

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDDIE CONSULAR, ACCUSED-APPELLANT.

Ponente: LAGURA-YAP, J.

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### LAGURA-YAP, J.:

This appeal of Eddie Consular seeks to set aside the December 13, 2004 Decision rendered by the Regional Trial Court (RTC), Branch 65, San Miguel, Jordan, Guimaras convicting him of Frustrated Qualified Theft in Criminal Case No. 0603.

#### Factual Antecedents

Eddie Consular stands charged of Qualified Theft pursuant to an Information[1] filed on January 12, 2001, the accusatory portion of which is as follows:

“That on or about the 11[th] day of May 2000, in the Municipality of Buenavista, Province of Guimaras, Philippines and within the jurisdiction of this Honorable Court, without violence or intimidation against persons nor force upon things, with intent to gain and without the knowledge and consent of Abelardo Gabiota, did then and there willfully, unlawfully, and feloniously gathered two hundred twenty pieces (220) coconuts from the coconut plantation of Abelardo Gabiota, to the damage and prejudice of said Abelardo Gabiota in the amount of TWO THOUSAND PESOS (P 2,000.00), Philippine Currency.

CONTRARY TO LAW.”

On 15 February, 2001, accused posted bail[2].

On 17 October, 2001, accused pleaded “Not Guilty” to the crime charged.[3]

#### Evidence of the Prosecution[4]

The prosecution presented four witness- complainant Gabiota, Francisco Igpuara, Police Officer Leonilo Trio and Police Officer Gellada.

Complainant witness (Gabiota) testified that at about 9 o'clock in the morning of 11 May 2000, he was in Mclain when a friend, Frankie Igpuara, reported to him that his coconuts were being harvested by the accused. Igpuara asked Gabiota if he had given his consent to accused. Gabiota said he did not. Gabiota went to his coconut plantation and saw the accused on top of a coconut tree taking its fruits. Gabiota went to get a policeman who accompanied him to the land. When he returned together with Police Officer Trio and a certain Danny, the accused was no longer there. They gathered the coconuts and brought these to the police station. They took pictures. Gabiota said that he owns the land where there were coconut trees standing. The land is covered under TCT No. T-180030. Gabiota said that the value of the coconuts was P 2,000.00. He paid P 30,000.00 to his counsel for filing the case and P 1,500.00 for his (counsel) appearance.

On cross-examination, Gabiota admitted that the house of the accused was inside the coconut plantation. In 1972, the accused was not living in the land. The accused did not plant the coconut trees. Gabiota hired the accused as

coconut gatherer. He did not allow the accused to gather the coconuts without his (Gabiota) permission. On 11 May 2000, Gabiota did not hire the accused to harvest the coconuts from his plantation. Gabiota said he did not acknowledge the coconuts which were gathered by the accused without his permission. When he saw the coconuts scattered in his land, he did not confront the accused. Instead, he went to the police. The 320 pieces of coconuts were with the police.

Francisco Iguara testified that on the aforementioned date and time, he saw the accused Eddie Consular harvesting coconuts in the coconut plantation owned by Gabiota. When he met the latter, Iguara informed Gabiota of what he saw. The latter uttered "Eddie is bad because he gathered coconut fruits without asking permission from me".

On cross-examination, Iguara told the court that he knew the accused. The house of the accused was inside the coconut plantation of Gabiota. When Iguara passed by the coconut plantation, he saw the accused and his son climbing the coconut tree and gathering the fruits.

Police Officer Leonilo Trio testified that at 4:20 o'clock in the afternoon of 11 May 2000, he, together with Police Officer Gellada, proceeded to Sitio Cabanbanan, Barangay Salvacion, Buenavista, Guimaras in connection with the report of Gabiota that his coconuts were harvested by accused. When they arrived, no one was around but they saw the gathered coconuts on the ground. They counted the coconuts and took pictures. While they were counting the coconuts, the son of the accused arrived. They counted 320 coconuts. The coconuts were delivered to the police station the following morning.

Police Officer Gellada corroborated Police Officer Trio's testimony that upon Gabiota's report, they went to Sitio Cabanbanan and saw the coconuts on the ground.

On cross-examination, Police Officer Gellada said that he did not know who gathered the coconuts, which were brought to the police station the next day. He also did not know who brought the coconuts there.

The prosecution offered documentary exhibits consisting of three pictures, Transfer Certificate of Title No. T-180030, Tax Declaration, and Certification from the Police Blotter.

#### Version of the Defense[5]

The defense presented the accused, his wife (Elfa Consular) and Police Officer Baisa.

Accused Eddie Consular testified that the owner of the land where he planted coconuts is Abelardo Gabiota. He had been gathering coconuts from Gabiota's land since 1979. The agreement was for him to gather coconuts then he will inform Gabiota. He is paid by dividing the coconuts into two. The coconuts which he gathered on 11 May 2000 were taken by the police, Gabiota and his son and Iguara. They brought the coconuts to the Municipal Hall. He complained to the police but was told that they will call Gabiota. He was scheduled to meet Gabiota on 15 May but Gabiota did not come. Then, he received a subpoena stating that he was an accused. According to the accused, Gabiota is no longer the owner of the land but Herman Castro. When he was charged of qualified theft, the owner of the land was no longer Gabiota. The accused said he is a farm worker recognized by the Department of Agrarian Reform though he cannot show proof to the court.

On cross-examination, the accused declared that he gathered coconuts every three months. He harvested coconuts from 1999 to 2001. When he gathered coconuts on 11 May 2000, he did not ask permission from Gabiota or from Herman Castro. He asked permission from Iguara, the overseer of Herman Castro.

Elfa Consular testified that it is not true that her husband stole coconuts. The land of Gabiota was already sold to Herman Castro. Gabiota, Iguara and Police Officer Trio got the coconuts in front of their house and brought

these to the municipal hall.

On cross-examination, Elfa Consular said that they were not in their house when the coconuts were gathered. When they arrived, the coconuts were already gathered.

Police Officer Baisa testified that he and Gabiota gathered the coconuts and brought these to the police station. The accused was not present. Police Officer Baisa did not know who gathered the coconuts. He did not know if there was a complaint when their assistance was sought for gathering the coconuts.

The defense offered the Deed of Sale executed by Abelardo Gabiota as its documentary exhibit.

On September 23, 2005, the RTC promulgated the assailed Decision, the decretal portion[6] of which reads:

“WHEREFORE, premises considered judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime of FRUSTRATED QUALIFIED THEFT, defined and penalized under Article 310 in relation to Article 50 of the Revised Penal Code.

Applying the indeterminate sentence law accused is sentenced to suffer a penalty of imprisonment of four (4) years and two (2) months to six (6) years of prision correccional and to restore unto the complainant the amount of P 2,000.00.

Accused is also directed to reimburse the complaining witness Abelardo Gabiota the amount of Fifteen Thousand (P 15,000.00) Pesos broken as follows:

P 10,000.00 as attorney's fees

5,000.00 as actual expenses.

SO ORDERED.”

On October 6, 2005[7], accused filed a Motion for Reconsideration.

On 24 October 2005[8], the RTC issued an Order denying the Motion.

Hence, this instant appeal.

#### Assignment of Errors

Eddie Consular (accused-appellant) enumerates in his Brief[9], the grounds for his appeal which serve as errors allegedly committed by the lower court:

I. The decision of (sic) did not established (sic) all the elements of the crime.

II. That the lower court did not consider the fact that there was (sic) no coconut fruits presented in court nor there was any presented during the ocular inspection.

III. That the lower court failed to consider that the evidence does not fulfill the test of moral certainty and are not sufficient to support conviction.

On the first ground, accused-appellant notes that the lower court in its assailed decision, established as facts, that the accused gathered the coconuts in the plantation; that the taking was done without the consent of the alleged owner and that it was not he (accused) who took the coconut fruits outside the plantation, hence the decision of frustrated qualified theft.

Also, the lower court failed to decide the matter of intent to gain. The accused-appellant claims of an agreement between the complainant and him wherein he will gather the coconut fruits and then inform the latter (complainant) and take his share. This proves that he has an interest or an expected income from the coconuts.

Hence, he does not have to steal just to gain from the fruits.

Accused-appellant adds that even if he had material possession of the coconuts as he had put them near his house, it does not imply that he has the intention to dispose of it. His interest over the coconuts necessitates that he keeps these where it is safe.

On the second ground, accused-appellant points out to complainant's claim that he stole 320 pieces of coconut trees from the plantation of the accused. However, during the trial, the alleged coconut trees were not presented. Neither were these presented during the ocular inspection. The prosecution only presented a picture of the coconut fruits during the investigation by the police. Accused-complainant contends that without the presentation of the coconut fruits to the court, there is no proof that the coconut fruits were the ones he stole.

And on the third ground, accused-appellant points out that since he admitted having gathered the coconut fruits, it would be rather odd if he would be guilty of qualified theft. He also went to the police station to question the acts of the complainant and the police. The alleged agreement that he (accused-appellant) can gather coconut fruits and inform the complainant, that he has been hired by the complainant as a coconut gatherer and that he has a share in the proceeds thereof are facts that are inconsistent with his guilt. The lower court failed to fulfill the test of moral certainty (of his guilt). He should not have been convicted, but acquitted.

The Solicitor General posits the contrary in his Brief[10]:

APPELLEE PROVED APPELLANT'S GUILT FOR QUALIFIED THEFT BEYOND REASONABLE DOUBT.

It is the Solicitor General's contention that all the elements of qualified theft are present in this case, i.e., the taking of coconuts from the premises of a plantation, the coconuts belong to another, the taking was done with intent to gain, the taking was made without the consent of the owner and that the taking was made without use of violence against or intimidation of persons or force upon things.

There is no merit to the assertion of accused-appellant that the prosecution failed to prove intent to gain. Based on jurisprudence, *Benjamin Beltran, Jr., et. al. v. The Honorable Court of Appeals, et. al.*[11], the intent to gain may be presumed from the proven unlawful taking. In this case, accused-appellant's act of taking the coconuts carries the presumption that he acted with intent to gain.

The Solicitor General refutes accused-appellant's contention that since no coconut fruits were presented in court or in the ocular inspection, the corpus delicti was not established. There are witnesses for the prosecution who testified on the photographs of the coconuts taken at the crime scene. One witness testified that the coconut fruits were decomposing at the police station. Another identified accused-appellant as the culprit. Even accused-appellant testified about the coconut fruits brought to the police station.

It is significant that accused-appellant admitted he did not ask permission from the complainant before harvesting the coconut fruits on the date in question and that the coconut fruits referred by the prosecution and the defense are the same. The police witnesses identified the photographs of the coconut fruits taken from the crime scene. One police officer who testified for the defense said he helped transport the coconut fruits from the plantation to the police station. Most of all, the admission of accused-appellant that he gathered the coconut fruits and that he reported to the police the acts of complainant do not detract from his liability for the crime committed. There are eyewitnesses who saw him gather the coconut fruits in complainant's plantation. Clearly, the complainant is guilty of qualified theft.

Accused-appellant filed a Reply Brief[12] taking exception to the jurisprudence cited by the Solicitor General in *Benjamin Beltran, Jr., et. al. v. Court of Appeals, et. al.*[13] which states among others that intent to gain cannot

be presumed if there are special circumstances that reveal a different intent on the part of the perpetrator. In the instant case, a special circumstance is present that would negate the said presumption, that is, that the complainant and accused-appellant have an existing agreement to share the fruits of the coconut trees every time there is a harvest. The sharing agreement created a reasonable ground as to whether or not the harvesting of the coconut fruits was unlawful. Moreover, the fact that the accused had been previously authorized since 1979 to harvest the coconuts with sharing arrangements belies the claim of complainant that he did not authorize the complainant to do so on the date in question, May 11, 2000.

Accused-appellant believes that since the coconut fruits were found in the grounds of his house, he could not have complete possession thereof as these remained in the premises of the plantation. It would be difficult to transport these outside the plantation unnoticed. In this case, accused-appellant, citing *Valenzuela v. People of the Philippines, et. al.*[14], asseverates that there was no unlawful taking because he was never in possession of the coconut fruits. The lower court committed error in convicting him of frustrated qualified theft.

### Our Ruling

We refer to at least four jurisprudential guideposts in Our review of the instant case.

The first relates to the nature of appeal in criminal cases.

Appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned[15].

The second enumerates the elements of the crime of qualified theft which is the charge filed against accused-appellant. Theft becomes qualified when any of the following circumstances is present: 1. the theft is committed by a domestic servant; 2. the theft is committed with grave abuse of confidence; 3. the property stolen is a (a) motor vehicle, (b) mail matter or (c) large cattle; 4. the property stolen consists of coconuts taken from the premises of a plantation; 5. the property stolen is fish taken from a fishpond or fishery; and 6. the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance[16].

The third reminds Us of the well-settled rule that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case[17].

And the fourth prompts Us to consider the pertinent ruling limiting the stages of execution of theft to attempted and consummated stages only. In the landmark case of *Valenzuela y Natividad v. People and The Honorable Court of Appeals*[18], the Supreme Court declared that there is no crime of frustrated theft. Neither *Diño* nor *Flores* can convince us otherwise. Both fail to consider that once the offenders therein obtained possession over the stolen items, the effect of the felony has been produced as there has been deprivation of property. The presumed inability of the offenders to freely dispose of the stolen property does not negate the fact that the owners have already been deprived of their right to possession upon the completion of the taking.

We proceed to determine if the information charges accused-appellant of the crime of qualified theft. Under Section 6, Rule 110 of the Revised Rules of Criminal Procedure, a complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

A careful perusal of the information yields an affirmative answer. The information alleges that herein accused-appellant, Eddie Consular, on or about the 11[th] day of May 2000 in Buenavista, Guimaras, without violence and intimidation against persons nor force upon things, with intent to gain and without the knowledge and consent of Abelardo Gabiota, gathered two hundred twenty pieces of coconut from the plantation of Gabiota in the amount of P 2,000.00. The information charges accused-appellant of qualified theft as the property he allegedly stole consists of coconuts taken from the premises of a plantation owned by Abelardo Gabiota.

In the assailed decision, the lower court deduced that the crime committed is only frustrated qualified theft. This conclusion by the lower court is principally anchored upon the fact that it was the complainant who brought the coconuts to the police station. The lower court elucidated that since the accused was not able to carry the coconuts away from the plantation because of the timely arrival of the complainant, what was committed was only frustrated qualified theft[19].

Withal with the ruling in *Valenzuela y Natividad v. People and The Honorable Court of Appeals*[20] We cannot sustain the finding of the lower court anent the frustrated stage of execution of qualified theft. Just as the Supreme Court has ruled in *Valenzuela* that there is no frustrated theft in the Revised Penal Code, it can be said with equal footing, that there is also no frustrated qualified theft. The Supreme Court's persuasive ratiocination in *Valenzuela* moves us with abiding confidence to apply the rule to qualified theft cases such as that filed against accused-appellant, involving stolen coconuts. "Insofar as we consider the present question, "unlawful taking" is most material in this respect. Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage. At the same time, without unlawful taking as an act of execution, the offense could only be attempted theft, if at all."

Accused-appellant may not protest to the application of *Valenzuela*, in that his criminal liability may be increased. Parenthetically, accused-appellant mentioned *Valenzuela* in his Reply Brief to asseverate that there was no unlawful taking of the coconut fruits because he was never in possession thereof. Even so, by reason of his appeal, the case against him has been thrown wide open for Our review on both questions of law and of fact, particularly on the proper staging of the crime even as he failed to mention it as error. Under Section 11, Rule 124 of the Revised Rules of Criminal Procedure, the Court of Appeals may reverse, affirm, or modify the judgment and increase or reduce the penalty imposed by the trial court, remand the case to the Regional Trial Court for for new trial or retrial, or dismiss the case.

All the same in *Valenzuela*, We sense how the Supreme Court endeavored to interpret the concept of unlawful taking in theft cases and how it is deemed completed so as to consummate the crime. In no uncertain terms, the Supreme Court corrected the Court of Appeals in the previous cases of *Diño* and *Flores*, which the lower court relied upon. Reading through the ratio decidendi of *Valenzuela*, written in the erudite prose of its ponente, there is no reason why the courts should continue with the laborious task of determining effective asportation by distinguishing if the stolen objects are "much less bulk and more common". Neither *Diño* nor *Flores* can convince us otherwise. Both fail to consider that once the offenders therein obtained possession over the stolen items, the effect of the felony has been produced as there has been deprivation of property. The presumed inability of the offenders to freely dispose of the stolen property does not negate the fact that the owners have already been deprived of their right to possession upon the completion of the taking.

We now put into context the rule in *Valenzuela* in rephrasing the ultimate question in the instant appealed case-

Did the prosecution prove in a clear and convincing manner, the criminal liability of accused-appellant for qualified theft?

According to the Supreme Court in *People v. Pineda*[21], the first duty of the prosecution is not to prove the crime

but to prove the identity of the criminal for even if the commission of the crime can be established, there can be no conviction without proof of the identity of the criminal beyond reasonable doubt.

There is no doubt that the prosecution was able to establish the identity of accused-appellant as the person who gathered and took the coconuts of complainant Gabiota. One, the witness Iguara declared that on May 11, 2000 at about 9:00 o'clock in the morning, in Sitio Cabanbanan, Salvacion, Buenavista, Guimaras, he saw Eddie Consular (accused-appellant) harvesting coconut fruits owned by Abelardo Gabiota[22]. And two, complainant Gabiota confirmed that when he went to the plantation, he also saw accused-appellant on top of the coconut tree, taking fruits[23]. Complainant Gabiota said that he did not allow accused-appellant to gather the coconut fruits[24].

It is significant for the lower court to note the fact that accused-appellant admitted that he was the one who gathered the coconuts. All he needed to do was just to inform Gabiota after harvesting the fruits[25]. Accused-appellant did not refute the claims of the complainant Gabiota and Iguara that they saw him on top of the coconut trees gathering fruits[26]. With these circumstances plus the positive declarations of the witnesses for the prosecution, there is no room to doubt the identity of accused-appellant as the one who took the coconuts.

As the prosecution has proven that it was accused-appellant who gathered and harvested the coconuts, the essential element of unlawful taking in theft is deemed completed. Jurisprudence is settled that to "take" under the theft provision of the penal code does not require asportation or carrying away[27]. The word "take" in the Revised Penal Code includes any act intended to transfer possession which, as shown in this case was committed by accused-appellant through the use of his own hands, as by removing and extracting the coconut fruits from the trees. As a matter of fact, the police found the coconuts already under the trees near the house of accused-appellant.

The assertion by accused-appellant that it was the complainant and the police who took and brought the coconuts to the police station cannot erase the unlawful taking of the coconuts that transpired earlier, for which he was responsible. Although he was unable to carry away the coconuts out of the premises of the coconut plantation this did not frustrate the unlawful taking. For one, the coconuts were found on the ground when the police arrived. In that instance, it can be said that the coconuts were then capable of appropriation. Applying the rule in Valenzuela and Article 310 of the Revised Penal Code regarding qualified theft, We say that accused-appellant committed qualified theft of coconuts.

Apropos of the other requirement in theft that the property stolen belongs to another, there is clear evidence adduced that the stolen coconuts belong to the complainant. Tax Declaration PN 075-01-020-02-072[28] dated March 6, 2000 indicates that around fifty coconut trees are declared in the name of Abelardo Gabiota (complainant) in Lot No. 1-F-5 located in Salvacion, Buenavista, Guimaras. On the one hand, Transfer Certificate of Title No. T-180030[29] shows that Lot 1-F-5 is registered in the name of Abelardo Gabiota. These documents demonstrate that the owner of the coconut trees from where accused-appellant harvested the coconut fruits is Abelardo Gabiota.

Accused-appellant presented a Deed of Sale[30] dated September 18, 1999 to show that the lot where the coconut trees are situated was already sold by complainant to a certain Herman Castro. Looking closely at this Deed of Sale, We ascertain that only a portion of the lot in question (Lot No. 1-F-5) was sold, that is, 20,366 square meters from out of 40,696 square meters more or less. Hence, this evidence of accused-appellant fails to support his claim that complainant no longer owns the lot or the portion thereof from where the coconuts were harvested.

While accused-appellant presented the aforementioned Deed of Sale to question complainant's ownership of the land and the coconuts harvested therefrom, he did not exert any effort to convince the lower court that he is a farm

worker so as to accord him with certain rights over the coconuts. The lower court aptly observed:

In the same way that the claim of the accused that he is a farm worker registered with the Department of Agrarian Reform will not hold water. When asked by his lawyer if he can present proof to that effect accused answered “no sir” xxx. And the only exhibit marked and offered by the accused is the alleged Deed of Sale xxx.

What amount shall be an accurate or at least a realistic estimate of the value of the 220 stolen coconut fruits?

The amount is essential in determining the imposable penalty for qualified theft since the penalty depends on the value of the property. Resort shall be made to the ruling in *Merida v. People*[31] because herein complainant did not substantiate his claim that the value of the stolen coconuts was P 2,000.00. To prove the amount of the property taken for fixing the penalty imposable against the accused under Article 309 of the Revised Penal Code, the prosecution must present more than a mere uncorroborated "estimate" of such fact. In the absence of independent and reliable corroboration of such estimate, the courts may either apply the minimum penalty under Article 309 or fix the value of the property taken based on the attendant circumstances of the case.

Of these two, the Court shall consider the minimum of the penalty since there are no attendant circumstances in this case to consider. In *People v. Reyes*[32], the Supreme Court stated that if there is no available evidence to prove the value of the stolen property or that the prosecution failed to prove it, the corresponding penalty to be imposed on the accused-appellant should be the minimum penalty corresponding to theft involving the value of P5.00.

The prescribed penalty under Article 309(6) of the Revised Penal Code is *arresto mayor* in its minimum and medium periods. However, considering that coconuts were the things stolen from the premises of a plantation, the theft is punished under Article 310 of the Revised Penal Code as qualified theft. The prescribed penalty shall be increased by two degrees[33], that is, to *prision correccional* in its medium and maximum periods or two (2) years, four (4) months and one (1) day to six (6) years. Taking into account the Indeterminate Sentence Law, the minimum term shall be taken from anywhere within the range of four (4) months and one (1) day of *arresto mayor* to two (2) years and four (4) months of *prision correccional* which is the penalty next lower to the prescribed penalty. We find it proper to impose upon accused-appellant, given the similar circumstances in *Revaldo v. People*[34], the indeterminate penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum.

Since complainant Gabiota did not prove the amount of his loss, the lower court's award of P 5,000.00 shall be treated as temperate damages and not as actual damages. Nonetheless, in the absence of competent proof on the amount of actual damages suffered, a party is entitled to temperate damages.[35] The rule in *People v. Torres, Sr.*,[36] requires the imposition of interest at 6% on the damages awarded reckoned from May 11, 2000 when the qualified theft was committed up to the finality of the judgment. In addition, interest at 12% per annum shall be imposed on said damages from finality of the judgment until paid.

Complainant Gabiota is not entitled to attorney's fees. The policy of the Court is that no premium should be placed on the right to litigate. An award of attorney's fees has always been the exception rather than the rule[37]. The lower court did not make an express findings of fact and law that brings this case within the exception. But costs are adjudged against accused-appellant who is found criminally liable for qualified theft. We abide with the present judicial practice to charge the costs against the accused who is convicted xxx[38]. In a criminal action, fees and indemnities in the course of the judicial proceedings are included as costs. As a rule, costs are allowed to the prevailing party as a matter of course xxx[39].

WHEREFORE, the December 13, 2004 Decision by the Regional Trial Court (RTC), Branch 65, San Miguel,

Jordan, Guimaras in Criminal Case No. 0603 convicting accused-appellant Eddie Consular guilty of frustrated qualified theft is REVERSED and SET ASIDE. Another judgment is entered in its place, finding him GUILTY beyond reasonable doubt of qualified theft. An indeterminate penalty of imprisonment of four (4) months and one (1) day of arresto mayor, as minimum, to two (2) years, four (4) months and one (1) day of prision correccional, as maximum is imposed upon accused-appellant.

Furthermore, he is ORDERED to pay temperate damages in the amount of P 5,000.00 with interest at 6% on the damages awarded to be reckoned from May 11, 2000 up to the finality of the judgment. Interest at 12% per annum shall be imposed on said damages from finality of the judgment until paid. The award for attorney's fees is DELETED for lack of basis.

With costs against accused-appellant.

**SO ORDERED.**

Delos Santos and Lopez, JJ., concur.

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[1] Rollo, p. 40.

[2] Records, p. 68.

[3] See Certificate of Arraignment, Records, p. 126.

[4] As culled by the trial court in the Decision.

[5] See Appellant's Brief which was culled from the assailed Decision.

[6] Records, p. 330 where the stamp, PROMULGATED, is found on p. 1 of RTC Decision.

[7] Records, pp. 342-344.

[8] Records, pp. 368-369.

[9] Rollo, pp. 15-39.

[10] Rollo, pp. 91-124.

**[11] 646 SCRA 728, 744-745 (2011).**

[12] Rollo, pp. 125-138.

[13] Footnote 11.

[14] G.R. No. 160188, June 21, 2007.

[15] People v. Jaime Gatlabayan y Batara, G.R. No. 186467, July 13, 2011 citing People v. Balagat, G.R. No. 177163, April 24, 2009, 586 SCRA 640, 644-645.

[16] People v. Anabe, 630 SCRA 10.

[17] People v. Delos Reyes, 684 SCRA 260.

[18] G.R. No. 160188, June 21, 2007.

[19] Rollo, p. 51, page 10 of the Decision.

[20] Footnote 8.

[21] G.R. No. 141644, May 27, 2004.

[22] TSN, 30 January 2003, p. 5.

[23] TSN, 06 November 2000, p. 4.

[24] Supra, p. 22.

[25] TSN, September 30, 2003, p. 5.

[26] Supra, TSN, p. 5.

[27] Laurel v. Judge Zeus C. Abrogar, et. al., G.R. No. 155076, January 13, 2009.

[28] Exhibit “E”, Records, p. 184.

[29] Exhibit “D”, Records, p. 17.

[30] Exhibit “1”, Records, pp. 270-271.

[31] G.R. No. 158182, 12 June 2008 cited in Revaldo v. People, G.R. No. 170589, April 16, 2009.

**[32] 344 SCRA 346.**

[33] People v. Temporado, G.R. No. 173473, 17 December 2008 cited in Revaldo v. People, see footnote 30.

[34] Footnote 30.

[35] Dueñas v. Guce-Africa, G.R. No. 165679, October 5, 2009 cited in Lozano v. People, G.R. No. 165582, July 9, 2010.

[36] G.R. No. 190317, August 22, 2011.

[37] Manila Electric Company (MERALCO) v. Atty. Pablito Castillo, et. al., G.R. No. 182976, January 14, 2013 citing National Power Corporation v. Heirs of Macabangkit Sangkay, G.R. No. 165828, August 24, 2011, 656 SCRA 60, 92.

[38] Florenz D. Regalado, Criminal Law Conspectus, p. 144.

[39] Section 1, Rule 142, 1997 Revised Rules of Court.

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