

ENRIQUE TAN, PETITIONER VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. L-4269. April 27, 1951

Ponente: FERIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/09d08dd9b19a/>

FERIA, J.:

Petitioner filed on November 2, 1950, a petition for certiorari on two grounds: (1) that the Court of Appeals acted with grave abuse of discretion in denying the motion for new trial presented by the petitioner based on newly discovered evidence after said Court has rendered its decision affirming the judgment of the lower court which convicted the petitioner of the crime of qualified theft, and (2) the facts found by the Court of Appeals in its decision do not constitute the offense of qualified theft, because even assuming that the petitioner was responsible for the disappearance of the materials deposited on the yard of his house, he is not criminally liable for the crime of theft, but only civilly liable, or guilty of the crime of mis-appropriation of public funds. And he prayed in his petition that, after a due consideration of the case, (1) the judgment of the Court of Appeals, and not only the order denying the motion for new trial, be set aside and a new trial ordered; (2) that the question of law he raises to the effect that the facts proven do not constitute the offense of qualified theft with which the petitioner was charged be decided, and (3) that this Supreme Court grant the petitioner such other relief as it may deem proper.

This Court, in view of the grounds on which the petitioner for certiorari was based and the relief prayed for in the petition, properly considered the petition as appeal by certiorari filed in time, that is, within ten days after the entry of first judgment of the Court of Appeals on October 26, 1950, and dismissed the petition on the ground that the question therein raised were factual.

Now a motion for reconsideration was filed by the petitioner in which he states that the petition for certiorari filed by him, was not an appeal by certiorari, but a special civil action of certiorari under Rule 67 of the Rules of Court, because what the petitioner prayed for in his petitions was, not that this Court revise the judgment of the Court of Appeals and absolve the defendant, but only that the judgment of the Court be set aside and a new trial ordered. If this allegation were correct, this Court would have considered and passed upon the petition as a special civil action of certiorari under Rule 67 of the Rules of Court, but, as already stated, the petitioner also raised the question of law whether the facts found by the Court of Appeals constituted qualified theft, or merely a civil liability, or at most a misappropriation of public funds, and prayed this Court to grant the petitioner such other relief as it may deem proper besides the grant-ing of his motion for new trial. It is to be observed that, although appeal does not lie from a resolution rendered in the exercise of the Court's discretion, abuse of discretion of the lower court may be corrected by the Superior Court on appeal from an appealable order or decision.

But considering now the petition for certiorari as filed under Rule 63 of the Rules of Court, the same must also be dismissed. It is true that the granting or denial of a motion for new trial on any of the grounds specified in section 2 of Rule 117, relating to new trial in criminal cases, lies in the sound discretion of the court to which such motion is submitted (*U. S. vs. Visguera*, 4 Phil., 380). By grave abuse of discretion is meant such capricious and whimsical exercise of discretion as is equivalent to acting without or in excess of jurisdiction (*Abad Santos vs.*

Province of Tarlac,[*] 38 Off. Gaz 830); but a mere perusal of the testimonies of Jose S. Catbagan, Catalina Calagnara and Severino Lucea whose affidavits are attached to the petition as part thereof, will show that they are merely cumulative, corroborative or impeaching, and the Court of Appeals did not exercise capriciously and whimsically its discretion but acted correctly in denying the motion for new trial filed by the petitioner, because the so called newly discovered evidence, if admitted, would not probably change the judgment of the lower court.

Jose S. Catbagan states in his affidavit that, during the incumbency of the petitioner as warehouseman of the Surplus Property Commission, Guian, Samar, he was one of the boarders of the petitioner in the quonset hut of the latter, and he had not seen any G. I. sheet, Celotex nor Plywood that was stored in their house. The testimony of this witness is merely corroborative of that denial of the accused petitioner and cannot be a newly discovered evidence because the petitioner ought to know such testimony before the trial if the affiant was really living with the accused at the time the offense is alleged to have been committed.

Catalina Calagnara says in her affidavit that, on or about the 30th of July, 1949, she was invited by Mrs. Cabanas to live with her at the residence of the petitioner who was then in Manila, and on that day Mrs. Valdomero visited Mrs. Cabanas and threatened her with having her arrested and prosecuted for having bought parachutes from some Americans from the U. S. Navy at Tubabao, Guian, Samar, and sold them, if she did not sign the papers he was taking with him, which, he explained to Mrs. Cabanas, were about Mr. Tan storing quonset hut materials in his residence, and that although Mrs. Cabanas contended that there were no quonset hut materials stored in the petitioner's residence, Mrs. Cabanas signed the papers for fear that Mr. Valdomero will have her arrested. This testimony or evidence, aside from being merely impeaching, is not worthy of credence, not only because it is highly incredible that Valdomero had made such threat to Mrs. Cabanas in the presence of the affiant, but because of the following findings of the lower court.

In an attempt to discredit the testimony of Soledad Cabanas, the defense presented in evidence her affidavit, Exhibit 1, dated November 22, 1947, wherein she alleged that she did not know anything about the crime at bar but that Aquilino Valdomero threatened and forced her to be a witness in the instant case. But the circumstances under which said affidavit was executed, to wit: that the affiant was taken at nighttime from her house by the defendant herein and not Capt. Sakay and brought to the house of Justice of the Peace Ila, where she signed said affidavit about midnight after the said accused had impressed her, by touching meaningfully his revolver, that something would happen to her were she to refuse to sign it, lead the Court to believe that she did not execute it of her own free will, as she claims.

And Severino Lucea testifies in his affidavit that, during the petitioner's residence at Guian, Samar, as warehouseman of the Surplus Property Commission, the affiant was one of the boarders in the house of the petitioner, and during that period he had not seen any galvanized iron sheet, celotex nor plywood in the quonset hut Mr. Tan was occupying, dismantled from any building or quonset hut. That the affiant was an inventory clerk of the Surplus Property Commission at the Samar Naval Base, Guian, Samar, and Mr. Valdomero, "who was the Chief of all Inventory team, and as such the immediate superior of all inventory clerks and of all laborers detailed to work with the Inventory Clerk," on one occasion confided to him that he was aspiring to be appointed as Base Superintendent, and Mr. Tan's aspiration to the same position was an obstacle to his appointment, and so Valdomero "proposed to me to help eliminate Mr. Tan by using me and the laborers working directly, under me, Messrs. Vicente Ogaro and Felix Yape as witnesses." That Valdomero told him that "he planned to order Messrs. Ogaro and Yape to dismantle a certain building and later upon being questioned for their act of dismantling to impute Mr. Tan as the person who ordered them to dismantle the building and consequently a charge will be filed against Mr. Tan that may lead to his suspension and probable dismissal." That to convince the affiant to agree to be a witness against Mr. Tan Valdomero "repeated his plan before Messrs. Ogaro and Yape and made it evident to

me that these laborers were amenable to follow to the letter and execute his plan," but the affiant "did not agree to Mr. Valdomero's request because it was contrary to his conscience," and "the witness did not inform Mr. Tan about Mr. Valdomero's intended machination at first, nor did he inform him upon its consummation, because the witness was still under Mr. Valdomero, and he feared that the latter may make him a victim of his revenge."

The testimony of this affiant, which tends only to impeach the veracity of three of the witnesses for the prosecution, Valdomero, Ogaro and Yape, cannot affect the weight of the latter's testimony, because it is incredible that Valdomero would confide to the affiant his nefarious plan to utilize the services of Ogaro and Yape against the petitioner without any necessity, for Valdomero was the chief not only of the affiant but also of said Ogaro and Yape according to the affiant himself, and not only that, but Valdomero had to give afterwards his instructions to said Ogaro and Yape about what they would do in the presence of the affiant. The theory of the defense in this motion for new trial had already been presented as petitioners' defense and rejected by the lower Court in the following findings of the Court of Appeals' decision:

As a matter of fact the accused had admitted that he did not know of any personal motive which could have prompted any of said government witnesses to testify falsely against him, except that they might have been instigated to do so by certain envious officials in the Guian Base to prevent him, accused, from being appointed Base Superintendent therein, as it was then of common knowledge, according to the accused, that he would be named to that position. But this is a mere supposition and has not gone beyond it. Besides, if the accused's alleged appointment as Base Superintendent were really impending then, said two laborers of the Base Ogaro and Yape, would have thought twice, for obvious reasons, before testifying against him. More so, if they were perjured witnesses, as the accused insinuates. It is clear, therefore, that if they implicated the accused with the theft at bar it is because they were actuated by truth and conscience.

In view of the foregoing, petitioner's petition for certiorari under Rule 67 of the Rules of Court is dismissed. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo, and Bautista Angelo, JJ., concur.

[*] 67 Phil., 480.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.