



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PASDA, INC.,

Petitioner,

G.R. No. 264237

Present:

-versus-

COURT OF APPEALS and
EMMANUEL D. PASCUAL,
Respondents.

LEONEN, S.A.J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

Promulgated:

DEC 06 2023

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DECISION

LOPEZ, M., J.:

The private complainant cannot question the resolution granting the application for bail pending appeal and the subsequent judgment acquitting the accused. The interest of the offended party is limited only to the civil aspect of the case. We apply this dictum in this Petition for *Certiorari*¹ under Rule 65 of the Rules of Court assailing the Decision² dated September 19, 2022 of the Court of Appeals (CA) in CA-G.R. CR HC No. 15115.

ANTECEDENTS

PASDA, Inc. (PASDA) charged its former president Emmanuel D. Pascual (Emmanuel) with three counts of qualified theft before the Regional Trial Court of Tarlac City, Branch 65 (RTC) docketed as Criminal Case Nos. 7064-2017, 7065-2017, and 7066-2017, to wit:

¹ *Rollo*, pp. 3-61.

² *Id.* at 82-119. Penned by Associate Justice Lorenza R. Bordios, with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Rafael Antonio M. Santos of the Court of Appeals, Manila, Third Division.

Criminal Case No. 7064-2017

That sometime on January 2016 to February 2016, in the City of Tarlac and within the jurisdiction of the Honorable Court, the above-named accused, who was then the former President and current Board of Director of **PASDA INC.**, with grave abuse of confidence, did then and there willfully, unlawfully and feloniously with intent to gain and without the knowledge and consent of the owner thereof, take, steal and carry away the money of the company worth [PHP] **1,065,000.00** by issuing company check no. 440821 dated December 7, 2015 under his name and get the proceeds of the check bearing the said amount to the damage and prejudice of **PASDA INC.**

CONTRARY TO LAW[.]³ (Emphasis in the original)

Criminal Case No. 7065-2017

That sometime on January 2016 to February 2016, in the City of Tarlac and within the jurisdiction of the Honorable Court, the above-named accused, who was then the former President and current Board of Director of **PASDA INC.**, with grave abuse of confidence, did then and there willfully, unlawfully and feloniously with intent to gain and without the knowledge and consent of the owner thereof, take, steal and carry away the money of the company worth [PHP] **9,500,000.00** by issuing company check no. 440833 dated January 05, 2016 under his name and get the proceeds of the check bearing the said amount to the damage and prejudice of **PASDA INC.**

CONTRARY TO LAW[.]⁴ (Emphasis in the original)

Criminal Case No. 7066-2017

That sometime on January 2016 to February 2016, in the City of Tarlac and within the jurisdiction of the Honorable Court, the above-named accused, who was then the former President and current Board of Director of **PASDA INC.**, with grave abuse of confidence, did then and there willfully, unlawfully and feloniously with intent to gain and without the knowledge and consent of the owner thereof, take, steal and carry away the money of the company worth [PHP] **2,870,621.08** by issuing company check no. 440810 dated December 4, 2015 under his name and get the proceeds of the check bearing the said amount to the damage and prejudice of **PASDA INC.**

CONTRARY TO LAW[.]⁵ (Emphasis in the original)

Emmanuel pleaded not guilty. Joint trial ensued.⁶ The prosecution witnesses testified that Emmanuel had access to confidential records and was designated as the signatory of checks to pay the corporate expenditures. However, Emmanuel was replaced because of various irregularities during his term. In 2016, the audit investigation showed that Emmanuel issued three checks without authority from PASDA's Board of Directors. The checks were

³ *Id.* at 672.

⁴ *Id.* at 673.

⁵ *Id.* at 674.

⁶ *Id.* at 84.

deposited to Emmanuel's account.⁷ On the other hand, Emmanuel denied the accusations and claimed that PASDA authorized him to sign checks that were all covered by their corresponding vouchers. Specifically, the assailed transactions were advances of Emmanuel which he later returned through a manager's check.⁸

Meantime, the Regional Trial Court of Tarlac City, Branch 64 granted Emmanuel's application for bail.⁹ In a Decision¹⁰ dated October 29, 2020, the RTC convicted Emmanuel of the charges and held that the prosecution sufficiently proved the elements of qualified theft, thus:

WHEREFORE, premises considered, the Court finds the accused **EMMANUEL PASCUAL y David GUILTY** beyond reasonable doubt of the crimes of QUALIFIED THEFT (3 counts), under Article 310 of the Revised Penal Code, in Criminal Case Nos. 7064-2017, 7065-2017, and 7066-1017, and accused is hereby sentenced to suffer the following penalties:

- a. *Reclusion Perpetua* in Criminal Case No. 7064-2017;
- b. *Reclusion Perpetua* in Criminal Case No. 7065-2017; and
- c. An indeterminate penalty ranging from 8 YEARS and 1 DAY of *Prision Mayor*, as minimum, to 20 YEARS of *Reclusion Temporal*, as maximum, in Criminal Case No. 7066-2017.

SO ORDERED.¹¹ (Emphasis in the original)

Emmanuel elevated¹² the case to the CA docketed as CA-G.R. CR HC No. 15115. Emmanuel then filed a Petition¹³ for bail pending appeal. In a Resolution¹⁴ dated March 8, 2021, the CA granted the application for bail and ordered Emmanuel's provisional release, *viz.*:

FOR THESE REASONS, the Urgent Petition/Application for Bail Pending Appeal filed by accused-appellant Emmanuel D. Pascual is hereby **GRANTED**. This Court orders the **PROVISIONAL RELEASE** of Emmanuel D. Pascual on the same bond of One Million Pesos ([PHP] 1,000,000.00) posted by him before the court *a quo* and **DIRECTS** his immediate release from custody at the New Bilibid Prison, Muntinlupa City unless he is being detained for some other lawful cause.

SO ORDERED.¹⁵ (Emphasis in the original)

⁷ *Id.* at 84–85 and 449–450.

⁸ *Id.* at 86–87 and 451.

⁹ See Order dated October 8, 2018; *id.* at 227. Penned by Executive Judge Lily C. De Vera-Vallo.

¹⁰ *Id.* at 448–455. Penned by Judge Maria Magdalena A. Balderama.

¹¹ *Id.* at 455.

¹² See Notice of Appeal dated December 22, 2020; *id.* at 529–531.

¹³ See Urgent Petition/Application for Bail Pending Appeal; *id.* at 533–576.

¹⁴ *Id.* at 68–80. Penned by Associate Justice Elihu A. Ybañez, with the concurrence of Associate Justices Rafael Antonio M. Santos and Bonifacio S. Pascua.

¹⁵ *Id.* at 79–80.

In a Decision¹⁶ dated September 19, 2022, the CA acquitted Emmanuel of the charges based on reasonable doubt. The CA found that Emmanuel was duly authorized to transact on behalf of PASDA when the questioned checks were issued. The prosecution also failed to substantiate the elements of qualified theft,¹⁷ to wit:

Accused-appellant asseverates that at the time he issued and withdrew said checks in December 2015 and January 2016, he was authorized by PASDA through Board Resolution dated August 13, 2007[.]

x x x x

The due execution and authenticity of Board Resolution No. 2007-001 dated August 13, 2007 was admitted by the prosecution as provided in the Order dated February 27, 2020, where the private prosecutor, Atty. Daniel Nicholas Darvin admitted through stipulation of facts[.]

x x x x

In the same vein, Exhibit 7[†] of the Secretary's Certificate issued by Atty. Victor Rey Santos requiring two signatories in the issuance of PASDA's checks was only issued on May 5, 2016 while the date, issuance and withdrawal of the subject checks refer to December 2015 and January 2016, hence, the same could not be construed as revocation of the Board Resolution No. 2007-001.

x x x x

With the court's extensive discussion that accused-appellant was authorized to issue and withdraw the subject checks from the account of PASDA by virtue of the existence and validity of Board Resolution No. 2007-001 dated August 13, 2007 at the time of withdrawal, the confirmation by [the] BDO employee of accused-appellant's authority to withdraw, the failure of PASDA to file [a] complaint against BDO and the failure of the prosecution to prove that Board Resolution dated August 13, 2007 was already revoked when accused-appellant issued and withdr[e]w the subject checks from PASDA's account, the element that accused-appellant took PASDA's money without PASDA's consent is missing.

x x x x

This Court finds that accused-appellant's open issuance of the subject checks supported by check vouchers formal offer of evidence by [the] defense was under the belief that he is authorized to issue checks and withdraw the same from PASDA's account even with his lone signature and in significant amount pursuant to Board Resolution No. 2007-001 dated August 13, 2007. It is worth stressing that the legality of Board Resolution dated August 13, 2007 has never been successfully repudiated by the prosecution.

¹⁶ *Id.* at 82-119.

¹⁷ *Id.* at 94-118.

This belief is honest and accused-appellant's assertion of his authority is bonafide.

Ultimately, the good faith of accused-appellant is overwhelmingly manifested when he returned the value of the subject checks as affirmed by the court *a quo* in its assailed decision x x x

x x x x

Verily, the prosecution failed to prove that accused-appellant had an intent to gain when he withdrew the subject checks.

To recapitulate, the prosecution failed to prove beyond reasonable doubt the following elements of qualified theft:

1. the taking be done with intent to gain.
2. the taking be done without the owner's consent
3. the taking was with grave abuse of confidence.

x x x x

With the acquittal of accused-appellant, the Motion for Reconsideration of the Resolution granting the Petition for Bail has become moot and academic.

WHEREFORE, in view of the foregoing the appeal is **GRANTED**. The Decision dated 29 October 2020 of the Regional Trial Court, Third Judicial Region, Branch 65, Tarlac City, finding accused-appellant EMMANUEL PASCUAL *v* DAVID guilty beyond reasonable doubt, of three (3) counts of Qualified Theft in Crim. Case Nos. 7064-2017, 7065-2017 and 7066-2017 is **REVERSED** and **SET ASIDE**. Accused-appellant is **ACQUITTED** of the crime of Qualified Theft based on reasonable doubt.

SO ORDERED.¹⁸ (Emphasis supplied)

On November 28, 2022, PASDA filed a Petition for *Certiorari*¹⁹ ascribing grave abuse of discretion on the part of the CA in granting bail pending appeal in favor of Emmanuel and subsequently acquitting him of the criminal charges.²⁰ On February 15, 2023, this Court required²¹ the People, through the Office of the Solicitor General (OSG), and Emmanuel to Comment on the Petition pursuant to the guidelines in *Austria v. AAA*.²² In their respective Comments, the OSG²³ and Emmanuel²⁴ sought the dismissal of the Petition for PASDA's lack of legal standing to question the criminal aspect of the case. Specifically, the OSG argued that PASDA never requested its conformity or consulted it before filing the Petition.²⁵

¹⁸ *Id.* at 97-118.

¹⁹ *Id.* at 3-61.

²⁰ *Id.* at 24-57.

²¹ *Id.* at 1031.

²² G.R. No. 205275, June 28, 2022, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68436>> [Per J. M. Lopez, *En Banc*].

²³ *Rollo*, pp. 1032-1112.

²⁴ *Id.* at 1114-1134.

²⁵ *Id.* at 1038.

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RULING

The Petition must be dismissed.

Prefatorily, the seminal case of *Austria* harmonized the case law and formulated guidelines on the private offended parties' legal personality to question judgments and orders in criminal proceedings. The Court surveyed the divergent jurisprudence and instances where the private complainant was allowed to file an appeal or a petition for *certiorari* without the participation of the OSG questioning the acquittal of the accused, the dismissal of the criminal case and interlocutory orders rendered in the criminal proceedings. These include various reasons like denial of due process, grave abuse of discretion, and interest of substantial justice. In *Austria*, the Court categorically ruled that the "*divergent rulings do not grant the private complainant a blanket authority to question judgments and orders in criminal proceedings without the OSG's intervention,*"²⁶ thus:

On this point, the Court clarifies that the pronouncements in *Santiago, Dela Rosa, Perez, David, Flores, Morillo, Rodriguez, Salvador, and Narciso cannot be construed as a blanket grant of legal personality to private complainants to question judgments and orders in criminal proceedings on grounds of grave abuse of discretion or denial of due process. The Court did not abandon the well-established distinction in our legal system that the People, through the OSG, has legal interest over the criminal aspect of the proceedings, whereas the private complainant has legal interest over the civil aspect of the case.*

The decisions in *Santiago, Dela Rosa* and *Perez* explicitly noted that the private complainant "*has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds.*" Similarly, *David* pointed out that despite the acquittal, the offended party may appeal "*but only with respect to the civil aspect of the decision,*" while *Flores* reiterated that "*[h]aving an interest in the civil aspect of the case, the complainant may file such action, in his name, questioning the decision or action of the respondent court on jurisdictional grounds.*" **The rule remains that only the OSG may question before the SC and the CA matters involving the criminal aspect of the case.** Hence, the rulings in *Perez, David,* and *Flores* must be correlated with the decisions discussed earlier in *Jimenez, Anlud Metal Recycling Corp.,* and *Piccio* that private complainants cannot question orders dismissing criminal cases for want of probable cause and quashal of the information due to improper venue or insufficiency of the allegation without the OSG's participation given that these issues pertain to the criminal aspect of the case and the right to prosecute. Furthermore, the interpretation of the rulings in *Dela Rosa* and *Flores* was made clear in *Padillo v. Apas* stating that "*[w]hile it is settled that a private complainant, in his or her own name, has the right or personality to file through a private prosecutor a petition for certiorari questioning the dismissal of a criminal case, such right or personality is premised on his or her interest in the civil aspect of the case.*" Indeed, the

²⁶ *Austria* v. *AAA*, G.R. No. 205275, June 28, 2022, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68436>> [Per J. M. Lopez, *En Banc*]

Court in the subsequent cases of *Rodriguez* and *Salvador* aptly explained how private complainants maintained their interests in the civil aspect of the cases allowing them to assail orders in the criminal proceedings. Lastly, the *Morillo* and *Narciso* rulings were rendered based on exceptional circumstances and in the interest of substantial justice.

More importantly, the case law allowing private complainants to question judgments and orders in criminal proceedings should not be stretched to the degree of violating the mandate of the Administrative Code as to the nature and extent of the OSG's power and authority. The pertinent provision of the substantive law is clear that the OSG shall "[r]epresent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; x x x" As such, the OSG must be given the opportunity to be heard on how the remedies that private complainants sought before the SC and the CA might affect the interest of the People in the criminal aspect of the case. To be sure, there are several instances where the Court required the OSG to submit a comment instead of dismissing the appeal or petition for *certiorari* filed by private complainants questioning decisions or orders in criminal proceedings.²⁷ (Emphasis supplied)

This is the reason why the Court formulated the edifying rule on the private complainant's legal standing to question judgment or orders in criminal proceedings consistent with its exclusive rule-making authority, viz.:

To guide the bench and the bar, these rules should be observed with respect to the legal standing of private complainants in assailing judgments or orders in criminal proceedings before the SC and the CA, to wit:

(1) The private complainant has the legal personality to appeal the civil liability of the accused or file a petition for *certiorari* to preserve his or her interest in the civil aspect of the criminal case. The appeal or petition for *certiorari* must allege the specific pecuniary interest of the private offended party. The failure to comply with this requirement may result in the denial or dismissal of the remedy.

The reviewing court shall require the OSG to file comment within a non-extendible period of thirty (30) days from notice if it appears that the resolution of the private complainant's appeal or petition for *certiorari* will necessarily affect the criminal aspect of the case or the right to prosecute (*i.e.*, existence of probable cause, venue or territorial jurisdiction, elements of the offense, prescription, admissibility of evidence, identity of the perpetrator of the crime, modification of penalty, and other questions that will require a review of the substantive merits of the criminal proceedings, or the nullification/reversal of the entire ruling, or cause the reinstatement of the criminal action or meddle with the prosecution of the offense, among other things). The comment of the OSG must state whether it conforms or concurs with the remedy of the private offended party. The judgment or order of the reviewing court granting the private

²⁷ *Id.*

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complainant's relief may be set aside if rendered without affording the People, through the OSG, the opportunity to file a comment.

(2) The private complainant has no legal personality to appeal or file a petition for *certiorari* to question the judgments or orders involving the criminal aspect of the case or the right to prosecute, unless made with the OSG's conformity.

The private complainant must request the OSG's conformity within the reglementary period to appeal or file a petition for *certiorari*. The private complainant must attach the original copy of the OSG's conformity as proof in case the request is granted within the reglementary period. Otherwise, the private complainant must allege in the appeal or petition for *certiorari* the fact of pendency of the request. If the OSG denied the request for conformity, the Court shall dismiss the appeal or petition for *certiorari* for lack of legal personality of the private complainant.

(3) The reviewing court shall require the OSG to file comment within a non-extendible period of thirty (30) days from notice on the private complainant's petition for *certiorari* questioning the acquittal of the accused, the dismissal of the criminal case, and the interlocutory orders in criminal proceedings on the ground of grave abuse of discretion or denial of due process.

(4) These guidelines shall be prospective in application.²⁸
(Emphasis supplied)

Here, PASDA's Petition for *Certiorari* was filed on November 28, 2022, or after the ruling in *Austria* was rendered on June 28, 2022. Under the guidelines, PASDA has the legal standing to assail the civil liability of the accused but not the criminal aspect of the case or the right to prosecute unless made with the OSG's conformity. Notably, PASDA questioned before this Court the CA's order granting bail pending appeal and judgment of acquittal. These matters necessarily involved the criminal aspect of the case which only the OSG may bring or defend before this Court and the CA. This is explicitly provided under Book IV, Title III, Chapter 12, Section 35(1) of the 1987 Administrative Code, to wit:

Section 35. *Power and Functions.* — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall

²⁸ *Id.*

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discharge duties requiring the service of a lawyer. It shall have the following specific power and functions:

- (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphasis supplied)

The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant. The interest of the private offended party is restricted only to the civil liability of the accused. In the prosecution of the offense, the complainant's role is limited to that of a witness such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the OSG.²⁹ Yet, PASDA did not request the OSG's conformity. Also, nowhere in the Petition did PASDA even briefly discuss the civil liability of the accused. Records show that Emmanuel returned the value of the subject checks. In any event, the OSG effectively refused to give its conformity when it prayed for the dismissal of the Petition. Taken together, the Court is constrained to dismiss the Petition on the ground of lack of legal standing or personality of PASDA to question the acquittal of the accused.

Finally, double jeopardy has set in. The Constitution is explicit that no person shall be twice put in jeopardy of punishment for the same offense.³⁰ There is double jeopardy when the following elements concur: (1) the accused is charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) the accused is convicted or acquitted, or the case is dismissed without their consent.³¹ Here, all the elements are present. Emmanuel was validly charged with three counts of qualified theft before the RTC. Emmanuel pleaded not guilty to the charges. After trial, the RTC convicted Emmanuel. On appeal, the CA acquitted him based on reasonable doubt. Absent grave abuse of discretion or denial of due process, the judgment of acquittal is final and executory.³²

ACCORDINGLY, the Petition is **DISMISSED**. The Decision dated September 19, 2022 of the Court of Appeals in CA-G.R. CR HC No. 15115 is **AFFIRMED**. Emmanuel D. Pascual is **ACQUITTED** of the crime of qualified theft based on reasonable doubt. Let entry of final judgment be issued.

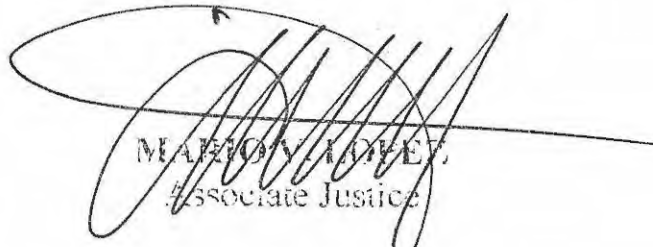
²⁹ *Rodriguez v. Gadiane*, 527 Phil. 691, 698 (2006) [Per J. Tinga, Third Division].

³⁰ See Article III, Section 21 of the Constitution. *

³¹ *Merciales v. CA*, 429 Phil. 70, 81 (2002) [Per J. Ynares-Santiago, *En Banc*].

³² *People v. Sandiganbayan (Third Division)*, 661 Phil. 350, 358-359 (2011) [Per J. Del Castillo, Third Division].

SO ORDERED.




MARION V. LOPEZ
Associate Justice

WE CONCUR:



MARVIC M.V.F. LEONEN
Senior Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



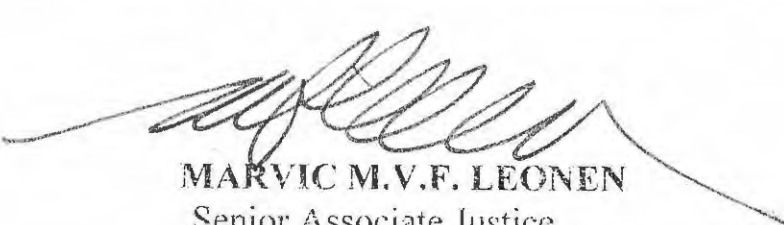
JOSEPH LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

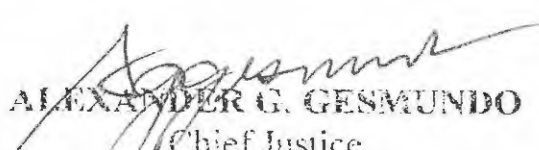
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice