

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGELITO FRANCO DEMARTIN, ACCUSED-APPELLANT.

Ponente: INTING, J.

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INTING, J.:

Before Us on appeal is the Decision[1] dated May 6, 2011 of the Regional Trial Court of Alabel, Sarangani Province, Branch 38, rendered in Criminal Case No. 968-02, finding accused-appellant guilty beyond reasonable doubt of the crime of qualified theft.

The facts[2] are as follows:

On April 16, 2002, an Information was filed against accused-appellant Angelito Franco Demartin, which reads:

“That on or about the 31st day of December 2001, in Barangay Maribulan, Municipality of Alable, Province of Sarangani, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, Angelito Demartin, Head Guard of GoldField Security Agency, having access to the fishpond, and with grave abuse of confidence, with intent of gain and without the consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away five (5) kilos of milk fish from the pond of AAIT compound, valued at THREE HUNDRED FIFTY (P350.00) PESOS, Philippine currency, to the damage and prejudice of the said Alson’s Agua Technologies Inc. in the amount aforestated.”[3]

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

On September 20, 2006, the prosecution presented its first witness, Laurence Jabillo Carandang (Laurence), who testified before the court a quo that he works under the Human Resources Department of Alsons Aqua Technologies, Inc. (AATI) located at Maribulan, Alabel, Sarangani Province.[5]

On the day of the incident, or on December 31, 2001, he was at his residence at NLSA Road, Lagao, General Santos City. Mr. Pedroso, the supervisor of AATI called him up to inform him that someone was caught stealing milkfish in the company premises, specifically in post no. 12. Thereafter, Laurence proceeded to the police station in Alabel where he learned that the accused-appellant had stolen six (6) pieces of milkfish. The accused-appellant was caught by Nelson Bardoquin and Romeo Empig, the company guards. At that time, the accused-appellant worked as a security guard of AATI under Goldfield Agency.[6]

When confronted, the accused-appellant allegedly reasoned out that he found the six (6) pieces of fish lying on the road. Due to the change of water from brackish to fresh water, the milkfish jumped from the water and unto the road.[7] According to Laurence, the milkfish that the accused-appellant took are still part of the property of AATI since it was found inside its compound. Moreover, the company policy of AATI requires that any person who shall bring milkfish outside of the compound is required to have a gate pass or delivery receipt.[8]

On cross-examination, Laurence admitted that he did not actually see the accused-appellant take the milkfish from their compound. He admitted that he was merely informed of the alleged theft by the accused-appellant.[9]

Thereafter, on November 29, 2006, Romeo Empig (Romeo) testified before the court a quo that he is the security guard at AATI and Sarangani Agricultural Company, Inc. (SACI) and a resident of SACI Compound. He testified that on the day of the incident, he and Nelson Bardoquin were conducting their roving duty as guards in the area of the company. When they arrived at post no. 12, they saw the accused-appellant carrying milkfish. The accused-appellant told them he found the milkfish on the road. When they demanded from him a gate pass and delivery receipt, he could not show anything to them. So that Romeo and Nelson called up their officers, Caesar Lumbag and Rosel Pedroso. Caesar, who is the Chief Security Officer of the SACI, then brought the accused-appellant to the police station, accompanied by Romeo and Nelson.[10]

During cross-examination, Romeo testified that he personally knows the accused-appellant since the latter also worked as a guard for the company, although hired by an agency. When he conducted the search and saw that there were several milkfish inside the bag of the accused-appellant, the latter explained that he picked it up because the milkfish were just lying on the road.[11] Romeo readily admitted that he did not personally witness the accused-appellant take the milkfish from the pond. He also testified that he has been working as a guard at SACI since March 3, 1980. The pond in SACI contains bangus, tilapia and prawn.[12]

On the same day, the prosecution presented its last witness, Nelson Bardoquin. But his testimony, with the acquiescence of the accused, was dispensed with since it merely echoed Romeo Empig's testimony.

On August 15, 2007, the defense presented its lone witness, the accused-appellant Angelito Demartin. The accused-appellant testified that he worked as a security guard for Goldfield Security Agency and his assigned post was in SACI where he was the head security guard. At the time of the incident, he was conducting his roving duty at post no. 12 of SACI.[13] The accused-appellant further testified that while he was on his way to post no. 12, he saw several milkfish jump from the pond. He then picked them up and gave it to Jose Osinado who was at said post. He then headed to the administration office to secure a gate pass but was arrested instead.[14]

On cross-examination, the accused-appellant testified that he has worked in SACI as a security guard for two (2) years until the time of his arrest. He also testified that he is familiar with the company policy of SACI with regard to its properties.[15]

On May 28, 2008, the prosecution presented Joshua Galido as its rebuttal witness before the court a quo. Joshua is the security manager of SACI. According to him, as a company policy, SACI requires that before anyone can take company property, including fish, from its compound, one must first secure a gate pass from the administration department. He adds that a memorandum was in fact issued by SACI on October 14, 2000 regarding the fish given to the harvesters and pond aides. Under said memorandum, only harvesters and pond aides are entitled to receive two (2) kilos of tilapia or katang during harvest season.[16]

On cross-examination, Joshua testified that SACI's employees are not totally prohibited from bringing out fish from the pond for as long as a gate pass is issued by the management.[17]

On May 6, 2011, the court a quo rendered the assailed decision finding the accused-appellant guilty beyond reasonable doubt of qualified theft. The dispositive portion of which reads:

“WHEREFORE, considering the foregoing, the prosecution was able to prove the guilt of the accused beyond reasonable doubt as charged in the information. Accordingly, applying the Indeterminate Sentence Law, the accused is hereby sentenced to suffer the indeterminate penalty of prision correccional medium period as minimum which is four (4) years, two (2) months and one (1) day to prision mayor medium period as maximum which is eight (8) years and one (1) day.”[18]

Hence, this appeal.

Accused-appellant assigns the following assignment of errors:

I

WHETHER OR NOT THE COURT A QUO ERRED IN FINDING MALICE WHEN APPELLANT TOOK THE FIVE (5) PIECES OF MILKFISH, WHEN IN FACT THERE WAS NONE;

II

WHETHER OR NOT THE COURT A QUO ERRED IN FINDING THAT APPELLANT TOOK THE FIVE (5) PIECES OF MILKFISH FOR GAIN, WHEN IN FACT THERE WAS NONE; AND

III

WHETHER OR NOT THE COURT A QUO ERRED IN CONVICTING APPELLANT ALTHOUGH THE EXISTENCE OF THE ALLEGED STOLEN FIVE (5) KILOS OF MILKFISH WAS NOT PROVEN.

Our Ruling

The appeal is bereft of merit.

The crime of theft is defined and penalized under Articles 308 to 310 of the Revised Penal Code, viz:

“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.

Art. 310. Qualified theft. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.”

The elements of qualified theft punishable under Article 310 in relation to Articles 308 and 309 of the Revised Penal Code (RPC) are as follows:

- 1.

There was a taking of personal property.

- 2.

The said property belongs to another.

- 3.

The taking was done without the consent of the owner.

- 4.

The taking was done with intent to gain.

- 5.

The taking was accomplished without violence or intimidation against person, or force upon things.

- 6.

The taking was done under any of the circumstances enumerated in Article 310 of the RPC, i.e., with grave abuse of confidence.[19]

In the case at bar, all the elements concur to warrant a conviction for qualified theft. Based upon the records of the case, it is established, and the accused-appellant likewise admits, that he took the milkfish which was the property of his employer. In his counter-affidavit dated January 18, 2002, the accused-appellant stated the following:

“3. Due to the abrupt change of the flow of water in the canal right after the machine that pumped salt water to the said canal was switched off, many of the milkfish from the canal jumped and some of them land to the foot path;

- That when I saw what is (sic) happening I immediately went to collect the dead milkfish that scattered in the foot path near the canal;

- That on the following day, December 31, 2001, I brought with me on my way out the said milkfish and was surprised when I am (sic) apprehended and turned over to the police considering that it is a common knowledge that the milkfish every now and then jumped the moment that the pump was switched off.”[20]

He also testified during cross-examination that he is familiar with the company policy of AATI which prohibits employees from taking out fish out of the company premises unless accompanied by a gate pass or delivery receipt.

Furthermore, the theft is qualified due to the presence of grave abuse of confidence and that the fish was taken out of a fishpond, as enumerated under Article 310 of the Revised Penal Code. As a security guard of AATI, the accused-appellant’s job necessarily entails trust and confidence which his employer has reposed upon him.

However, We find that the court a quo erred in imposing the proper penalty to be meted out against the accused-appellant. There was no sufficient evidence to prove that the stolen milkfish was worth P350.00. In *People v. Anabe*, the Supreme Court declared that 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.[21]

The minimum penalty under Article 309 is *arresto mayor* in its minimum and medium periods. However, pursuant to Article 310, the crime of qualified theft shall be punished by the penalties next higher by two degrees or *prision correccional* in its medium and maximum periods or two (2) years, four (4) months and one (1) day to six (6) years.

Applying the Indeterminate Sentence Law, the proper imposable penalty shall be 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.

WHEREFORE, the appeal is DENIED. The Decision dated May 6, 2011 of the Regional Trial Court of Alabel, Sarangani Province, Branch 38 is AFFIRMED but MODIFIED by imposing the 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.

SO ORDERED.

Inting and Lopez, JJ., concur.

[1] Penned by Hon. Jaime I. Infante; Rollo, pp. 47; Records, pp. 515-532.

[2] As culled from the records.

[3] Records, pp. 1-7.

[4] Supra, p. 65.

[5] Supra, pp. 581-597.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Records, pp. 599-626.

[11] Ibid.

[12] Ibid.

[13] Records, pp. 627-652.

[14] Ibid.

[15] Ibid.

[16] Records, pp. 653-669.

[17] Ibid.

[18] See footnote 1.

[19] *Matrido v. People*; G.R. No. 179061; July 13, 2009.

[20] Records, pp. 15-16.

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

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