

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMAR BOBIER Y APODACA @ "PUNKS", ACCUSED-APPELLANT.

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

Before the Court is an appeal from the Decision dated October 29, 2012[1] in Criminal Case No. T-5294 of Branch 18, Regional Trial Court, Tabaco City finding accused-appellant Amar Bobier y Apodaca @ "Punks" guilty beyond reasonable doubt of theft, defined under Article 308, Revised Penal Code (RPC), and sentencing him to suffer the indeterminate penalty of eight (8) years, eight (8) months and one (1) day of prison mayor, as minimum, to eleven (11) years, four (4) months and one (1) day of prison mayor, as maximum, plus additional two (2) years of imprisonment pursuant to Article 309 (1), RPC, and to indemnify private complainant Bayan Telecommunications, Inc. the amount of P47,271.00.

THE ANTECEDENTS

On August 22, 2011, around 3:00 A.M., Camelo Perez and Jose Ballester, Barangay Tanods on-duty, were patrolling Purok 2, Barangay Matagbac, Tabaco City, Albay when they chanced upon four (4) men pulling telephone cable wire cut off from nearby street posts. The Barangay Tanods approached the four (4) men to apprehend them. As the street post was illuminated, they recognized one of the men as accused-appellant Amar Bobier y Apodaca, a resident of Barangay Matagbac and known thereat as "Punks." Upon noticing the Barangay Tanods, the four (4) men scampered away, leaving behind the stolen telephone cable wire. The Barangay Tanods chased accused-appellant, but when he was about to be cornered he turned around, faced Barangay Tanod Camelo Perez and threw at the latter the pliers he was carrying.[2]

Barangay Tanods Camelo Perez and Jose Ballester proceeded to the house of Barangay Captain Reynaldo Borrromeo to report the incident. Barangay Captain Reynaldo Borrromeo informed the police of the theft, instructed the other Barangay Tanods to continue the search for accused-appellant and proceeded to the crime scene to secure and roll the stolen telephone cable wire left behind and have the same measured.[3]

Around 4:00 A.M., Police Officer 3 (PO3) Roy Aldrin B. Torre, on board a mobile car, received the information sent by Barangay Captain Reynaldo Borrromeo and relayed the same to the Tabaco Police Station. The police station received the message around 4:30 A.M. and by 5:00 A.M., dispatched duty investigators Police Officer 2 (PO2) Jermaine Bilaro and PO2 Benedict De Lima Codia to verify and investigate the reported incident. After the investigation, the recovered telephone cable wire and the pliers were brought by Barangay Captain Reynaldo Borrromeo and Barangay Tanods Camelo Perez and Jose Ballester to the Tabaco Police Station using the barangay patrol jeep as the recovered telephone cable wire could not be accommodated in the mobile car. The recovered telephone cable wire, estimated to be more or less fifty-four (54) meters, and the pliers were turned over to PO2 Jermaine Bilaro, who then deposited the same to Police Officer 1 (PO1) Robbie Jean Belga, the property/evidence custodian.[4]

From the police station, Barangay Captain Reynaldo Borrromeo and Barangay Tanod Jose Ballester proceeded to

the barangay hall for update on the search operation. Around 7:00 A.M., Barangay Captain Reynaldo Borromeo received information that the person found sleeping in front of a house in Purok 5 appeared to be accused-appellant. Barangay Captain Reynaldo Borromeo, together with Barangay Tanods Jose Ballester, Reynaldo Cañeta and Alexander Serrano proceeded to the place. They woke the person found sleeping with his face covered by a jacket and found that he was accused-appellant. They asked accused-appellant to come with them at the barangay outpost and informed him that he was a suspect in a theft incident. As accused-appellant resisted arrest and tried to jump from the barangay patrol jeep, the arresting barangay officials were prompted to handcuff him. Accused-appellant was then brought to the police station for investigation and booking. Accused-appellant was also brought to the Ziga Memorial District Hospital for medical examination.[5]

However, accused-appellant denied any involvement in the theft. Allegedly, around 10:00 P.M. of August 21, 2010, he went to the place of Jerwel Padua at Purok 5 and had drinks with Santiago Boncodin while Jerwel Padua, Barangay Tanod Danilo Bonza and Corazon Padua Bonaobra were playing "tong-its." He fell asleep after the drinking session and was only awakened around 7:00 A.M. when he was stricken by a rope by the arresting Barangay Tanods. He was forced to go to the police station with the barangay officials because he was mauled, handcuffed and tied to the jeep with a rope. He was not also informed that there was a case against him. He was implicated because the Barangay Tanods had grudge against him as the motorcycle he was riding almost sideswiped Barangay Tanod Reynaldo Cañeta on July 14, 2010.[6]

The respective factual versions of the parties, as summarized by the trial court in its Decision dated October 29, 2012, are as follows:

"x x x Camelo Perez narrated x x x that on August 22, 2010 at around 3:00 o'clock in the morning, he was with Jose Ballester on patrol when he saw a person pulling Bayantel cable wire near the post illuminated by a lamp post; he approached the fellow pulling the cable wire and recognized the fellow to be Amar Bobier, the herein accused, and who is known to him for a long time and is better known as Punks; that when the latter fled, they chased him and when he got near Amar, the latter threw a plier to him; as they were not able to catch up with the accused, they instead went to the barangay captain and narrated to him the incident; x x x

Barangay Captain Reynaldo Borromeo x x x would tell the Court that at about 3:00 o'clock in the morning of August 22, 2010, he was at his house when Tanods Perez and Ballester reported to him a theft incident at Purok 2, Matagbac, Tabaco City; after receipt of such report, he instructed the tanods to make a follow-up of the suspects one of whom was identified as alias Punks, a resident of Purok 2, Matagbac, Tabaco City; after his instructions to the tanods, he went to the scene of the incident and have the wires measured have it rolled and turned over to the policemen; as the wire cannot be accommodated to the patrol car, he used his jeep in bringing the wires to the police station; tanods Perez and Ballester were with him during the turnover of the wires to the police station; at the police station, the incident was recorded in the police blotter; after the recording of the incident in the police blotter book and the turnover of the wires, they went home to make follow-up operation on the suspects; upon reaching the barangay hall, an informant told him that a person who might be Punk is sleeping in front of the house of a certain person; with tanod Cañete, Serrano and Jose Ballester; they went to the place and on reaching the place, there was the fellow who was sleeping covering himself with a jacket; he woke up the suspect and removed the jacket and came to know that he is the suspect, Punks; he told the suspect to go with him, but the former resisted, so, he handcuffed him and boarded him to the jeep and proceeded to the police station; the incident was recorded in the barangay blotter book x x x.

x x x x x x x x

Denying the accusation leveled against him, accused, Amar Bobier testified that in the evening of August 21, 2011 at about 10:00 o'clock, he was at the place of Jerwel Padua drinking with Santiago, while Jerwel, Dan Benosa and Corazon Padua were playing tong-its; they began their drinking spree at 10:00 o'clock in the evening because before proceeding to the house of Jerwel, he was then at the lower portion of Matagbac; after

drinking, he slept at the place where they had their drinking spree and because he got sleep, he did not know what time the tong-its players left; that the place where the theft incident happened is very far from Jerwel Padua's place; that the prosecution witness who testified against him must probably have grudge against him because prior to the fiesta in their place, July 14, his companion was driving the motorcycle they almost sideswipe tanod Cañete; that it was about 7:00 o'clock in the morning of August 22, 2011 when he was struck probably by a rope that he was awakened and told that he had a case and he was handcuffed, boarded on a vehicle and brought to the police station; at the police station, he explained that he had a drinking spree at the house of Jerwel."[7]

In an information dated August 23, 2011, accused-appellant was charged with the crime of theft, the accusatory portion of which reads:

"That on or about 2:50 o' clock in the morning of August 22, 2011, at Matagbac, Tabaco City, Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused in conspiracy with three still unidentified persons, did then and there willfully, unlawfully and feloniously take, steal and carry away without the consent of owner BAYANTEL TELECOMMUNICATION, INC., represented by TEOFILO T. BULALACAO, FIFTY FOUR (54) meters of cable wire, amounting to FORTY-SEVEN THOUSAND TWO HUNDRED SEVENTY-ONE PESOS (P47,271.00), in Philippine Currency, to the damage and prejudice of Bayantel Telecommunication, Inc.

ACTS CONTRARY TO LAW."[8]

When arraigned on September 29, 2011, accused-appellant pleaded "not guilty" to the charge.[9]

During the pre-trial,[10] the parties agreed that the issue to be resolved was "[W]hether or not the accused is guilty of the offense charged in the Information." [11] The defense made the following admissions:

"1. That the accused Amar Bobier y Apodaca, who had been arraigned in this case, is the same person who is presently represented by Atty. Nasayao. - x x x

2. That Amar Bobier y Apodaca is also known as "Punks". - x x x

3. That Punks was at Matagbac, Tabaco City, at around 2:50 o'clock in the morning of August 22, 2011. - x x x

4. x x x x x x x x

5. That Punks is known even before August 22, 2011 to Brgy. Tanods Carmelo Perez, Jose Ballester, Brgy. Capt. Reynaldo Borromeo, Brgy. Tanods Alexander Serrano and Reynaldo Cañeta. - x x x

6. That Punks was arrested in the early morning of August 22, 2011. - x x x

7. x x x x x x x x

8. That having been arrested in the early morning of August 22, 2011, Punks was brought to the City Prosecution Office of Tabaco City for inquest supposedly for theft at around 6:00 in the evening of the same date. - x x x"[12]

Trial ensued. The witnesses for the prosecution were (i) Barangay Tanod Camelo Perez;[13] (ii) Barangay Captain Reynaldo Borromeo;[14] (iii) PO2 Benedict De Lima Codia;[15] and, (iv) Security Officer Teofilo Tandan, Bayan Telecommunications, Inc.'s representative.[16] The prosecution and the defense stipulated on the testimonies of (i) PO1 Robbie Belga;[17] (ii) Barangay Tanod Jose Ballester;[18] and, (iii) PO2 Jermaine Bilaro.[19]

The witnesses for the defense were (i) accused-appellant;[20] (ii) accused-appellant's friend Jerwel Padua;[21] and, (iii) accused-appellant's friend Dindo Bonagua.[22]

In a Decision dated October 29, 2012, the trial court convicted accused-appellant of theft and sentenced him as follows:

"WHEREFORE, from all the foregoing, judgment is hereby rendered finding accused, AMAR BOBIER @ "Punks", GUILTY beyond reasonable doubt for the offense charged. Accordingly, he is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from EIGHT (8) YEARS, EIGHT (8) MONTHS and ONE (1) DAY OF PRISON MAYOR, as minimum, to ELEVEN (11) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF PRISON MAYOR, as maximum, with additional two years of imprisonment in accordance with paragraph 1, Article 309 of the Revised Penal Code; and to indemnify Bayan Telecommunications, Inc., the amount of Php47,271.00.

SO ORDERED."[23]

Thereupon, accused-appellant filed the present appeal[24] which is premised on the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE, WITH MORAL CERTAINTY, ALL THE ELEMENTS OF THE CRIME CHARGED.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[25]

ISSUE

Whether the trial court erred in convicting accused-appellant of theft.

THE COURT'S RULING

In convicting accused-appellant of the crime of theft, the trial court noted that (i) the positive testimony of Barangay Tanod Camelo Perez must prevail over the negative denial of accused-appellant; (ii) the testimonies of accused-appellant and his witness Jerwel Padua were conflicting; and, (iii) accused-appellant failed to show any ill motive on the part of Barangay Tanod Camelo Perez in testifying against him.[26]

Accused-appellant faults the trial court in so ruling. Allegedly, (i) "the prosecution evidence consisted mainly of the self-serving and hearsay testimonies of Camelo Perez, Barangay Captain Reynaldo Borromeo, PO1 Robbie Jane Belga, PO2 Benedict Codia and Teofilo Bulalacao Tandaan, all of which are insufficient to overcome the accused-appellant's presumption of innocence;"[27] (ii) "the element of ownership is lacking"[28] since the testimony of Teofilo Tandaan "regarding Bayantel's ownership of the cable wire x x x confiscated by the barangay officials has no basis"[29] and "the authority of Teofilo Bulalacao Tandaan of Bayantel was not supported by any written document by the prosecution;"[30] (iii) "the constitutional presumption of innocence should prevail in the accused-appellant's favor"[31] since the stolen telephone cable wire was not found in the possession of accused-appellant; and, (iv) the penalty imposed was incorrect because "the testimony of Teofilo that the amount of the cable wires is approximately Forty Seven Thousand Two Hundred Seventy One Pesos (Php47,271.00) is a sweeping estimate which has no basis at all since said witness did not even show any computation nor any document coming from Bayantel as to how he arrived at this value."[32]

The Court affirms the conviction of accused-appellant for the crime of theft.

The testimonies of Barangay Tanod Camelo Perez, Barangay Captain Reynaldo Borromeo, PO1 Robbie Jane Belga, PO2 Benedict Codia and Teofilo Bulalacao Tandaan cannot be said to be self-serving just because their testimonies were favorable to the prosecution. Moreover, the defense was given ample opportunity to cross-examine said witnesses and to test their credibility.

It has been held that "self-serving evidence" is not to be literally taken as evidence that serves one's selfish interest.[33] Under our law of evidence, self-serving evidence is one made by a party out of court at one time.[34] Thus, pieces of evidence, whether testimonial, object or documentary, offered before judicial or quasi-judicial proceedings are not considered as self-serving because the adverse party may cross-examine the witnesses of the other party and rebut the authenticity and veracity of the objects and documents offered as evidence. As enunciated in *Clemeña vs. Bien*:^[35]

"Self-serving evidence," perhaps owing to its descriptive formulation, is a concept much misunderstood. Not infrequently, the term is employed as a weapon to devalue and discredit a party's testimony favorable to his cause. That, it seems, is the sense in which petitioners are using it now. This is a grave error. "Self-serving evidence" is not to be taken literally to mean any evidence that serves its proponent's interest. The term, if used with any legal sense, refers only to acts or declarations made by a party in his own interest at some place and time out of court, and it does not include testimony that he gives as a witness in court. Evidence of this sort is excluded on the same ground as any hearsay evidence, that is, lack of opportunity for cross-examination by the adverse party and on the consideration that its admission would open the door to fraud and fabrication. In contrast, a party's testimony in court is sworn and subject to cross-examination by the other party, and therefore, not susceptible to an objection on the ground that it is self-serving."

Anent accused-appellant's claim that the constitutional presumption of innocence should prevail in his favor, the Court finds that the prosecution evidence proved beyond reasonable doubt not only the presence of all the elements of the crime of theft, but also the identity of accused-appellant as one of the perpetrators.

Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent.[36] Thus, the elements of the crime of theft as provided for in Article 308, RPC are as follows: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and, (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.[37] It is also basic that in every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt.[38]

The testimony of Barangay Tanod Camelo Perez was direct, straightforward and categorical. Even on cross-examination, he remained steadfast and did not waver at all. As he testified:

"PROS. BROTAMONTE:

q What is your position in barangay Matagbac, Tabaco City as of August 22, 2011?

a Barangay Tanod, sir.

q Were you on duty that date?

a Yes, sir.

q By the way, can you tell us, one of your duties as barangay tanod?

a To go on patrol at around 3:00 o'clock in the morning.

q What date was that?

a August 22, 2011, sir.

q Who were with you at that time?

a Jose Ballester, sir.

q While conducting patrol at that time did you observe any unusual incident?

a I saw a person who was pulling a cable wire.

q What kind of cable wire?

a Cable wire of Bayantel.

q What is that Bayantel cable wire for?

a For telephone, sir.

q Please tell us from which this Bayantel cable wire being pulled?

a Near the post which was illuminated by a lamp.

q

Bayantel cable wire were fixed at a certain post. Please clarify from where this person was pulling the cable wire?

a I saw that the cable wire was cut off and so it was being pulled.

q Having seen people pulling cable wire, what did you and Jose Ballester do?

a We approached them, sir.

q What was your purpose in approaching the persons?

a We saw them pulling the cable wire.

q What was your impression then when you saw persons pulling those cable wire?

a To apprehend them.

q For what crime were you arresting them?

a For theft.

q At that point, were you able to determine the gender of those fellows?

a Yes, sir.

q Female or male?

a Male, sir.

q At that point were you able to recognized any one of them?

a Yes, sir, we were able to get near the persons.

q Tell us that one whom you recognize?

a Amar, sir. (Witness pointing to accused Amar Bobier inside the courtroom).

q Is this persons whom you pointed to was the same fellow arraigned in this case?

a Yes, sir.

q How long have you known that person?

a Long time, already. Twenty years already.

q Why do you know that person?

a I am a resident of Matagbac, sir.

COURT:

q

Because you are a resident of Matagbac, you came to know him long ago. Is he a resident of Matagbac?

a Yes, Your Honor.

PROS. BROTAMONTE:

q Under what name or affiliation do you know that person?

a He is known as Punks.

q Do you know his surname?

a Yes, sir.

q Tell us.

a Bobier, sir.

q Now, what happened in your effort to arrest the person who was pulling the cable?

a He fled.

q The person having fled, how did you and Jose Ballester react?

a

Because we were not able to catch him, we went to the barangay captain and informed him about the incident.

q How did you react when he escaped?

COURT:

After he was not able to catch the accused, he went to the barangay captain.

PROS. BROTAMONTE:

q Did you not try to run to catch him?

a I tried running after him but we were not able to catch him.

a While chasing the person, what did you do if any?

a I got near him, then he faced me and threw a plier at me.

q And you are referring to Punks?

a Yes, sir."[39]

All the elements of the crime of theft are present in this case. The presence of the first element of taking of personal property is evident from the fact that the recovered telephone cable wire, is a personal property and thus, capable of asportation.

The existence of the second element that the property belongs to another was also proven by the prosecution. Bayan Telecommunications, Inc.'s representative Teofilo Tandan identified the recovered telephone cable[40] as property of Bayan Telecommunications, Inc. Even if the testimony of Teofilo Tandan is disregarded for the alleged failure of the prosecution to offer as evidence the special power of attorney[41] authorizing the former to represent Bayan Telecommunications, Inc., there is still no denying the fact that the stolen property does not belong to accused-appellant and he had no valid claim to it. For a conviction for theft does not require proof of full ownership of the stolen property.

Apropos is *Miranda vs. People*,[42] wherein the Supreme Court rejected therein petitioner's argument that she could not be convicted of qualified theft as the full ownership of the property stolen was not established. Said the Supreme Court:

"Moreover, we agree with the CA when it gave short shrift to petitioner's argument that full ownership of the thing stolen needed to be established first before she could be convicted of qualified theft. As correctly held by the CA, the subject of the crime of theft is any personal property belonging to another. Hence, as long as the property taken does not belong to the accused who has a valid claim thereover, it is immaterial whether said offender stole it from the owner, a mere possessor, or even a thief of the property. x x x"

The element of taking without the consent of the owners and without the use of violence against or intimidation of persons or force upon things, is also present. The fact that the telephone cable wire was cut-off from the post in the early hours of the morning showed that accused-appellant and his three (3) cohorts were not authorized by Bayan Telecommunications, Inc. to remove the same. The cutting off of the telephone cable wire in the early hours also ensured that the cutting and asportation would be accomplished without having to intimidate or use force upon any person who may stop them from accomplishing their plan of stealing the telephone cable wire.

Notably, the crime of theft was consummated even if accused-appellant and his three (3) cohorts were prevented from carting away the recovered telephone wire with the timely arrival of Barangay Tanods Camelo Perez and Jose Ballester. Theft is produced the moment there is deprivation of personal property due to its taking with intent to gain.[43] In theft, the act of unlawful taking connotes deprivation of personal property of one by another with intent to gain, and it is immaterial that the offender is able or unable to freely dispose of the property stolen because the deprivation relative to the offended party has already ensued from such act of execution.[44] Unlawful taking, or *apoderamiento*, is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.[45]

The third element of taking with intent to gain is also present. Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain.[46]

The Court also finds that the identity of accused-appellant as one of the malefactors was proved beyond reasonable doubt. Visibility is a vital factor in the determination of whether an eyewitness could have identified the perpetrator of a crime.[47] Considering that cable wires, whether for telephone or television, are generally attached to posts with street lights, the light coming from Albay Electric Cooperative, Inc. (ALECO) lights,[48] as in this case, made it possible for Barangay Tanod Camelo Perez to positively recognize accused-appellant as one of the four (4) men pulling the severed portion of the telephone cable wire. Apart from this, Barangay Tanod Camelo Perez had another glimpse of accused-appellant when the latter was cornered and almost caught by the

patrolling Barangay Tanods.[49]

It was not unlikely for Barangay Tanod Camelo Perez to recognize accused-appellant. In the course of the performance of their functions, Barangay Tanods gain familiarity with the residents of the place they serve. In this case, Barangay Tanod Camelo Perez and accused-appellant were both long-time residents of Barangay Matagbac, Tabaco, Albay.[50] The testimony of Barangay Tanod Camelo Perez that he had known accused-appellant for twenty (20) years was also not disputed.

Notably, the affidavit of Barangay Tanod Jose Ballester[51] corroborated the testimony of Barangay Tanod Camelo Perez, although Barangay Tanod Jose Ballester did not anymore testify as the prosecution and the defense stipulated on his testimony.[52]

The presumption that official duty had been regularly performed,[53] was un rebutted. The Barangay Tanods were then in the performance of their duty at the time of the incident. Barangay Tanods Camelo Perez and Jose Ballester were patrolling Barangay Matagbac, precisely, to keep it safe and discourage the proliferation of thieves who operated during the early hours of the morning. Accused-appellant failed to show any ill motive for the arresting barangay officials to falsely impute a serious crime against him. The allegation that he was implicated because the Barangay Tanods harbored a grudge against him when the motorcycle he was riding on July 14, 2010 almost sideswiped Barangay Tanod Reynaldo Cañeta,[54] is baseless. Record bears that the driver of the motorcycle was not accused-appellant but a certain Rex.[55]

In his defense, accused-appellant put forward denial and alibi. Allegedly, at the time of the theft, he was sleeping at the place of Jerwel Padua at Purok 5 and the same was far from Purok 2 where the recovered telephone cable wire was stolen.[56] However, accused-appellant failed to sufficiently establish that it was physically impossible for him to be at the scene of the crime. The theft happened within the same barangay and according to accused-appellant's own testimony, Purok 2 was located at the opposite road.[57]

Bare denial of the crime charged is insufficient to exculpate an accused. Well established is the rule that "a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him." [58] Besides, for alibi to succeed as a defense, the accused must establish by clear and convincing evidence, first, his presence at another place at the time of the perpetration of the offense, and second, the physical impossibility of his presence at the scene of the crime.[59]

To back up his assertion that he was not among the perpetrators of the crime of theft, accused-appellant presented in court his friends Jerwel Padua and Dindo Bonagua. The Court gives less probative weight to a defense of alibi when it is corroborated by friends and relatives, as in this case, where both corroborating witnesses are close friends of the accused. One can easily fabricate an alibi and ask friends and relatives to corroborate it.[60] It cannot stand against the positive identification of appellant by a credible witness to the crime.[61]

Then again, the Court ordinarily puts great weight on the factual findings of the judge who conducted the trial of the case and heard the testimonies of the witnesses themselves.[62] COMPARED to appellate magistrates who merely read and rely on the cold and inanimate pages of the transcript of stenographic notes and the original records brought before them, the trial judge is in a better position to calibrate the testimonies of the witnesses at the stand.[63] Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh or the scant or full realization of an oath – all of which are useful for an accurate determination of a witness' honesty and sincerity.[64]

However, the trial court's imposition of the indeterminate penalty of eight (8) years, eight (8) months and one (1)

day of prison mayor, as minimum, to eleven (11) years, four (4) months and one (1) day of prison mayor, as maximum, plus additional two (2) years of imprisonment, must be modified to conform to applicable laws and jurisprudence. It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of assignment of errors or not.[65]

The imposable penalty for the crime of theft under Article 309, RPC depends upon the value of the thing stolen.[66] To prove the amount of the property taken for fixing the penalty imposable against accused-appellant, the prosecution must present more than a mere uncorroborated "estimate".[67] If no evidence was introduced to prove the value of the property taken[68] or in the absence of independent and reliable corroboration of such estimate,[69] the Court may fix the value of the property taken based on the attendant circumstances of the case or impose the minimum penalty under Article 309, RPC.[70] The lightest penalty that applies to theft, where the value of the thing stolen does not exceed five pesos, is found in paragraph 6,[71] Article 309 which imposes the penalty of arresto mayor, in its minimum and medium periods, or imprisonment of one (1) month and one (1) day to four (4) months.[72]

Witness Teofilo Tandaan, branch manager of the security agency servicing Bayan Telecommunications, Inc.,[73] testified that the recovered telephone cable wire was valued at P47,271.00. However, the employee of Bayan Telecommunications, Inc. who prepared the estimate was not presented before the trial court. Neither was the computation and the applicable supporting invoices attached to witness Teofilo Tandaan's complaint-affidavit nor presented during trial. According to him, he merely communicated by telephone the length of the recovered telephone cable wire without specifying its diameter and the pairs of wire it contained. As Teofilo Tandaan testified during cross-examination:

"ATTY. NASAYAO, JR.:

Q

Okey. Now, Mr. Witness, how were you able to arrive at the value of the wires that was cut?

A

When we were preparing the complaint at the police station I called our client, BAYANTEL Legazpi, and asked how much is the cost of the stolen wires and I told the description and the length and then the BAYANTEL office gave the cost of the wires. They computed it in their office.

Q

Now, the total cost was Php47,271.00. Does it not include the repair charges or the re-installation charges, only the value of the wires that has been cut, is that correct?

A

Yes, sir.

Q

Only the value of the wire?

A

Yes, sir.

Q

You did not give the information to the personnel from the BAYANTEL of the specific diameter of the cable wire because you said you have described the wire that has been cut?

A

I think I did not mention.

Q

You did not mention the smaller one you only mentioned the bigger one, is that correct?

A

Yes, sir.

Q

What is the diameter of that cable wire?

A

I think about 400 pairs.

Q

Meaning you have 400 pairs bigger wire inside as oppose to the smaller ones which contained how many?

WITNESS:

A

200 or 300 pairs."^[74]

As no independent and reliable evidence supported the alleged value of the recovered telephone cable wire, the doubt must be resolved in favor of accused-appellant. Hence, accused-appellant can only be sentenced to the lightest penalty prescribed by law, which is arresto mayor, in its minimum and medium periods, or imprisonment of one (1) month and one (1) day to four (4) months. As neither aggravating nor mitigating circumstance attended the commission of the crime of theft, the penalty imposed upon accused-appellant must be in its medium period, which is, from two (2) months and one (1) day to three (3) months of arresto mayor. As the Indeterminate Sentence Law is not applicable,^[75] accused-appellant is sentenced to suffer the straight penalty of three (3) months of arresto mayor.

Apropos is *Viray vs. People*,^[76] wherein the Supreme Court modified the penalty imposed upon therein petitioner and adopted the penalty imposable under Article 309 (6), RPC for failure of the prosecution to prove

that the alleged value of the stolen property was independent and reliable. Thus:

"As for the penalty, We note with approval the observation made by the appellate court that the amount of the property taken was not established by an independent and reliable estimate. Thus, the Court may fix the value of the property taken based on the attendant circumstances of the case or impose the minimum penalty under Art. 309 of the RPC. In this case, We agree with the observation made by the appellate court in accordance with the rule 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 Court also deletes the award of actual damages. Reparation is not in order as the property stolen was recovered. Moreover, the value of the recovered telephone cable wire was not duly proven. As held in *Viray vs. People*:

"Lastly, We delete the order for the reparation of the stolen property. Art. 2199 of the Civil Code is clear that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him, as he has duly proved." Since, as aforesaid, the testimony of the private complainant is not sufficient to establish the value of the property taken, nor may the courts take judicial notice of such testimony, We cannot award the reparation of the stolen goods."

WHEREFORE, the trial court's Decision dated October 29, 2012 is **AFFIRMED**, subject to the **MODIFICATION** that (i) accused-appellant Amar Bobier y Apodaca @ "Punks" is meted the straight penalty of imprisonment of three (3) months of *arresto mayor*, and (ii) the award of actual damages in the amount of P47,271.00 is deleted.

SO ORDERED.

Acosta, and Garcia-Fernandez, JJ., concur.

[1] pp. 48-58, Rollo; pp. 148-157, Record

[2] TSN dated November 16, 2011, pp. 3-6

[3] TSN dated November 16, 2011, pp. 5-6; TSN dated January 5, 2012, pp. 5-8; TSN dated January 19, 2012, p. 12

[4] TSN dated November 16, 2011, pp. 6-7; TSN dated January 5, 2012, pp. 7-10; TSN dated January 19, 2012, pp. 24-31; TSN dated March 21, 2012, pp. 4-7; Exh. "F", p. 13, Record; Exh. "G", p. 15, Record; Exh. "J", p. 23, Record

[5] TSN dated January 5, 2012, pp. 10-15; TSN dated January 19, 2012, p. 19; TSN dated March 21, 2012, pp. 4-7; Exh. "E", p. 12, Record; Exh. "F", p. 14, Record; Exh. "H", p. 16, Record; Exh. "I", p. 20, Record

[6] TSN dated June 20, 2012, pp. 5-13, 19 and 23-24; TSN dated July 12, 2012, pp. 4-5

[7] pp. 48-53, Rollo; pp. 148-152, Record

[8] pp. 1-2 and 35-36, Record

[9] Order dated September 29, 2011, p. 45, Id.; Certificate of Arraignment dated September 29, 2011, p. 44, Id.

[10] Pre-Trial Order dated October 26, 2011, pp. 57-61, Id.

[11] p. 61, Id.

- [12] pp. 57-58, Id.
- [13] TSN dated November 16, 2011
- [14] TSN dated January 5, 2012; TSN dated January 19, 2012, pp. 2-22
- [15] TSN dated March 21, 2012
- [16] TSN dated April 11, 2012
- [17] TSN dated January 19, 2012, pp. 24-31; Order dated January 19, 2012, p. 85, Record
- [18] Order dated February 16, 2012, p. 97, Record
- [19] Id.
- [20] TSN dated June 20, 2012
- [21] TSN dated July 12, 2012
- [22] TSN dated August 23, 2012
- [23] pp. 57-58, Rollo; pp. 156-157, Record
- [24] p. 158, Record
- [25] p. 37, Rollo
- [26] pp. 54-57, Rollo; p. 153-156, Record
- [27] p. 42, Rollo
- [28] p. 43, Id.
- [29] Id.
- [30] Id.
- [31] Id.
- [32] Id.
- [33] PMI Colleges vs. National Labor Relations Commission, 277 SCRA 462, August 15, 1997
- [34] Tuason vs. Court of Appeals, 241 SCRA 695, February 23, 1995
- [35] 501 SCRA 405, September 11, 2006, cited in Heirs of Marcial K. Ochoa vs. G & S Transport Corporation, 645 SCRA 93, March 9, 2011
- [36] People vs. Concepcion, 677 SCRA 319, July 18, 2012; Article 308, Revised Penal Code
- [37] Miranda vs. People, 664 SCRA 124, January 25, 2012
- [38] People vs. Wagas, 705 SCRA 17, September 4, 2013
- [39] TSN dated November 16, 2011, pp. 3-6
- [40] Exh. "M", TSN dated January 19, 2012, p. 4
- [41] p. 26, Record

- [42] 664 SCRA 124, January 25, 2012
- [43] Briones vs. People, 588 SCRA 362, June 5, 2009
- [44] BSB Group, Inc. vs. Go, 612 SCRA 596, February 16, 2010
- [45] Valenzuela vs. People, 525 SCRA 306, January 21, 2007, citing People vs. Bustinera, 431 SCRA 284, June 8, 2004
- [46] Ringor vs. People, G.R. No. 198904, December 11, 2013
- [47] People vs. Escote, 431 SCRA 345, June 8, 2004
- [48] TSN dated November 16, 2011, p. 9
- [49] Id., p. 6
- [50] Id., p. 5
- [51] Exh. "C", pp. 8-9, Record
- [52] Order dated February 16, 2012, p. 97, Id.
- [53] Section 3(m), Rule 131, Revised Rules on Evidence
- [54] TSN dated June 20, 2012, p. 9
- [55] Id., pp. 10 and 19-20
- [56] Id., pp. 7-8
- [57] Id., p. 15
- [58] People vs. Pamintuan, 697 SCRA 470, June 5, 2013
- [59] People vs. Mostrales, 652 SCRA 261, June 15, 2011
- [60] People vs. Mostrales, 652 SCRA 261, June 15, 2011
- [61] People vs. Enriquez, Jr., 465 SCRA 407, July 29, 2005
- [62] People vs. Mira, 535 SCRA 543, October 10, 2007
- [63] Bastian vs. Court of Appeals, 552 SCRA 43, April 18, 2008
- [64] Lim vs. San, 438 SCRA 102, September 9, 2004
- [65] People vs. Pangilinan, 660 SCRA 16, November 14, 2011
- [66] Briones vs. People, 588 SCRA 362, June 5, 2009
- [67] People vs. Anabe, 630 SCRA 10, September 6, 2010, citing Merida vs. People, 554 SCRA 366, June 12, 2008
- [68] Vide: Briones vs. People, 588 SCRA 362, June 5, 2009
- [69] People vs. Anabe, 630 SCRA 10, September 6, 2010, citing Merida vs. People, 554 SCRA 366, June 12, 2008
- [70] Viray vs. People, 709 SCRA 227, November 11, 2013

[71] ART. 309. Penalties. — Any person guilty of theft shall be punished by:

x x x x x x x x

6. Arresto mayor in its minimum and medium periods, if such value does not exceed 5 pesos.

x x x x x x x x

[72] Briones vs. People, 588 SCRA 362, June 5, 2009

[73] TSN dated April 11, 2012, p. 3

[74] Id., pp. 11-12

[75] SEC. 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year, nor to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section 5 hereof. (Emphasis supplied)

[76] 709 SCRA 227, November 11, 2013

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