

**THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
GERONIMO MACALINDONG, DEFENDANT AND APPELLANT.***CA-No. 349. May 25, 1946*

Ponente: DE JOYA, J.

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This is an appeal from the decision of the Court of First Instance of Batangas, dated February 2, 1943, finding the defendant and appellant Geronimo Macalindong guilty of the crime of theft of ten (10) wheelbarrow wheels of the approximate value of P10, although the information alleged they were worth P135, imposing upon him the penalty of four (4) months and one (1) day of arresto mayor, to suffer the accessory penalties prescribed by law, and to pay the costs.

From said decision, defendant Geronimo Macalindong has appealed, claiming that the evidence for the prosecution is utterly insufficient to establish the guilt of the accused of the crime charged, beyond reasonable doubt.

At the trial of the case in the court below, the witnesses for the prosecution testified to the following facts: That prior to June 12, 1942, the Provincial Government of Batangas owned about five hundred (500) steel wheelbarrows, which were deposited in and outside of a bodega within the old provincial government building in Batangas, Batangas; that although the chassis of most of them were defective, the wheels themselves were still serviceable; that when Eustaquio Casenas, a clerk in the district engineer's office of Batangas returned to duty sometime in June or July, 1942, he discovered that about one hundred (100) wheels and wheelbarrows had disappeared; that in the morning of June 12, 1942, defendant and appellant Geronimo Macalindong, claiming to have purchased wheelbarrow wheels at a public auction, requested Laureano Ilagan and Eduardo Bombeta to help him remove ten (10) wheelbarrow wheels from the old provincial government building of Batangas, and to place them in a carromata driven by the accused himself, which they did, and defendant took said wheels to Sebío's Hotel in said town, where defendant gave Laureano Ilagan and Eduardo Bombeta two (2) wheels each as their compensation, the defendant taking the remaining six (6) wheels in the carromata to his house in the barrio of Sambat of the municipality of Batangas; that to remove said wheels, the defendant and his two (2) companions entered the old provincial government building through a hole in the rear wall; that Laureano Ilagan sold the two (2) wheels given to him for P2, thus showing that the ten (10) wheel-barrow wheels were worth about P10; and that one of said ten (10) wheels was found in defendant's possession.

The facts stated above were established by the testimony of said Laureano Ilagan and Eduardo Bombeta, and by said Eustaquio Casenas and Marciano Ebreo, both employees in the district engineer's office of Batangas, and by policemen Urbano de la Paz and Buenaventura Dris, chief of police Apolonio Corpus and Batangas mayor Roman Perez.

On the other hand, the defense tried to show that upon arriving at the store of his brother-in-law named Eusebio Pagcaliwagan, located under Sebío's Hotel, in the morning of June 12, 1942, defendant saw and was met by said

Laureano Ilagan and Eduardo Bombeta, who offered to sell him wheelbarrow wheels, which, according to the two, they had in their houses, and that they would get them if defendant wanted to buy the same; that Laureano Ilagan and Eduardo Bombeta told herein defendant to wait for them as they would get the wheels, and as a matter of fact they left and after a short while returned to said store bringing with them four (4) wheelbarrow wheels which, according to the defendant, he purchased and paid P4.15 for them. Said four (4) wheels were presented as part of the evidence for the prosecution.

The facts stated above were testified to by defendant and appellant Geronimo Macalindong, Eusebio Pagcaliwagan and Anastacio Ama.

Defendant and appellant attacks the credibility of the two principal witnesses, namely, Laureano Ilagan and Eduardo Bombeta, calling attention to the fact that Marciano Ebreo has testified that he discovered the disappearance of wheelbarrows and wheelbarrow wheels, since January, 1942, whereas said witnesses stated that the ten (10) wheelbarrow wheels were removed from the °W provincial government building, only on June 12, 1942.

These two facts are not, however, incompatible. Some wheelbarrows and wheelbarrow wheels might have disappeared, since January, 1942, while others, such as the wheelbarrow wheels in question, might have been stolen on June 12, 1942.

The defense further claims that he has been accused in this case, because he failed to appear before the chief of police, for investigation, when he was ordered to do so. The chief of police testified, however, that the complaint was filed against the accused, in the justice of the peace court, on August 29, 1942, only after the case had been thoroughly investigated.

No evidence whatsoever has been presented to show any reason or motive why the witnesses for the prosecution should have testified falsely against the defendant and appellant in this case. In the absence of such evidence, the logical conclusion is that no such improper motive existed, and that their testimony is worthy of full faith and credit. (United States vs. Pajarillo, 19 Phil., 288; People vs. De Otero, 51 Phil., 201.) And in the instant case there exists no reason whatsoever for departing from the well established doctrine that in weighing contradictory declarations and statements, greater weight must generally be given to the positive testimony of the witnesses for the prosecution than to the denials of the defendant (United States vs. Bueno, 41 Phil., 447) ; and from the rule that the Supreme Court will not disturb the findings made by the trial court, as to the credibility of witnesses, as there exists no cause or justification whatsoever in the record to warrant a departure from such findings. (People vs. Istoris, 53 Phil., 91; People vs. De Asis, 61 Phil., 384; People vs. Garcia, 63 Phil., 296; People vs. Masin, 64 Phil., 757.)

The Court is satisfied that the guilt of the defendant and appellant of the crime charged in the information has been fully established, beyond reasonable doubt, as shown by the evidence for the prosecution, and found by the learned trial court.

In the information filed in this case, in the Court of First Instance of Batangas, the value alleged of the ten (10) wheelbarrow wheels in question was P135; but, according to the evidence adduced during the trial, the value of the stolen property was P10 only, which is punishable, under paragraph 5 of article 309 of the Revised Penal Code, with arresto mayor to its full extent. No aggravating or mitigating circumstance having concurred in the commission of the crime charged, the corresponding penalty should be imposed in its medium degree; and defendant and appellant Geronimo Macalindong is, therefore, hereby sentenced to the penalty of two (2) months and one (1) day of arresto mayor, to the accessory penalties prescribed by law, to indemnify the Provincial Government of Batangas in the sum of P6 and to suffer the corresponding subsidiary imprisonment in case of

insolvency and to pay the costs. Thus modified, the judgment appealed from is hereby affirmed. So ordered.

Ozaeta, Hilado, and Bengzon, JJ., concur.

DISSENTING:

PERFECTO, J.,

We do not believe that the guilt of appellant has been proved beyond all reasonable doubt and, therefore, he is entitled to be acquitted of the offense charged against him. Our position is based on the following facts:

(1) The theory of the prosecution is premised on the testimony of Laureano Ilagan and Eduardo Bombeta, in whose possession part of the stolen goods were found; and there is strong reason for believing that they tried to throw the blame on some other else's shoulders so as to free themselves from the danger of being prosecuted, a goal they attained successfully.

(2) Said two prosecution witnesses testified that the stolen properties were taken by appellant with their help n June 12, 1942, while the custodian of the goods himself, Mariano Ebreo, testifying also for the prosecution, stated that he discovered the disappearance of the stolen goods since January, 1942. Coming from a disinterested witness, we are inclined to accept Mariano Ebreo's testimony. If the disappearance took place in January, 1942, we can not understand how asportation of the same goods could have taken place five months later, on June 12, 1942. At least, the records failed to explain how such an inverisimilitude could have happened.

(3) The prosecution tried to prove, by the testimony of Laureano Ilagan and Eduardo Bombeta, that appellant took the stolen goods from the old provincial government building of Batangas, in broad daylight, had them placed in a carromata driven by the same appellant, and then took them to another public place in the same town, Sebio's Hotel. The very narration of the facts and circumstances under which the alleged theft was committed, makes the charge evidently incredible. If asportation took place from the provincial building of Batangas, government officials, employees, and guards must have witnessed it. If it was committed in broad daylight, it must have been witnessed by a large number of people who were present in and around a government office located in the heart of a big and densely populated town such as Batangas, the capital of the province of the same name. If the stolen goods were brought to Sebio's Hotel which is a public place, more people must have seen said goods. That appellant, if he committed the theft, would seek publicity instead of secrecy, which shelters and hatches crime, is a thing that challenges belief. That so many people, including government officials, employees, and guards, bystanders and other private citizens, should have allowed unchecked a theft boldly committed under their noses, is another thing that provokes incredulity.

We opine that the lower court's decision should be reversed and appellant acquitted.

Judgment modified.

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