

THIRD DIVISION

[G.R. No. 251732. July 10, 2023]

**JULIUS ENRICO TIJAM Y NOCHE AND KENNETH BACSID Y RUIZ, PETITIONERS,
VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

GAERLAN, J.:

An accused shall not be deprived of life and liberty on sheer conjectures, presumptions, or suspicions, but only on evidence that supports a conviction beyond reasonable doubt.

This resolves the Petition for Review on *Certiorari*^[1] filed by petitioners Julius Enrico Tijam (Tijam) and Kenneth Bacsid (Bacsid) (collectively, petitioners), praying for the reversal of the November 20, 2019 Decision^[2] and January 29, 2020 Resolution^[3] of the Court of Appeals in CA-G.R. CR No. 42347, which affirmed the July 31, 2018 Amended Decision^[4] of the Regional Trial Court (RTC), Branch 111, Pasay City convicting them of Theft.

Antecedents

In an Information dated August 25, 2017, petitioners were charged with Theft under Article 308, in relation to Article 309 of the Revised Penal Code (RPC), as amended, to wit:

That on or about the 18[th] day of August 2017, in Pasay City Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, with intent to gain and without the consent of the complainant KIM MUGOT Y MONJARDIN (Mugot), did then and there willfully, unlawfully, and feloniously take, steal and carry away one (1) unit Samsung A7 valued at Php25,000.00 owned by and belonging to aforesaid complainant, to the damage and prejudice of the latter in the amount of Php25,000.00.

Contrary to law.^[5]

Petitioners pleaded not guilty to the charge. After the pre-trial, trial on the merits ensued.

At around 1:30 a.m. of August 18, 2017, Kim Mugot (Mugot) was waiting for a bus ride home at SM Mall of Asia, Pasay City. When the bus arrived, Mugot, along with other commuters, rushed inside the bus. Meanwhile, Mugot was pinned against the door of the bus. He later noticed that his Samsung Galaxy A7 cellular phone, which was in his right pocket, was missing. Immediately, he alighted from the bus and searched for the person who pinned him against the bus door, whom he later identified as Bacsid. He noticed that Bacsid headed to the passenger's unloading area of SM Mall of Asia.^[6]

As Mugot approached the passenger's unloading area, he saw Tijam hand over his cellular phone to Bacsid. He shouted "*magnanakaw!*" and tried to recover his cellular phone from Bacsid. A struggle ensued between them, thereby causing the cellular phone to fall on the ground damaging it. Mugot picked up his cellular phone, and again screamed "*magnanakaw.*"^[7]

Responding to the commotion, Romnick Sarmiento, SM Mall of Asia's security guard, apprehended the petitioners and reported the incident to the SM Mall of Asia Police Community Precinct. Thereafter, the case was referred to the Investigation Office of Pasay City Police Station.^[8]

On the other hand, petitioners vehemently denied the charge levelled against them. Tijam related that he was on his way home after having dinner with his mother at the seaside, when he met Bacsid at the bus waiting area of SM Mall of Asia. They exchanged pleasantries and were about to part ways, when Tijam saw a cellular phone on the ground, which he picked up. He showed Bacsid the cellular phone. At that point, Mugot emerged and grabbed the cellular phone from Tijam causing it to fall on the ground. Then, Mugot vigorously hurled accusations against them, which led to a heated conversation among them.^[9]

Ruling of the RTC

On July 12, 2018, the RTC found petitioners guilty of Theft.^[10] It noted that the prosecution established all the elements for Theft beyond reasonable doubt.^[11] Likewise, it anchored its ruling on the disputable presumption that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act. Hence, it adjudged petitioners guilty since they were found in possession of the cellular phone moments after Mugot lost it. It further faulted petitioners for failing to proffer a clear and

convincing explanation as to how they came into possession of the cellular phone.^[12]
Accordingly, it ruled as follows:

WHEREFORE, this court finds [petitioners] Julius Enrico Tijam y Noche and Kenneth Bacsid y Ruiz guilty beyond reasonable doubt of theft and accordingly, sentences each of them to suffer the indeterminate penalty of imprisonment ranging from Five (5) months of *arrestor mayor*, as minimum, to Two (2) years of *prision correccional*, as maximum. No award of civil liability.

SO ORDERED.^[13]

However, on July 31, 2018, the RTC issued an Amended Decision^[14] to correct several typographical errors in the dispositive portion of its July 12, 2018 ruling.

Petitioners sought reconsideration, which was denied in the August 22, 2018 RTC Order.

Aggrieved, petitioners filed an appeal.

Ruling of the CA

On November 20, 2019, the CA affirmed the conviction meted by the RTC.^[15] It held that the prosecution established all the elements of Simple Theft beyond reasonable doubt. Moreover, it reasoned that Mugot positively identified Bacsid as the person on his left side as passengers rushed to board the bus on the night of the incident. It further noted that Mugot saw Tijam holding his cellular phone and handing the same to Bacsid. Finally, it rejected the petitioners' defense of denial. Thus, it disposed of the case as follows:

WHEREFORE, the trial court's Decision dated July 31, 2018 and Order dated August 22, 2018 are hereby **AFFIRMED**.

SO ORDERED.^[16] (Emphases in the original)

Dissatisfied with the ruling, petitioners filed a motion for reconsideration, which the CA denied in its January 29, 2020 Resolution.^[17]

Undeterred, petitioners filed the instant Petition for Review on *Certiorari*.^[18]

Issue

The crux of the case is whether or not the petitioners are guilty beyond reasonable doubt of Simple Theft.

Petitioners bewail that the prosecution failed to prove the element of unlawful taking. They lament that the CA simply relied on the presumption of possession of the stolen device to support the finding of guilt, when they thoroughly provided an explanation behind their possession.^[19] Likewise, they contend that there was never any direct evidence or even clear circumstantial evidence proving their guilt.^[20] Also, they attack Mugot's testimony as incredible and dubious. Finally, they maintain that their denial cannot be disregarded since the prosecution's evidence is insufficient to overcome the presumption of innocence accorded by the Constitution.^[21]

On the other hand, the People of the Philippines, through the Office of the Solicitor General (OSG) points out that the petitioners raise questions of fact, which are improper in a petition for review on *certiorari*.^[22] Moreover, the OSG maintains that the prosecution established that petitioners took Mugot's cellular phone.^[23] Furthermore, the OSG staunchly insists that Mugot's testimony sufficiently established the circumstances leading to the petitioners' guilt.^[24]

Ruling of the Court

The petition is impressed with merit.

Parameters of Judicial Review Under Rule 45 and the Exceptions Thereto

A determination of guilt hinges on how a court appreciates evidentiary matters in relation to the requisites of an offense, and is thus, fundamentally a factual issue.^[25] As a general rule, factual matters are not the proper subject of an appeal by *certiorari*,^[26] as it is not the Court's function to analyze or weigh the evidence which has been considered in the proceedings below.^[27] Nonetheless, a review of the factual findings is justified under any of the following circumstances:

- (i) when the findings are grounded entirely on speculations, surmises or conjectures;

- (ii) when the inference made is manifestly mistaken, absurd or impossible;
- (iii) when there is grave abuse of discretion;
- (iv) when the judgment is based on a misapprehension of facts;
- (v) when the findings of fact are conflicting;
- (vi) when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
- (vii) when the findings are contrary to that of the trial court;
- (viii) when the findings are conclusions without citation of specific evidence on which they are based;
- (ix) when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;
- (x) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [or]
- (xi) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.^[28]

As will be shown, the findings of the RTC and the CA are based on speculations, surmises or conjectures, thereby warranting a review of the facts.

***The prosecution failed to prove
the petitioners' guilt for simple
theft beyond reasonable doubt.***

Article 308 of the RPC defines Theft as the physical taking of another's property without violence or intimidation against persons or force upon things.^[29] To sustain a conviction for theft, the prosecution must prove the following elements beyond reasonable doubt, namely: (i) the taking of personal property; (ii) the property belongs to another; (iii) the taking was done with intent to gain; (iv) the taking was done without the consent of the owner; and (v)

the taking is accomplished without violence or intimidation against person or force upon things.^[30]

The burden to overcome the presumption of innocence of the accused lies with the prosecution.^[31] In this regard, the evidence for the prosecution must stand or fall on its own weight and should not draw strength from the weakness of the defense.^[32]

In the absence of direct evidence, circumstantial evidence may be sufficient for conviction if: (i) there is more than one circumstance; (ii) the facts from which the inferences are derived are proven; and (iii) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The inferences cannot be based on other inferences.^[33]

Likewise, the circumstances must constitute an unbroken chain that leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others as the guilty person. Moreover, the circumstances proven must be consistent with each other, consistent with the hypothesis that the accused is guilty, and inconsistent with any other hypothesis except that of guilt.^[34]

In this case, the prosecution relied on the following circumstances to prove the petitioners' liability for theft:

- (i) Mugot saw Bacsid pin him against the door of the bus while he was boarding;
- (ii) After entering the bus, Mugot noticed his mobile phone missing from his right) pocket;
- (ii) Mugot alighted from the bus and saw Bacsid walking back to the bus waiting i) area of SM Mall of Asia; and
- (iv) Mugot saw Tijam hand over his (Mugot's) cellular phone to Bacsid.^[35]

The Court finds that the combination of the aforementioned circumstances, even if given full faith and credit, do not establish the elements of Theft.

It cannot be gainsaid that the only overt acts remotely connecting Bacsid to the purported Theft are Mugot's allegations that Bacsid pinned him against the bus door and thereafter, walked back to the waiting area. By no stretch of the imagination may the act of pinning someone establish the unlawful taking of property. Besides, it is strange that Mugot claimed

that Bacsid pinned him to the bus door at his (Mugot's) left side, while the cellular phone was taken from his right pocket.

On the other hand, the only conspicuous deed hinting at Tijam's participation is the fact that he held Mugot's cellular phone and allegedly handed the same to Bacsid at the passenger waiting area. However, there is nothing in the records to indicate that Mugot saw Tijam inside the bus or show that the latter was there when his cellular phone was purportedly stolen.

Mugot further related that he was rushing inside the bus with other commuters. It was therefore not impossible for the purported Theft (if it indeed occurred), to have been committed by someone else. To stress, a conviction based on circumstantial evidence, must exclude the possibility that some other person committed the crime,^[36] which does not obtain here.

At best, the circumstantial evidence presented merely arouses suspicion or gives room for conjecture, which is not sufficient to convict. Overall, the circumstances do not constitute an unbroken chain that points to the petitioners, to the exclusion of all others, as the guilty persons. Worse, the facts from which the inferences are derived have not been substantially proven and fail to engender a moral certainty of guilt. Thus, the petitioners' constitutional presumption of innocence must prevail.

Tijam's possession of the cellular phone was satisfactorily explained.

Section 3(j), Rule 131 of the Rules of Evidence lays the disputable presumption "that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act."^[37] Latching on to said presumption, the RTC and the CA surmised that Tijam's possession of the cellular phone proves that he and Bacsid conspired with each other to steal it from Mugot.

Jurisprudence exhorts that courts should be mindful before applying said presumption and first undertake a thorough examination of the facts of the case. Failure to do so may result to unjust convictions that will lead to the forfeiture of one's life, liberty, and property.^[38]

Significantly, in *Mabunga v. People*,^[39] the Court stringently warned against the indiscriminate application of presumptions in criminal cases:

In criminal cases, however, presumptions should be taken with caution especially in light of serious concerns that they might water down the requirement of proof beyond reasonable doubt. As special considerations must be given to the right of the accused to be presumed innocent, there should be limits on the use of presumptions against an accused.

Although possession of stolen property within a limited time from the commission of the theft or robbery is not in itself a crime, it being possible to possess the same and remain innocent, such possession may be sufficient for the formation of an inference that the possessor is the thief **unless the evidence satisfactorily proves that the property was acquired by the accused by legal means.**

x x x x

Before an inference of guilt arising from possession of recently stolen goods can be made, however, the following basic facts need to be proven by the prosecution: (1) that the crime was committed; (2) that the crime was committed recently; (3) that the stolen property was found in the possession of the defendant; and (4) **that the defendant is unable to explain his possession satisfactorily.**

For purposes moreover of conclusively proving possession, the following considerations have to be emphasized: **(1) the possession must be unexplained by any innocent origin;** (2) the possession must be fairly recent; and (3) the possession must be exclusive.^[40] (Emphases supplied; citations omitted)

In the same vein, *United States v. Catimbang*^[41] underscores that a reasonable explanation behind the accused's possession inconsistent with guilt, shall be sufficient to rebut the presumption:

The inference of guilt is one of fact and rests upon the common experience of men. But the experience of men has taught them that an apparently guilty possession may be explained so as to rebut such an inference and an accused person may therefore put witnesses on the stand or go on the witness stand himself to explain his possession, and any reasonable explanation of his

possession, inconsistent with his guilty connection with the commission of the crime, will rebut the inference as to his guilt which the prosecution seeks to have drawn from his guilty possession of the stolen goods.^[42]

In this case, Tijam satisfactorily explained that he saw the cellular phone lying on the pavement, and thus picked it up. Such explanation is plausible in view of Mugot's own narration that there was an onslaught of passengers rushing inside the bus, which could have caused him to drop his cellular phone. Significantly, records are bereft of proof that Mugot saw Tijam inside the bus or anywhere near it when his cellular phone was lost or stolen.

It is also worth noting that it was never established that Bacsid had possession of the cellular phone. Records show that after Tijam picked up the cellular phone, he showed it to Bacsid. At this point, Mugot stormed on them and haphazardly accused them of stealing said device.

It bears stressing that the fact of possession alone, wholly unconnected with any other circumstances, cannot be used as a ground to convict. Clearly, the disputable presumption cannot prevail over the petitioners' explanation. Tijam's possession having been explained, the legal presumption is disputed and thus, cannot be the sole basis for the conviction. To hold otherwise, will be a travesty of justice as criminal convictions necessarily require proof of guilt beyond reasonable doubt.

Furthermore, the equipoise rule in criminal cases ordains that when inculpatory facts are susceptible of two or more interpretations, one that is consistent with the innocence of the accused, and the other consistent with his/her guilt, then the evidence fails to hurdle the test of moral certainty required to support a conviction.^[43] Consequently, where the evidence is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused.^[44]

Finally, the petitioners' defense of denial cannot be brushed aside in view of the weakness of the prosecution's evidence. Although a denial partakes of the nature of negative and self-serving evidence and is seldom given weight in law, still the defense of denial assumes significance when the prosecution's evidence fails to prove guilt beyond reasonable doubt.^[45] Here, the petitioners' denial, which gave way to a sufficient explanation behind their possession engenders a reasonable doubt as to their guilt.

All told, the Court must judge the petitioners' guilt or innocence based on facts and not on mere conjectures, presumptions, or suspicions.^[46] The highest quantum of proof is required as the petitioners' life and liberty are at stake.^[47] In this case, the facts from which the inferences were derived were not proven; the totality of the circumstances miserably failed to point to the petitioners to the exclusion of all others as the malefactors; the disputable presumption conjecturally relied upon by the RTC and the CA was sufficiently rebutted; and the evidence presented was susceptible of two interpretations. Due to the prosecution's failure to prove the petitioners' guilt beyond reasonable doubt, their presumption of innocence, enshrined in the Constitution and stringently guarded by the Court, must be upheld. Accordingly, the petitioners must be acquitted of the charge.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The November 20, 2019 Decision and January 29, 2020 Resolution of the Court of Appeals in CA-G.R. CR No. 42347 are **REVERSED and SET ASIDE**. Petitioners Julius Enrico Tijam and Kenneth Bacsid are hereby **ACQUITTED** on the ground that their guilt was not proven beyond reasonable doubt.

Let entry of judgment be issued immediately.

SO ORDERED.

Inting and Dimaampao, JJ., concur.

Caguioa (Chairperson), J., see concurring opinion.

Singh, J., see dissenting opinion.

^[1] *Rollo*, pp. 24-38.

^[2] *Id.* at 45-62; penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Danton Q. Bueser and Ronaldo Roberto B. Martin, concurring.

^[3] *Id.* at 64-65.

^[4] *Id.* at 80-89; penned by Presiding Judge Wilhelmina B. Jorge-Wagan.

^[5] *Id.* at 26.

^[6] *Id.* at 46.

^[7] *Id.* at 46-47.

^[8] *Id.* at 47.

^[9] *Id.* at 47.

^[10] *Id.* at 80-83.

^[11] *Id.* at 84.

^[12] *Id.* at 85.

^[13] *Id.* at 89.

^[14] *Id.* at 90-99.

^[15] *Id.* at 45-62.

^[16] *Id.* at 62.

^[17] *Id.* at 64-65.

^[18] *Id.* at 24-36.

^[19] *Id.* at 32.

^[20] *Id.* at 34.

^[21] *Id.* at 36.

^[22] *Id.* at 138.

^[23] *Id.* at 140.

^[24] *Id.* at 142.

^[25] **Macayan, Jr. v. People**, 756 Phil. 202, 214 (2015).

^[26] **Miro v. Vda. de Erederos**, 721 Phil. 772, 785 (2013).

^[27] *Id.*

^[28] **De Leon v. Maunlad Trans Inc.**, 805 Phil. 531, 538-539 (2017).

^[29] **Roque v. People**, 486 Phil. 288, 305 (2004).

^[30] **Pit-Og v. People**, 268 Phil. 413, 420-421 (1990), citing **People vs. Rodrigo**, 123 Phil. 310, further citing **US v. De Vera**, 43 Phil. 1000.

^[31] **People v. Molde**, G.R. No. 128262, January 21, 2019, citing **People v. Dacuma**, 753 Phil. 276, 287 (2015).

^[32] *Id.*

^[33] Rule 133 NEW RULES OF EVIDENCE, A.M. No. 19-08-15-SC, Section 4.

^[34] **People v. Bayon**, 636 Phil. 713, 722 (2010), citing **People v. Castro**, 587 Phil. 537 (2008).

^[35] *Rollo*, p. 84.

^[36] **Zabala v. People**, 752 Phil. 59, 70 (2015), citing **People v. Anabe**, 644 Phil. 261 (2010).

^[37] 2019 Proposed Amendments to the Revised Rules of Evidence, A.M. No. 19-08-15-SC.

^[38] **Lopez v. People**, G.R. No. 249196, April 28, 2021.

^[39] 473 Phil. 555 (2004).

^[40] *Id.* at 565-567.

^[41] 35 Phil. 367 (1916).

^[42] *Id.* at 371-372, cited in **Mabunga v. People**, *supra* note 39.

^[43] **Lopez v. People**, *supra* note 38; **People v. Urzais**, 784 Phil. 561, 579-580(2016).

^[44] **People v. Urzais**, *id.*, citing **People v. Erguiza**, 592 Phil. 363, 388 (2008).

^[45] **Franco v. People**, 780 Phil. 36, 53 (2016), citing **People v. Cañete**, 364 Phil. 423, 435 (1999) and **People v. Mejia**, 612 Phil. 668, 687 (2009).

^[46] **Franco v. People**, *supra* note 45.

^[47] **People v. Molde**, *supra* note 31.

CONCURRING OPINION

CAGUIOA, J.:

I agree with the *ponencia* that the prosecution in this case was not able to prove beyond reasonable doubt the guilt of both petitioners Julius Enrico Tijam y Noche (Tijam) and Kenneth Bacsid y Ruiz (Bacsid).

It is evident that the testimony of the complainant, Kim Mugot (Mugot), constituted the bulk of the prosecution's evidence in this case, since he was the only one with personal knowledge of the alleged taking of his cellphone. His narration essentially consisted of the following events: first, he was pinned to the door of a bus by Bacsid while a throng of commuters were rushing to board the same; second, he later noticed that his cellular phone, which was in his right pocket, was missing; third, he followed the person who pinned him to the bus door back towards the unloading area; and fourth, he saw Tijam (not Bacsid) handing his phone to Bacsid.^[1] From these events, Mugot and the prosecution concluded that Bacsid and Tijam must have acted in conspiracy to steal Mugot's phone.

While these circumstances may inspire suspicion at best, these cannot by any means be sufficient to prove that the crime of theft was even committed, let alone that Bacsid and Tijam perpetrated the same.

First, the Court cannot hastily conclude that Mugot's phone was taken from him just because he was pinned to the bus's door. There were many commuters who were also trying to board the bus along with him, and he could have been jostled around by Bacsid and the other people around him.

Second, when Mugot next saw his missing phone, it was in Tijam's hand, and the latter was handing the same to Bacsid. This is a key point and significant source of doubt in the prosecution's theory. There is a significant logical gap between Mugot being pinned to the bus and allegedly getting his phone stolen by Bacsid, and Mugot discovering his phone in Tijam's hand, moments later.

The logical expectation would be that, if Bacsid indeed took the phone, it would be in his

possession. Also, if the hypothesis is that Bacsid turned over the phone to Tijam as his co-conspirator, then Tijam should not be handing it back to Bacsid. There are simply too many unanswered questions about the entire situation, and too many possible explanations for Tijam's and Bacsid's behavior. As pointed out by the *ponencia*, another likely explanation is that due to the many passengers rushing to board the bus, Mugot dropped his cellular phone without noticing, and that Tijam just happened to pick it up.^[2] There is no other compelling evidence which would make the conclusion that they committed theft to be the most plausible option.

More importantly, the constitutionally-protected right of an accused to be presumed innocent disincentivizes the Court from concluding that Tijam and Bacsid are guilty of theft, when there are simply too many doubts and gaps in the prosecution's evidence. The Court has ruled time and again that "where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with innocence and the other with guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to convict the accused."^[3]

In this particular case, I believe it is even proper to go so far as to say that the evidence did not only fail to fulfill the test of moral certainty, it also failed to meet the requisite threshold of probable cause. In this case, the trial court, the Court of Appeals and evidently, the prosecution, all relied on the presumption under Section 3(j), Rule 131 of the Rules of Evidence which states that "a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act." To my mind, this provision was too hastily applied against the two accused. The provision itself exhorts that before a person in possession of a thing may be considered as the taker thereof, there must first have been a recent wrongful act; *there should have been a taking that occurred*. In this case, the taking itself was not even sufficiently proven. How then can there be a presumption that the two accused were the "taker[s] and the doer[s] of the whole act"?

The *ponencia* astutely points out that courts should take care not to indiscriminately rely on presumptions in criminal cases lest they lead to unjust convictions. The particular facts of the case must always be thoroughly considered. This same principle is not only true of courts, but should also be adhered to by prosecutors when deciding whether there is merit in pursuing a case. A prosecutor's judiciousness can shield the innocent not only from the costs of litigation but also from deprivation of liberty for protracted periods of time. Deciding not to pursue a case riddled with doubt is just as commendable as steadfastly pursuing one buttressed by strong evidence.

Given the foregoing, I vote to **ACQUIT** petitioners Tijam and Bacsid.

^[1] *Ponencia*, pp. 3 and 8.

^[2] *Id.* at 10-11.

^[3] **People v. Lignes, G.R. No. 229087**, June 17, 2020.

DISSENTING OPINION

SINGH, J.:

Petitioners Julius Enrico Tijam y Noche (**Tijam**) and Kenneth Bacsid y Ruiz (**Bacsid**) (collectively, the **petitioners**) were charged with Theft under Article 308, in relation to Article 309, of the Revised Penal Code (**RPC**):

That on or about the 18[th] day of August 2017, in Pasay City Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, with intent to gain and without the consent of the complainant KIM MUGOT Y MONJARDIN (Mugot), did then and there willfully, unlawfully, and feloniously take, steal and carry away one (1) unit Samsung A7 valued at Php25,000.00 owned by and belonging to aforesaid complainant, to the damage and prejudice of the latter in the amount of Php25,000.00.

Contrary to law.

The Regional Trial Court (**RTC**) convicted the petitioners because they were found in possession of complainant Kim Mugot's (**Mugot**) cellular phone, which raised a disputable presumption that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act.^[1]

On appeal, the Court of Appeals (**CA**) affirmed the conviction, highlighting the fact that Mugot positively identified Bacsid as the person on his left side as passengers rushed to

board the bus and that Mugot saw Tijam holding his cellular phone and handing it over to Bacsid.^[2]

In resolving the Petition, the *ponencia* first ruled that the findings of the RTC and the CA are based on speculations, surmises, and conjectures, warranting a review of the factual circumstances of the case. Absent direct evidence to support a finding of petitioners' guilt beyond reasonable doubt, it was necessary to look into the sufficiency of circumstantial evidence.^[3]

However, the *ponencia* found the circumstantial evidence lacking. It found that Bacsid's overt acts of pinning Mugot against the bus door and walking back to the waiting area could not have established that Bacsid unlawfully took Mugot's cellular phone. The same finding was applied to Tijam, whose overt acts were merely holding the cellular phone and handing it over to Bacsid.^[4]

The *ponencia* also rejected the application of Section 3(j), Rule 131 of the Revised Rules of Court, which provides for the disputable presumption that a person found in possession of a thing taken involving a recent wrongful act is the taker and the doer of the whole act. It reminded the courts to be mindful before applying the said presumption. Besides, to rebut the presumption, Tijam's possession of the cellular phone is inconsistent with his guilt because he merely picked it up from the pavement.^[5]

Thus, the *ponencia* acquitted both petitioners for failure of the prosecution to prove their guilt for simple theft beyond reasonable doubt.^[6] The *ponencia* finds that the circumstances do not establish the crime charged and holds:

It cannot be gainsaid that the only overt acts remotely connecting Bacsid to the purported Theft are Mugot's allegations that Bacsid pinned him against the bus door and thereafter, walked back to the waiting area. By no stretch of the imagination may the act of pinning someone establish the unlawful taking of property. Besides, it is strange that Mugot claimed that Bacsid pinned him to the bus door at his (Mugot's) left side, while the cellular phone was taken from his right pocket.

On the other hand, the only conspicuous deed hinting at Tijam's participation is the fact that he held Mugot's cellular phone and allegedly handed the same to Bacsid at the passenger waiting area. However, there is nothing in the records to

indicate that Mugot saw Tijam inside the bus or show that the latter was there when his cellular phone was purportedly stolen.

Mugot further related that he was rushing inside the bus with other commuters. It was therefore not impossible for the purported Theft (if it indeed occurred), to have been committed by someone else. To stress, a conviction based on circumstantial evidence, must exclude the possibility that some other person committed the crime, which does not obtain here.

At best, the circumstantial evidence presented merely arouses suspicion or gives room for conjecture, which is not sufficient to convict. Overall, the circumstances do not constitute an unbroken chain that points to the petitioners, to the exclusion of all others, as the guilty persons. Worse, the facts from which the inferences are derived have not been substantially proven and fail to engender a moral certainty of guilt. Thus, the petitioners' constitutional presumption of innocence must prevail.^[7]

While I agree with Tijam's acquittal, I respectfully dissent and vote to affirm Bacsid's conviction.

The Court has ruled that in criminal cases, proof beyond reasonable doubt does not require absolute certainty of the fact that the accused committed the crime, and it does not likewise exclude the possibility of error; what is only required is that degree of proof which, after a scrutiny of the facts, produces in an unprejudiced mind moral certainty of the culpability of the accused.^[8]

For conviction to ensue, the guilt of the accused may be established by either direct evidence or circumstantial evidence. Direct evidence proves a challenged fact without drawing any inference, while circumstantial evidence indirectly proves a fact in issue, such that the fact-finder must draw an inference or reason from circumstantial evidence.^[9]

In the present Petition, there is no dispute that no direct evidence was presented and the evidence for the prosecution is largely circumstantial. Thus, it behooves upon the Court to determine the sufficiency of the circumstances and whether the same "tend by inference to establish the fact" constituting the elements of the crime charged.^[10]

Rule 133, Section 4 of the Revised Rules on Evidence^[11] provides three requisites that

should be established to sustain a conviction based on circumstantial evidence:

Section 4. *Circumstantial evidence, when sufficient.* – Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Inferences cannot be based on other inferences.

It is worth noting, however, that circumstantial evidence suffices to convict an accused only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person; the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.^[12]

The Court explained in *People v. Monje*^[13] the guidelines to be observed in weighing the probative value of circumstantial evidence:

In assaying the probative value of circumstantial evidence, four (4) basic guidelines must be observed: (a) It should be acted upon with caution; (b) All the essential facts must be consistent with the hypothesis of guilt; (c) The facts must exclude every other theory but that of guilt of the accused; and, (d) The facts must establish with certainty the guilt of the accused as to convince beyond reasonable doubt that he was the perpetrator of the offense. The peculiarity of circumstantial evidence is that the series of events pointing to the commission of a felony is appreciated *not singly but collectively*. The guilt of the accused cannot be deduced from scrutinizing just one (1) particular piece of evidence. It is more like a puzzle which when put together reveals a convincing picture pointing to the conclusion that the accused is the author of the crime.^[14] (Italics in the original)

Based on the foregoing principles, I find that the circumstantial evidence in the present Petition suffice to convict Bacsid of theft. Mugot's straightforward testimony sufficiently established circumstances that lead to the reasonable conclusion that Bacsid took Mugot's cellphone from his pocket. These circumstances are:

1. Mugot had his cellphone in the right pocket of his pants while waiting to board the bus in the passenger's waiting area of the SM Mall of Asia;^[15]
2. when the bus arrived, Bacsid boarded through the front side entrance of the bus;^[16]
3. As other passengers rushed to board the bus, Bacsid pinned Mugot against the door of the bus;^[17]
4. Immediately after, Mugot noticed his cellphone missing from his pocket;^[18]
5. Mugot alighted from the bus and followed Bacsid the person who pinned him against the door of the bus and who was heading back to the passenger's waiting area;^[19]
6. At the passenger's waiting area, Mugot saw Tijam hand over the phone to Bacsid.^[20]

While the above circumstances, taken individually, would not lead to a conclusion that Bacsid was the culprit, they collectively establish with certainty Bacsid's guilt. The key circumstance that links Bacsid to the unlawful taking of Mugot's cellular phone is his identification as the person who pinned Mugot to the door, after which Mugot realized that his cellular phone was missing. The events that followed are consistent with the hypothesis of Bacsid's guilt and exclude any other theory that point to another person being the culprit.

If Mugot had not identified Bacsid as the person who pinned him to the door, then the facts that Bacsid left the bus and returned to the passenger's waiting area and Tijam handed his cellular phone to Bacsid become irrelevant. The series of events from the moment Bacsid pinned Mugot to the bus door until Mugot went after Bacsid at the passenger's waiting area formed an unbroken chain that is consistent with Bacsid's guilt for the unlawful taking of Mugot's cellular phone.

Contrary to the majority opinion, there is nothing strange with Mugot's claim that he was

pinned to the bus door at his left side while the cellular phone was taken from his right pocket. It is not impossible for Bacsid to reach for Mugot's right side while pinning him on his left side. It is a wily strategy for a person who attempts to steal from another to employ a distraction, such as initiating a sudden physical contact, so that the victim would not notice the unlawful taking.

To bolster the above circumstances, it is worthy to note that Bacsid was seen boarding the bus initially, but suddenly left and did not attempt to ride the bus anymore; and that Tijam was seen handing over the cellular phone to Bacsid, even if they just met at the passenger's waiting area. It may thus be inferred that Bacsid attempted to escape immediately after taking the cellular phone and that Tijam thought that the cellular phone belonged to Bacsid when it fell to the pavement. This is the circumstance which engendered doubt as to the guilt of Tijam because his act of picking up the phone from the pavement is equivocal and not indicative that he connived with Bacsid. Whereas, the fact that Tijam handed Mugot's phone to Bacsid is very indicative that Tijam believed it belonged to Bacsid, ergo, it was in Bacsid's possession before it fell to the pavement. The application of the presumption, therefore, is warranted. And since Bacsid was unable to explain why he had Mugot's phone in his possession, the presumption became conclusive.

Jurisprudence is replete with cases that explain how an inference of guilt arising from possession of recently stolen goods. The following basic facts, which apply in the present Petition, must be established:

Before an inference of guilt arising from possession of recently stolen goods can be made, however, the following basic facts need to be proven by the prosecution: (1) that the crime was committed; (2) that the crime was committed recently; (3) that the stolen property was found in the possession of the defendant; and (4) that the defendant is unable to explain his possession satisfactorily.^[21] (Italics omitted)

It is for all these reasons, supported by the evidence on record, that I vote against the *ponencia* to find Bacsid guilty as charged.

WHEREFORE, I DISSENT as to the acquittal of Kenneth Bacsid y Ruiz, but concur as to the acquittal of Julius Enrico Tijam y Noche, who were both charged with Theft under Article 308, in relation to Article 309, of the Revised Penal Code.

^[1] *Ponencia*, p. 3.

^[2] *Id.* at 4.

^[3] *Id.* at 6-7.

^[4] *Id.* at 7-8.

^[5] *Id.* at 8-10.

^[6] *Id.* at 11.

^[7] *Id.* at 7-8.

^[8] **People v. Juare and Aguadilla, G.R. No. 234519**, June 22, 2020, 939 SCRA 137, 154-155.

^[9] **Bacerra v. People**, 812 Phil. 25, 35 (2017).

^[10] **Imperial v. People, G.R. No. 230519**, June 30, 2021.

^[11] A.M. No. 19-08-15-SC, entitled “2019 PROPOSED AMENDMENTS TO THE REVISED RULES ON EVIDENCE,” approved on October 8, 2019.

^[12] **People v. Bayon**, 636 Phil. 713, 722 (2010).

^[13] 438 Phil. 716 (2002).

^[14] *Id.* at 732-733.

^[15] *Rollo*, p. 46, CA Decision; *rollo*, p. 82, RTC Decision.

^[16] *Id.*

^[17] *Id.*

^[18] *Id.*

^[19] *Id.*

^[20] *Id.*

^[21] **Mabunga v. People**, 473 Phil. 555, 566 (2004).

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