

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GLORIA DALUMPINES, ACCUSED-APPELLANT.

Ponente: INTING, J.

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INTING, J.:

Before Us on appeal is the Decision[1] dated October 6, 2011 of the Regional Trial Court of Bansalan, Davao del Sur, Branch 21, rendered in Criminal Case No. XXI-902 (01), finding accused-appellant guilty beyond reasonable doubt of the crime of theft.

The facts[2] of the case are as follows:

On June 27, 2001, an Information was filed against accused-appellant Gloria Dalumpines which reads as follows:

“That sometime on October 30, 2000 at Poblacion Dos, Bansalan, Davao del Sur, Philippines and within the jurisdiction of the Honorable Court, the above named accused with intent to gain and without the consent of the owner, did then and there willfully, unlawfully and feloniously take, steal and carry away more or less 1,731 board feet hardwood lumbers (tugas) valued at P51,930.00 belonging to Grace E. Esguera, to her damage and prejudice in the sum aforesaid. CONTRARY TO LAW.”[3]

Upon arraignment, the accused-appellant, with the assistance of her counsel, entered a plea of not guilty before the court a quo.[4]

Trial ensued.

Version of the Accused

On July 2, 2004, the accused-appellant testified before the court a quo that sometime in 1981, she and her family leased the property of the late Felix Esguerra, the father of complainant Grace Esguerra. The subject property is located in Magsaysay Street, Bansalan, Davao del Sur. They lived there for fifteen years, or until 1996. When Felix passed away, his daughter Grace took over the collection of the rentals from the subject property. In 1996, Grace ordered the accused-appellant to move to the back portion of the house because she intended to use the space for business. Thereafter, the accused-appellant constructed a new house with the help of paid laborers and carpenters. She spent around P25,000.00 for the construction of the house, including materials and labor. With regard to the materials, the accused-appellant testified that she used coconut lumber, mango wood and lawaan. She paid P200.00 as monthly rental for the lot. She and her family lived there for four years or until 2000. On that same year, Grace sent accused-appellant a letter ordering her to vacate the property because she was going to use it. Grace also ordered accused-appellant to remove everything in the lot, including the house which she built. Accused-appellant dismantled the materials of her house on October 28, 2000. She insisted that she cannot be convicted of theft because the materials she brought belonged to her and not to the complainant.[5]

On cross-examination, the accused-appellant admitted that she was summoned by the Barangay because Grace had filed a complaint against her for allegedly stealing lumbers from the subject property after vacating the subject property. When confronted, accused-appellant admitted that she uttered the following statements during

the conciliation proceedings conducted by the Barangay:

“Pagsugod namo dinha 1981. Ang among gipananghiran ang iyang amahan. Pagkamatay sa iyang amahan sila na ang naningil. Katapusan unya sa petsa 30 nagpaguba mi unya pag 31 diha ang iyang igsoon si Totoy nalantawan gud namo nga naa siya kay busy pud ko. Unya nawala lang man to siya. x x x (We asked permission from her father to live in the subject area. We started occupying the area in 1981. Upon her father’s demise, it was Grace who collected payment from us. We started dismantling the house on the 30[th]. Her brother, Totoy, was there on the 31[st]. We saw him in the subject area even if we were busy. But he disappeared all of a sudden.)

Pagkapetsa 1 akong gipadala ang kahoy didto kay ingon gud siya nga hasta bangag sa kasilyas ipadala gud niya. x x x (On the 1[st], I had the lumber transported there because she even said that I should include the toilet during the dismantling of the house)

Kabalo man mi nga dili to amoa. Iuli namo tong kahoya kay wala man namo kawata apan magpauli pod ko sa gasto kay balay gud ang among gi-arkilahan sugod sa sinugdanan. x x x

Magpabayad ko sa gastos. Dili gyud ko bisan asa mag-abot. x x x (I am demanding the payment of the expenses. I want nothing more regardless of where we end up.)

Dako na mi ug gasto pagpatukod. Kay ang among giarkilahan balay ra gud. Kay kami tanan nagbayad sa gasto sa pagpaguba ug pagpatukod. Sila mismo ang nag-ingon nga mosibog mi. x x x” (We already spent a lot for the construction of the house. We only rented the house and we were the ones who spent for the demolition and construction of the house notwithstanding the fact that it was they who demanded that we transfer.)[6]

On September 24, 2004, Romero Anticristo testified before the court a quo that he and the accused-appellant were neighbors in Mabunga. On September 26, 1996, Sammy Dalumpines (Sammy), accused-appellant’s husband, hired him to demolish the house in Magsaysay Street and to build a new one. He was accompanied by three (3) other carpenters, namely: Bobby Libre, Beaver Gonzales and Loting Bakang, and five (5) laborers: Teody Gonzales, Ramil, Eddie Palmero, Jojo Palmero and Jose Relado. It took them three (3) days to dismantle the house of Felix Esguerra. After dismantling the old house, they left the materials in that particular site. They then built a new house on the same lot in front of the old house facing east. Three (3) laborers assisted him in building the new house, namely: Teody Gonzales, Jojo Palmero and Eddie Palmero. It took them twenty-six (26) days or on October 28, 1996 to finish building the house. They used coconut, lawaan and mango lumbers which the accused-appellant bought from Bonifacio and Darapuyay in the municipality of Bansalan which cost around P30,000.00. The accused-appellant did not use the materials from the dismantled old house since they were already rotten.[7]

On cross-examination, Romero testified that Sammy informed him that it was Grace who ordered them to vacate from the old house and to build a new one at the back portion of the same lot. He admitted that he did not procure a permit to build the new house. He also admitted that he was not present when the accused-appellant allegedly purchased the lawaan from Darapuyay. During the demolition, the accused-appellant and her family were staying in the shanty at the side of the lot. Grace was not around during the demolition.[8]

On September 2, 2005, Anastacio Elesterio (Anastacio) testified before the court a quo that sometime in August 1996, the accused-appellant bought five (5) pieces of coconut lumber and two (2) pieces of mango lumber worth P2,000.00 from him. The lumbers were used for the construction of accused-appellant’s house.[9]

On cross-examination, Anastacio testified that she and the accused-appellant were neighbors in Bansalan. He has a permit to cut trees from the barangay captain but not from the Philippine Coconut Authority. He admitted that he does not have any personal knowledge on whether or not the lumbers which the accused-appellant purchased

from him were the ones used in the construction of the latter's house.[10]

Finally, on March 31, 2006, Judito Lumen was called to the witness stand where he testified that he has been a driver by profession since 1983 up to the present. Sometime in 1996, he was hired by the accused-appellant to transport mango and coconut lumbers from Barangay Bonifacio to Magsaysay Street. The lumbers were to be used for the construction of the house of accused-appellant. On November 1, 2000, he was once again hired by the accused-appellant to transfer the latter's materials to Digos. He was informed by the accused-appellant that her house in Bansalan had already been dismantled. He drove a six-wheeler truck to transport the materials.[11]

Upon being cross-examined, Judito testified that in 1993 to 1996, he worked for one Godofredo Cutin, who is engaged in the business of hauling. He was then hired by Weena Bus as a driver in 2001. He was assisted by one Mario Bosyo in the transportation of the materials to Bonifacio and Magsaysay St.[12]

The Version of the Prosecution

On June 30, 2008, the complainant, Grace Esguerra, testified before the court a quo that the accused-appellant was a lessee in her late father's old house in Magsaysay Street. There were also other lessees occupying the lot. In 1996, she requested all her tenants to vacate the subject property because a new house was going to be built. Grace occupied around two hundred fifty (250) square meters of the one thousand eighty-nine (1,089) square meter lot. After the old house was demolished, Grace agreed to the request of the accused-appellant to build a house in the vacant portion of the subject property. This agreement was not reduced into writing. The accused-appellant, along with other tenants, also asked Grace if they could use the lumbers from the demolished house; she agreed provided they leave the materials once they move out of the subject property. The accused-appellant used the posts, the guilders and the flooring from the old house. Thereafter, in 2000, she sent a letter (a notice to vacate) to the accused-appellant giving her until September of that same year to move out. However, the accused-appellant refused to leave the subject property so that she was constrained to take the matter to the barangay captain. The accused-appellant moved out of the subject property on November 1, 2000. She took with her the hard wood that belonged to Grace and without the latter's knowledge and consent. Grace was not around when the accused-appellant moved out since it was All Saints' Day. During the barangay proceedings, the accused-appellant agreed to return the hard wood, provided that she will be reimbursed of her expenses. However, Grace did not accede to the proposition. The value of the hard wood taken by the accused-appellant is around fifty one thousand (P51,000.00) pesos.[13]

On cross-examination, Grace testified that among the tenants, it was the accused-appellant who used most of the materials from the old house. Her carpenter made a listing of the materials used by the accused-appellant. The listing was made without the concurrence of the accused-appellant. It was presented at the office of the Punong Barangay where she and the accused-appellant had a confrontation. The document was likewise stated in the police blotter.[14]

Grace also admitted that on July 6, 2000, she sent a letter to the accused-appellant which read, in part: "Be that as it may, I have plans to construct a new building on the leased premises. I am therefore constrained to ask you now to vacate the area and look for another relocation site. I am therefore constrained to ask you now to vacate the area and look for another relocation site. For this reason I am requesting you to demolish, transfer and remove everything you have introduced on the premises which I am expecting to be done not later than the end of October 2000." She clarified that what was to be removed by the accused-appellant were all the materials that she had purchased outside and introduced to the house since there had already been a prior agreement that the materials owned by her and used by the accused-appellant were to remain in the premises.[15]

On September 29, 2008, Domingo Carillo testified before the court a quo that he was a member of the Lupong

Tagapamayap in Barangay Poblacion in Bansalan, Davao del Sur. Grace Esguerra filed a complaint before their office against the accused-appellant because the latter allegedly took her lumber without permission. Thereafter, Domingo formed a pangkat where he was the chairman. The other members of the pangkat were Segundo Patalinghug and Margarito Gutierrez. Mae Ladesa acted as the secretary. During the conference, the accused-appellant admitted that she took the lumber but asked Grace for the reimbursement of her expenses.[16]

On cross examination, Domingo testified that the pangkat was constituted in 2000. He admitted that although Grace complained about the missing lumber, the latter did not disclose who owned the house that was dismantled.[17]

On June 15, 2009, the prosecution presented its final witness, Victoriano Ajero. Victoriano testified that he is a resident of Rose Street, Bansalan, Davao del Sur. He and the accused-appellant were tenants of the lot owned by Grace Esguerra. He had a house and a shop thereat, while the accused-appellant lived in the old house of Grace. In 1996, Grace requested them to move out of the lot since she was going to use the space. Upon their request, Grace agreed to let Victoriano and accused-appellant transfer to the vacant portion of the lot since they had nowhere else to transfer residence. Thereafter, the accused-appellant used the lumbers of the demolished house of Grace to construct her house in the vacant portion of the lot. The lumbers were made of hard wood. On October 30, 2000, the accused-appellant caused the demolition of her house. All the materials from the demolished house was then loaded in a truck and brought somewhere.[18]

During cross-examination, Victoriano testified that he does not know the materials used in the construction of the old house. During the demolition of the old house, he was also dismantling his own house. He admitted that he does not know the quantity of lumbers which the accused-appellant bought in constructing the new house. He also testified that Grace and the accused-appellant had a prior agreement permitting the latter to use the materials from the old demolished house.[19]

On October 6, 2011, the court a quo rendered the assailed decision which reads, viz:

“WHEREFORE, IN VIEW OF ALL THE FOREGOING, the Court finds accused Gloria Dalumpines guilty beyond reasonable doubt of Theft under Art. 308 in relation to Art. 309 of the Revised Penal Code and is meted the penalty of TWO (2) YEARS, FOUR (4) MONTHS AND ONE (1) DAY TO FOUR (4) YEARS AND TWO (2) MONTHS and is directed to return to the private complainant, within fifteen (15) days the pieces of lumber taken by her.”[20]

Hence, this appeal.

Accused-appellant assigns the following assignment of errors:

I

THE HONORABLE COURT ERRED IN CONVICTING ACCUSED NOTWITHSTANDING THE CLEAR AND OVERWHELMING EVIDENCE ADDUCED IN THE RECORDS SHOWING THAT NO UNLAWFUL TAKING IS COMMITTED BY THE ACCUSED IN THE COURSE OF THE BRINGING AND TRANSPORTING THE DISMANTLED LUMBERS COMPLAINED UPON OR ELSE, NO MALICE OR FURTIVE DESIGN EXISTS IN THE RECORDS TO WARRANT THE GRATUITOUS FINDING OF THEFT AS CHARGED HEREOF.

II

THE HONORABLE COURT GRIEVOUSLY ERRED IN FINDING APPELLANT GUILTY OF THE CRIME NOTWITHSTANDING COMPLAINANT’S FULL ACQUIESCENCE OF ACCUSED’S ACT IN

THE COURSE OF TAKING OF THE LUMBER MATERIALS THEREBY MILITATING THE COMMISSION OF THEFT

Our Ruling

The appeal is bereft of merit.

The crime of theft is defined and penalized under Articles 308 and 309 of the Revised Penal Code, to wit:

“Art. 308. Who are liable for theft. — 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 personal property of another without the latter's consent.

Theft is likewise committed by:

- Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
- Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and
- Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.

Art. 309. Penalties. — Any person guilty of theft shall be punished by:

- The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos, but if the value of the thing stolen exceeds the latter amount the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.
- The penalty of prision correccional in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.
- The penalty of prision correccional in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.
- Arresto mayor in its medium period to prision correccional in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.
- Arresto mayor to its full extent, if such value is over 5 pesos but does not exceed 50 pesos.
- Arresto mayor in its minimum and medium periods, if such value does not exceed 5 pesos.
- Arresto menor or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provision of any of the five preceding subdivisions shall be made applicable.
- Arresto menor in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.”

The elements of theft under Article 308 of the Revised Penal Code 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.[21]

In the case at bar, the accused-appellant admitted that she took the lumbers belonging to private complainant Grace Esguerra after the demolition of her house in Bansalan. The taking of the lumbers was without the consent of the latter and without violence and/or intimidation of persons or force upon things. In addition, the intent to gain is revealed when the accused-appellant admitted during the barangay proceeding that she took the lumbers so she could ask Grace for reimbursement of her construction expenses. Upon her cross-examination, the accused-appellant admitted that she made the following statements during the barangay proceeding, to wit:

“Kabalo man mi nga dili to amoa. Iuli namo tong kahoya kay wala man namo kawata apan magpauli pod ko sa gasto kay balay gud ang among gi-arkilahan sugod sa sinugdanan. x x x” (I know that it’s not mine. I will return the lumbers because we did not steal it. But I want to be reimbursed of the construction expenses for the house)

We thus affirm the findings of the court a quo that accused-appellant indeed took the lumber belonging to the private complainant notwithstanding their prior agreement permitting the accused-appellant to use the lumber of private complainant provided she return them when she moves out of the lot, viz:

“Evidently, accused knew that not all materials used in the construction of her house at Bansalan was hers. While she was able to prove that she bought five punos (sic) punos and mangos (sic) trees, the lumber from which were used to construct her house at Bansalan, she failed to convince the Court that no material was taken by her from the demolished big house. Her statement during their barangay confrontation that ‘she knew that the lumber were not theirs...and was willing to return as she did not steal the same’ was a clear admission of her knowledge that she took what was not hers. Her insistence that she brought everything that was demolished because private complainant in her 16 July letter to her states ‘xxx I am requesting you to demolish, transfer and remove everything you have introduced on the premises xxx’ is misplaced. As earlier discussed, she knew that some of the lumber (sic) were not hers as these were taken from the demolished house owned by the private complainant. She was only allowed to use the same on the condition to leave the same when she would finally move out from the place. She, as well as the other tenants, was allowed thereof out of owner’s compassion. When she brought these pieces of lumber to Cogon, Digos City, it was without the consent of the owner, herein private complainant. It is well to emphasize that she was even willing to return the same but at the expense of the private complainant to which the latter did not agree.”

We see no cogent reason to depart from the findings of the court a quo in this regard. Nevertheless, We find that the court a quo erred in the penalty it imposed upon the accused-appellant. In the dispositive portion of the decision, the court a quo meted out a penalty of two (2) years, four (4) months and one (1) day to four (4) years and two (2) months of imprisonment against the accused-appellant. However, there was no sufficient evidence to prove that the lumber stolen was worth P51,930.00, as alleged in the information and the complaint.

As elucidated by the Supreme Court in *People v. Anabe*, 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". 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.[22]

The minimum penalty under Article 309 is *arresto mayor* in its minimum and medium periods, or one (1) month and one (1) day to two (2) months, as minimum, to three (3) months and one (1) day to four (4) months, as

maximum.

The Indeterminate Sentence Law shall not be applicable since the maximum term of imprisonment does not exceed one year, pursuant to Section 2 of Act No. 1403.

WHEREFORE, the appeal is DENIED. The Decision dated October 6, 2011 of the Regional Trial Court of Bansalan, Davao del Sur, Branch 21 is AFFIRMED but MODIFIED by imposing the penalty of one (1) month and one (1) day to two (2) months, as minimum, to three (3) months and one (1) day to four (4) months, as maximum.

SO ORDERED.

Camello and Lopez, JJ., concur.

[1] Penned by Hon. Loida S. Posadas-Kahulugan; Rollo; pp. 33-43; Records, pp. 191-201.

[2] As culled from the records.

[3] Records, p. 1-2.

[4] Supra, p. 23.

[5] TSN, July 2, 2004; pp. 1-22.

[6] Supra, pp. 23-31.

[7] TSN, September 24, 2004; pp. 1-12.

[8] Supra, pp. 13-22.

[9] TSN, September 2, 2005; pp. 1-11.

[10] Supra, pp. 12-17.

[11] TSN, March 31, 2006; pp. 1-8.

[12] Supra, pp. 8-23.

[13] TSN, June 30, 2008; pp. 5-18.

[14] Supra, pp. 19-32.

[15] Ibid.

[16] TSN, September 29, 2008; pp. 1-6.

[17] Supra, pp. 7-8.

[18] TSN, June 15, 2009; pp. 1-8.

[19] Supra, pp. 9-18.

[20] See footnote 1.

[21] Laurel v. Abrogar; G.R. No. 155076; January 13, 2009.

[22] G.R. No. 179033; September 6, 2010.

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