PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BRYAN TE-ENGPO, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

On appeal are the Judgment[1] dated 9 December 2011 of the Regional Trial Court, of Negros Oriental, 7[th] Judicial Region, Branch 42, Dumaguete City rendered in Crim. Case No. 2010-19802 convicting accused-appellant guilty beyond reasonable doubt of Robbery with Force Upon Things and its Order[2] dated 15 December 2011 amending the dispositive portion thereof, viz -

> "WHEREFORE, judgment is rendered finding accused Bryan Te-engpo guilty beyond reasonable doubt of the crime of robbery defined under paragraph 5 of Article 294 of the Revised Penal Code. He is hereby sentenced to suffer the indeterminate prison term of four (4) months and one (1) day of arresto mayor as minimum to six years and one (1) day of prision mayor as maximum. He is also ordered to restore to the Dauin National High School the following items: 3 microscopes Unicon brand Model GE-29, twelve (12) 2.50 ml., three (3) glass covers and nine (9) dissecting sets.
>
> For insufficiency of evidence, accused Felix Balilo, Jr. is hereby acquitted. He is hereby ordered released from custody at the NODRC, Dumaguete City, unless detained for any other lawful cause.
>
> SO ORDERED."

THE FACTS

On 20 August 2009, an Information[3] was filed against Felix Balilo, Jr., Eddie Flores and Bryan Te-engpo alias "Bryan", the accusatory charge of which reads,

> "That on or about 10[th] day of September 2008, in the Municipality of Dauin, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and helping one another, did, then and there willfully, unlawfully, feloniously, with intent to gain, and by means of force upon things, to wit: by then removing two (2) sets of window glass at back portion of the classroom of Dauin National High School or through an opening not intended for entrance or egress, take, steal and carry away the following:
> 1. eight (8) compound microscope
> 2. nine (9) dissecting set
> 3. twelve (12) 250 ml beakers
> 4. three (3) cover glass
> 5. one (1) fire extinguisher

all items belonging to the Dauin National High School, against their will, all value at Php17,753.39, to the damage and prejudice of said owner in the aforesaid sum of Php17,753.39, Philippine currency (sic)."

[The case was docketed as Crim. Case No. 2009-19658.[4]]

Warrants of Arrest both dated 22 January 2010 were issued commanding the arrest of Felix Balilo, Jr.[5] and Eddie Flores and Bryan Te-engpo.[6]

By Order[7] dated 11 February 2010, the trial court released accused Bryan Te-engpo after posting bail.

The prosecution moved[8] to amend the Information to add the words “entered the classroom and once inside, did then and there”. Thus, the amended Information[9] reads,

> “That on or about 10[th] day of September 2009 (sic), in the Municipality of Dauin, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together and helping one another, did, then and there willfully, unlawfully, feloniously, with intent to gain, and by means of force upon things, to wit: by then removing two (2) sets of window glass at back portion of a classroom of Dauin National High School or through an opening not intended for entrance or egress, entered the classroom and once inside, did then and there take, steal and carry away the following: (Underscoring supplied)
> 1. eight (8) compound microscope
> 2. nine (9) dissecting set
> 3. twelve (12) 250 ml beakers
> 4. three (3) cover glass
> 5. one (1) fire extinguisher
>
> all items belonging to the Dauin National High School, all valued at Php17,753.39 [sic], to the damage and prejudice of the owner in the aforesaid sum of Php17,753.39, Philippine currency (sic).”

By Order[10] dated 22 February 2010, the trial court directed the District Warden of Siaton to turn-over accused Felix Balilo, Jr. to the Negros Oriental Detention and Rehabilitation Center (NODRC) in Dumaguete City.

By Order[11] dated 25 February 2010, the trial court admitted the amended Information.

Upon arraignment, the accused Bryan Te-engpo[12] and Felix Balilo, Jr.[13] pleaded not guilty to the charge against them.

Accused Eddie Teves Flores was reported to have died[14] already.

In the Order[15] of the trial court dated 18 February 2011, it is reflected therein that the prosecution presented a copy of the death certificate of Jessie Mendoza.

After the issues have been joined and the pre-trial terminated, trial on the merits ensued.

Accused Felix Balilo, Jr., thru counsel, filed a Demurrer to Evidence,[16] which was denied by the trial court for having been filed out of time in its Order[17] dated 19 May 2011.

As culled by the trial court, the facts of the case are the following,

> “Evidence for the Prosecution
>
> At about 8:30 o'clock in the evening of September 10, 2008, a report was made to the PNP Dauin Station by one Joventino Abejero, a police auxiliary assigned at the Dauin National High School, that there was an unauthorized entry or break-in in one of the classrooms, which he discovered was ransacked. The report was immediately entered in the police blotter. In response to the report, SPO2 Galileo Macalipay Quio, Sr. proceeded to the place of the incident to conduct an ocular inspection. According to Mrs. Carmelita Alcala, the officer-in-charge of the High School, who was present during the inspection, they discovered that two glass blades were removed from the jalousie window of the laboratory room, which probably explained how the

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perpetrators gained entrance. Inside the laboratory everything was in disarray. The cabinet containing laboratory equipment like microscopes, beakers – was forcibly opened. An inventory conducted the following day revealed that the following laboratory equipment were stolen: eight (8) microscopes Unicon Brand Model GE-29, one (1) fire extinguisher, twelve (12) 2.50 ml. beakers, three (3) glass covers and nine (9) dissecting sets. Of these stolen items, the following were recovered: 5 microscopes – four from different buyers and one which was left near the school grounds and fire extinguisher surrendered by Dr. Augustus Santillan, who also purchased one microscope.

The fact of ownership of these things which were stolen was established through the testimonies, not only of Mrs. Carmelita Alcala, the officer-in-charge of the school, but also by property custodian, Mrs. Lorenza Trumata who identified the microscopes. Copies of documents indicating the Delivery Receipts of this laboratory equipment from its supplier, the certificate of acceptance by the Dauin National High School, as well as the authority of Mrs. Carmelita Alcala, were also presented in evidence.

During a follow-up operations conducted by elements of the PNP Dauin, they were able to recover four (4) microscopes from different buyers here in Dumaguete City. SPO4 Romulus Delfin, they visited laboratories and clinics in Dumaguete City to make inquiries if perchance somebody offered to sell them microscopes. Luckily, their investigation yielded positive results, leading to the recover[y] of the four microscopes.

On September 15, 2008, SPO4 Romulus Delfin, together with SPO4 Alcala and SPO3 Galileo Quio, first went to the Dumaguete City Medical Cooperative where they learned that a person, described as 'one with a long hair and burnt scars in the face' had offered to sell a microscope to them. However, they were advised just to come back, as their manager was not around. Afterwards, they proceeded to the PNP Station of Dumaguete City to review the pictures on the rogue gallery, but could not find the suspect as described. Upon the advice of some policemen from Dumaguete that the person they are looking may be the one in Tinago, Dumaguete City, they proceeded to the place. On their way, they stopped by a clinic owned by one Dr. Augustus Santillan, whom they were able to ask the same query if he received offers to a microscope. Dr. Santillan admitted that his neighbor, Bryan Te-engpo sold to him one microscope for P500.00, and even called Bryan Te-engpo. Moments later, a person, identified as Bryan Te-engpo arrived at the residence of Dr. Santillan and during their conversation, SPO4 Delfin and his companions heard Bryan admit that it was Felix Balilio (sic), Jr., who had asked him to sell that microscope. Apart from the microscope he purchased from Bryan Te-engpo, Dr. Santillan also surrendered to the police the fire extinguisher.

Jessie Mend[oza] whose store is just in front of the residence of Bryan Te-engpo, also voluntarily returned one microscope to the policemen from Dauin.

It was also Bryan Te-engpo who relayed the information to the police that one more microscope was sold by Eddie Flores to a public school teacher from West City Elementary School in Dumaguete City. In the course of their investigation, the policemen were able to speak with Eddie Flores who confirmed to them that he sold one microscope to Mr. Steve Teves. Later, the police recovered a microscope from Mr. Steve Teves, the teacher from the West City Elementary School, who admitted that it was Eddie Flores who sold it to him for P1,500.00. According to SPO2 Quio and SPO3 Delfin, both Bryan Te-engpo and Eddie Flores told them that they were only asked by Felix Balilio (sic), Jr. to sell the microscopes, which they had sold to the different buyers.

With respect to the microscope recovered from the Negros Oriental Hospital Cooperative, also referred to by the police as Dumaguete City Medical Cooperative, its manager, Cesar Miranda testified it was Bryan Te-engpo who sold to him the microscope. According to him, Bryan Te-engpo explained that the microscope belonged to his friend, who was formerly enrolled in a medical course, but who had since stopped schooling and didn't need it anymore. From what was related by Bryan Te-engpo, this microscope of his friend was given by the latter's aunt who is abroad. Cesar Miranda also clarified that he bought the microscope for P1,500.00 not for the cooperative, but for his nephew who was engaged in the cell phone repair business.

All four buyers of the microscopes: Dr. Augustus Santillan, Dumaguete Medical Cooperative through its manager, Cesar Miranda, Steve Teves and Jessie Mendoza turned over the possession of the microscopes they purchased from Bryan Te-engpo and Eddie Flores to the (sic) SPO2 Galilio Quio, as shown by the receipts issued by the latter. These microscopes recovered by the police from the different buyers were also presented in evidence. In the course of their testimonies, SPO4 Delfin and SPO2 Quio pointed to accused Bryan Te-engpo as the person who Dr. Santillan identified as the one who sold the microscope to him. Cesar Miranda also identified accused Bryan Te-engpo as the person who sold the microscope to him. Cesar Miranda also identified accused Bryan Te-engpo as the person who sold the microscope to the Medical Cooperative."

"Evidence for the Defense

On the part of the accused Felix Balilo (sic), Jr., he denied the charge and claimed that he was nowhere in the vicinity of the school when th alleged robbery took place, as he was just at his residence busy preparing food for their fiesta celebration, and later, entertaining their guests, as that day, September 10, was the town fiesta of Dauin. He denied knowing co-accused Bryan Te-engpo, claiming that he only met him in court when this case was filed. With regard to Eddie Flores, accused also maintains that he does not know him. The story of the accused was corroborated by his father, Felix Balilo, Sr., who also testified in court that his son was just at their residence on that day of the alleged robbery, preparing food and later entertaining their guests.

Co-accused Bryan Te-engpo also insisted that he was innocent of the charges and that at the time of the alleged robbery on September 10, 2008, he was just in Dumaguete City. He related that while he had wanted to go to Dauin that day as it was a town fiesta, however, he was unable to do so for lack of transportation. In the course of his cross-examination, he confirmed going to the house of Dr. Augustus Santillan, where he was able to talk with some policemen. Nonetheless, due to the vigorous objection of his counsel, he was unable to explain what took place at the residence of Dr. Santillan, nor refute the claim of the prosecution witnesses regarding his admission of having sold a microscope to Dr. Santillan.

The grandmother of Bryan Te-engpo corroborated his alibi. She testified that Bryan Te-engpo was at school on September 10, 2008, and in fact just came back for lunch, but left for school again in the afternoon."

THE RULING OF THE REGIONAL TRIAL COURT

In convicting accused Bryan Te-engpo and acquitting accused Felix Balilo. Jr., the trial court ratiocinated,

"From the foregoing evidences, it was established that there was unlawful taking of these personal properties, belonging to Dauin National High School, without the knowledge and consent of its owners, and that that (sic) unlawful taking was accomplished with the use of force upon things. In other words, with the exception of animus lucrandi, all the elements of robbery with force upon things were proven by the prosecution.

Admittedly, no one saw the actual robbery committed. Evidence relied upon by the prosecution is circumstantial. The recovery of two of the stolen microscopes from two different buyers, who testified that it was accused Bryan Te-engpo who sold it to them, established the latter's possession of two of the stolen microscopes. In particular, it was firmly established that accused Bryan Te-engpo sold two of the stolen microscopes to Dr. Augustus Santillan and Mr. Cesar Miranda, which microscopes were recovered by the policemen from Dauin on September 17, 2008 and September 19, 2008, respectively, after they were turned over by the buyers themselves. As a matter of fact, it was admitted by the parties that Dr. Augustus Santillan purchased one unit microscope from accused Bryan Te-engpo for P500, whose identity was likewise admitted. Furthermore, Mr. Cesar Miranda of the Negros Oriental Medical Cooperative also testified that he purchased one microscope from accused Bryan Te-engpo, whom he identified in open court. These two microscopes recovered [from] Dr. Santillan and Mr. Miranda were likewise identified by Mrs. Trumata, the laboratory in-charge of Dauin National High School, as the ones which were stolen from their laboratory.

The court has no reason to disbelieve the testimonies of Dr. Santillan and Mr. Miranda pointing to the accused

Te-engpo as the person who sold them the two microscopes which were later discovered to be stolen. There was nothing in evidence to even remotely suggest bias, and neither did the accused Te-engpo question their motives in testifying. As a matter of fact, accused Te-engpo did not even refute their testimonies, despite the fact that they positively identified him as the person who sold them the stolen microscopes. The court finds it unusual that accused Te-engpo opted to maintain his deafening silence and refused to deny the matter. His failure to refute these testimonies or explain his possession thereof must be taken against him.

Jurisprudence tells that intent to gain or animus lucrandi is presumed when one is found in possession of stolen items precisely because the taking of property belonging to another is an unlawful act. Moreover, in the case of People versus Donato del Rosario, which is a case of similar factual moorings, amidst the denial of the accused that he robbed the house of one Emelita Paragua, and the testimonies of two witnesses that he was the one who pawned and sold to them the jewelry, established the accused's possession of the stolen jewelry. On this, [the] Supreme Court had said that 'when stolen property is found in the possession of one, not the owner, without a satisfactory explanation of his possession, he will be presumed to be the thief. This rule is in accordance with the disputable presumption 'that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act.'

The court is not unmindful of the requirement that before an inference of guilt arising from the possession of recently stolen property can [be] made, the following facts must be proven, to wit: 1) The crime was committed; 2) The crime was committed recently; 3) That the stolen property was found in the possession of the accused; 4) That the accused is unable to explain his possession satisfactorily. Applied to this case, the court finds that the prosecution was able to establish that a robbery occurred at the Dauin National High School Laboratory Classroom last September 10, 2008, wherein among those items stolen, were microscopes. The testimonies of Dr. Santillan and Mr. Miranda that they were able to purchase microscopes sometime [in] September 2008 from the accused, and the fact that they were recovered on September 17, 2008 and September 19, 2008, respectively, established that the accused Bryan Te-engpo was in possession of the stolen microscopes, and that his possession thereof was recent or near the date after they were stolen. And most importantly, accused Bryan Te-engpo failed to refute, explain and or deny his possession of the stolen microscopes, despite opportunity to do so.

Accused Te-engpo proffered the defense of denial and alibi. However, in the light of the evidence against him as discussed above, his plain, unexplained denial cannot overcome the evidence against him of having possessed the stolen microscopes which he eventually sold to the two buyers who gave their testimonies in court. With regard to his alibi, the same is not airtight, so as to discount all possibilities of his having gone to Dauin, National Oriental at the time of the robbery. Moreover, the defense of alibi is inherently weak, particularly when the alibi is provided by close family members, relatives or friends, as in this case, which was provided by accused Te-engpo's grandmother.

In conclusion, the court finds that the prosecution was able to establish the guilt of the accused beyond reasonable doubt.

With regard to accused Felix Balilo, Jr., there is nothing in evidence which would establish his participation in the robbery other than the testimony of the policeman from Dauin who claimed to have heard Bryan Te-engpo declare that he was just being asked by Felix Balilo, Jr. to sell the microscopes, which he sold to Dr. Santillan and Mr. Miranda. X x x

The charge is for robbery as defined under Article 293 in relation to Article 299 of the Revised Penal Code, particularly paragraph (a)(1) defined as gaining entrance to a public building through an opening not intended for entrance or egress. While the laboratory classroom where the robbery took place is a public building, being a national high school owned by the government, yet the court is not convinced that the entrance was effected by way of the window wherein the two blades of the jalousie [window] was removed in line with the description and demonstration by Mrs. Carmelita Alcala that the width measurement of each blade was 3 ¼

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> inch. If indeed two blades were removed, then the total opening would be 6 ½ inches wide, which may be impossible for the accused with the physical bearing of accused Te-engpo to manage, even if a two-inch allowance be added. While the same witness again on re-direct claimed that that (sic) total total opening of the two blades removed would be 11 inches, yet it was not explained why she described it to be 6 ½ inches during her earlier testimony. For this reason, the court finds that that (sic) accused Te-engpo can only be held liable for simple robbery as defined under paragraph 5 of Article 294.
>
> The penalty for robbery under Article 294, paragraph 5, is prision correccional in its maximum period to prision mayor in its medium period. Applying the Indeterminate Sentence Law, and in the absence of any mitigating or aggravating circumstances, the maximum penalty to be imposed shall be taken from the medium of the imposable penalty which is prision mayor minimum and whose range is six (6) years and one (1) day to eight (8) years, following Article 64(1) of the Revised Penal Code. The minimum, on the other hand, shall be taken from the penalty next lower in degree which is arresto mayor in its maximum period to prision correccional in its medium period, whose range is from four (4) months and one (1) day to four (4) years and two (2) months, in accordance with Article 61(4) of the Revised Penal Code."

The trial court amended the dispositive portion of its judgment, to read,

> "WHEREFORE, judgment is rendered finding accused Bryan Te-engpo guilty beyond reasonable doubt of the crime of robbery defined under paragraph 5 of Article 294 of the Revised Penal Code. He is hereby sentenced to suffer the indeterminate prison term of four (4) months and one (1) day of arresto mayor as minimum to six years and one (1) day of prision mayor as maximum. He is also ordered to restore to the Dauin National High School the following items: 3 microscopes, Unicon brand, Model GE-29, twelve (12) 2.50 mt (sic) three (3) glass covers and nine (9) dissecting sets.
>
> For insufficiency of evidence, accused Felix Balilo, Jr, is hereby acquitted. He is hereby ordered released from custody at the NODRC, Dumaguete City, unless detained for any other lawful cause.
>
> SO ORDERED."

By Order[18] dated 15 December 2011, the trial court granted the accused's Urgent Motion to Continue the Cash Bond of the Accused Pending the Filing of the Appropriate Pleading".[19]

By Order[20] dated 2 January 2012, the trial court, inter alia, granted the accused's Notice of Appeal and ordered the records of this case to be forwarded to this Court.

In his Brief, the accused, now appellant, makes the following assignment of errors, to wit:

> "I.
>
> That the court a quo failed to appreciate the fact that the prosecution witnesses never saw the alleged culprit of the crime charged in the Information.
>
> II.
>
> The court failed to take into consideration that the corpus delicti was not properly identified by the prosecution which cast[s] doubt as to its existence.
>
> III.
>
> The court a quo failed to consider that SPO4 Delfin failed to make an inventory of the alleged corpus delicti giving doubt as to it[s] existence as it can easily be change[d]."

The arguments of the accused-appellant

The accused-appellant first argues that the corpus delicti is doubtful and could not in anyway be connected to the

alleged crime of robbery. He continues that the prosecution failed to prove that there was conspiracy on the alleged robbery with force upon things.

Next, the accused-appellant contends that under the law he is presumed innocent until the contrary is proved as accusation is not synonymous with guilt. He adds that one's conviction does not and should not depend on the weakness of the defense but on the strength of the evidence of the prosecution.

Thus, for all the foregoing premises, his acquittal is proper under the circumstances.

The arguments of the plaintiff-appellee

The plaintiff-appellee, represented by the Office of the Solicitor General (OSG), counters that the prosecution has discharged its burden to prove the guilt of the accused-appellant beyond reasonable doubt. The OSG maintains that although there was no direct evidence to prove the culpability of the accused-appellant, circumstantial evidence as provided in Section 4 of Rule 133 of the Revised Rules of Evidence can be the basis of a conviction. In the case at bar, the circumstantial evidence of the prosecution has been proven through the positive testimonies of the witnesses. The chain of events leads to the inevitable conclusion that the accused-appellant was the taker of the stolen items and disposed the same with intent to gain. In fact, in the course of their investigation, the police officers were able to recover four (4) microscopes from four (4) different persons – three of them purchased from the accused-appellant and the fourth one from the late Eddie Flores.

Denial and alibi are inherently weak defenses which the courts must receive with caution because these can be easily fabricated. In the face of a positive, clear and convincing testimony that a crime was committed and the accused committed the same, these defenses cannot prevail over such testimony. Here, accused-appellants' defense of denial and alibi cannot prevail over the positive identification by the prosecution witnesses that he sold them the microscopes. In fact, the accused-appellant admitted going to the house of Dr. Santillan and that he was able to talk to some police officers. When asked if he heard Dr. Santillan's testimony to the effect that it was from him that the said doctor purchased one (1) unit of microscope, the accused-appellant answered in the affirmative.[21] More important, the accused-appellant failed to refute the statements of the prosecution witnesses. As settled, when stolen property is found in the possession of one, not the owner, without a satisfactory explanation of his possession thereof, he will be presumed to be the thief.

THE ISSUE

At the core of the controversy is the issue of whether or not the circumstantial evidence relied upon by the prosecution was sufficient to convict the accused-appellant for the crime of robbery with force upon things.

THIS COURT'S RULING

The appeal lacks merit.

Prefatorily, the prosecution has to prove beyond reasonable doubt that the accused-appellant committed the crime of Robbery charged against him in the Information. As defined in Article 293 of the Revised Penal Code the elements of robbery are the following:

a)

that there is personal property belonging to another;

b)

that there is unlawful taking of that property;

c)

that the taking is with intent to gain; and

d)

that there is violence against or intimidation of persons or force upon things.

In this instance, the prosecution adequately established the above elements.

Onset, the accused-appellant was convicted on the basis of circumstantial evidence as there was no direct evidence to prove his culpability. Appurtenant thereto is the doctrine laid down by the Supreme Court in People v. Fuentes,[22] wherein the Supre

> However, direct evidence is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. At times, resort to circumstantial evidence is imperative since to insist on direct testimony would, in many cases, result in setting felons free and deny proper protection to the community. Thus, Section 4, Rule 133 of the Revised Rules of Court on circumstantial evidence requires the concurrence of the following: (1) there must be more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt of the guilt of the accused. We have ruled that circumstantial evidence suffices to convict an accused only if the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.

We are not unmindful of the case of Mabunga v. People.[23] In that case, the trial court found the accused guilty of robbery with force upon things, relying upon circumstantial evidence. This court affirmed the judgment of the trial court relying on Section 3(j) Rule 131 of the Revised Rules on Evidence.[24] However, on review, the Supreme Court acquitted the accused, explaining in length its reason therefor, viz -

> While possession need not mean actual physical control over the thing for it may include constructive possession, it is still necessary that for possession to be deemed constructive the accused knowingly has the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person.
>
> x x x x
>
> At all events, apart from appellant’s supposed possession of the "HOPE" box on October 15, 1994, no other evidence was adduced by the prosecution linking him to the robbery. The teaching of Askew v. United States[25] must thus be heeded:
> We have heretofore adverted to the possession of the instruments or of the fruits of a crime as affording ground to presume the guilt of the possessor; but on this subject no certain rule can be laid down of universal application; the presumption being not conclusive but disputable, and therefore to be dealt with by the jury alone, as a mere inference of fact. Its force and value will depend on several considerations. In the first place, if the fact of possession stands alone, wholly unconnected with any other circumstances, its value or persuasive power is very slight; for the real criminal may have artfully placed the article in the possession or upon the premises of an innocent person, the better to conceal his own guilt. It will be necessary, therefore, for the prosecutor to add the proof of other circumstances indicative of guilt, in order to render the naked possession of the thing available towards a conviction.[26] (Emphasis and underscoring supplied)
>
> x x x x

The appellate court ruled that since it was sufficiently established that appellant was in possession of the typewriter two weeks after it was stolen, he had the burden of proving that he was not the one responsible for the heist. While a presumption imposes on a party against whom it is directed the burden of going forward with

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evidence to rebut such presumption, the burden of producing evidence of guilt does not extend to the burden of proving the accused's innocence of the crime as the burden of persuasion does not shift and remains throughout the trial upon the prosecution. (Footnotes added)

But the circumstances obtaining in Mabunga are not present in the case at bar. Here, the circumstantial evidence adduced by the prosecution sufficiently satisfies the onus probandi necessary for the conviction of the accused-appellant. Hereunder are the circumstances proving the crime of robbery and pointing to the accused-appellant as the perpetrator of that crime, to wit:

> One. On 10 September 2008, Jovenito Abejero, the barangay tanod assigned to guard the premises of the Dauin National National School discovered that the laboratory room in the said school was ransacked. He found one (1) set of microscope near the amphitheater of the school. He reported the incident to the police.[27]
>
> Two. Inside the laboratory room, the cabinet containing the stolen items was already opened, and things were already scattered on the floor. Two glass blades of a jalousie window were missing. The windows do not have grills, only the door and the cabinet containing the laboratory apparatuses have locks.[28]
>
> Three. Eight (8) sets of compound microscope, nine (9) dissecting sets, twelve (12) 250-ml. beakers, three (3) pieces cover glass and one unit of fire extinguisher were discovered missing.[29]
>
> Four. A personnel of the medical cooperative described the person who sold to them one (1) set of microscope. Based on the description given to them, the police officers sought assistance from the Dumaguete Police Station where they were told that the person so described fits someone who resides in Barangay Tinago.
>
> Five. Dr. Augustus Santillan admitted[30] to have purchased from accused Bryan Te-engpo one (1) set of compound microscope, Unicon Brand, Model GE-29, made in India sometime in September 2008, for P500.00.
>
> Six. One (1) set of compound microscope, Unicon Brand, Model GE-29, made in India, was recovered from Steve Teves – a teacher from the West City Elementary School. He purchased[31] the said microscope from Eddie Flores.
>
> Seven. One (1) set of compound microscope was recovered from Jessie Mendoza.[32]
>
> Eight. One (1) set of microscope, UNICON Brand GE-29 model, made in India, was recovered from Cesar Miranda, who purchased it from accused-appellant Bryan Te-engpo for P1500.00. Cesar Miranda testified on this matter,
>
> "Q:
>
> Can you still recall who offered to you that compound microscope?
>
> A:
>
> Yah, Mr. Bryan.
>
> Q:
>
> Can you point at him?
>
> A:
>
> Yes, Mr. Bryan, (Witness pointed to a person inside the courtroom who stood up and when asked of his name answered: Bryan Te-engpo)
>
> Q:

Mr. Witness, where did you meet Bryan Te-engpo when he offered to you this subject microscope?

A:

Mr. Bryan went to the office, since it is a laboratory he was trying to offer a microscope telling me that this was owned by my friend who was formerly studying some kind of medical courses and now that he is not schooling anymore that was given to him by his auntie from abroad and that he is not using it anymore so he would like to dispose it."[33]

Nine. The microscopes recovered are similar to the ones left in the laboratory room of the Dauin National High School as testified to by Mrs. Carmelita Alcala, viz -

"Q:

By the way, Mrs. Alcala. Do you have any identifying or signifying marks that would help you identify these compound microscopes?

A:

We don't have because the microscopes do not have serial numbers and during that time it was returned to us we know that those microscopes belong to the school because it is the same with the other microscopes which were not taken by the robbers.

Q:

In other words, you are telling us that the recovered microscopes are the same, appear to be the same with the remaining microscopes which were not taken by the robbers?

A:

Yes, you honor."[34]

Ten. While Mrs. Carmelita Alcala testified on cross[35] that other schools also received the same microscopes from SEDEP and that she could not discount the possibility that the stolen microscopes may have come from other schools, viz,

"Q:

In other words, you are not sure that the microscope were taken from your school on September 10, 2008 because you cannot remember the particular brand or model?

A:

I am sure, I can recognize that it is the same because they are the same with the remaining microscopes in our school.

Q:

Do you think there are no other microscopes the same as these in other schools?

A:

I know they have in other schools because a lot of schools also received from SEDEP the same kind of microscopes.

Q:

Of the same company?

A:

Yes.

Q:

So there is a possibility that the microscopes came from other schools.

A:

There is.”[36]

she, however, stressed on re-direct that she does not know of any other robbery incident similar to what happened in their school. If there was, then the Division Superintendent would have already informed them about it. Thus, she testified -

“Q:

Now you said a while ago Mrs. Alcala that it is not only the Dauin National High School which is the recipient of laboratory equipment from SEDEP which are also recipients of the laboratory equipment from SEDEP like these compound microscopes you received that they were also victims of robbery?

A:

I did not hear any Ma'am because if there will be I am sure the Division Superintendent will discuss that in our meetings because if there are incidents that happened like mine during our conference she will mention to all school heads to be very vigilant and as such as possible to put grills at the laboratory.

Q:

In other words, you learned only of one (1) incident, there is only one (1) incident wherein a school is being robbed and the stolen items were those laboratory equipment which were donated to the school from SEDEP?

A:

Yes.”[37]

Based on the foregoing circumstances, there is no doubt that several laboratory apparatuses were stolen from the laboratory of the Dauin National High School on September 10, 2008; and that after the robbery, accused-appellant Bryan was in possession or control of some of these stolen items which he sold to Dr. Santillan and Cesar Miranda sometime in September 2008.

The fact of possession by the accused-appellant of the two (2) stolen microscopes after the commission of the crime was established by the admissions of Dr. Santillan and Cesar Miranda, respectively, viz -

“1.

That, Dr. Augusto Ceasar Santillan was able to buy one compound microscope from Bryan Te-engpo, with Model GE-29, Unicon Brand made in India, in the amount of Php500.00 sometime in September 2000.

x x x x”[38]

“Q:

Mr. Witness, is it a fact that on the day that accused Bryan Te-engpo alleged sold to you one unit compound microscope, accused Felix Balilo was not there?

A:

I cannot recall, Your Honor, if Felix Balilo came but what I could remember for sure its Mr. Bryan.

Q:

So, Mr. Witness would you say that Felix Balilo, Jr. was not there during the alleged conduct or sale?

x x x x

A:

What I know is that somebody came but I cannot identify whether Bryan had a companion."[39]

It is worthy of noting that the accused-appellant admitted going to the house of Dr. Santillan and talking to the police officers. He even admitted having heard and listened to the testimony of Dr. Santillan to the effect that it was from him that the said doctor purchased one set of compound microscope. He testified on cross-examination, thus -

"Q:

Since according to you, you heard the testimony of Dr. Augustus Santillan, you heard him declare that you sold to him one (1) unit microscope which the doctor even identified as part of the four (4) microscopes involved in this case, what can you say to that testimony of Dr. Santillan?

A:

Yes.

Q:

And you were even invited to his house when the policemen came?

A:

Yes.

Q:

And you heard Dr. Augustus Santillan testify that that microscope was one of those microscopes stolen from Dauin National High School on September 10, 2008?

A:

I was told and invited by the policemen to talk to Dr. Santillan and which happened not on the actual date of September 10, 2008, a later date then September 10, 2008.

Q:

So you admit you went to the residence of Dr. Santillan?

A:

Yes."[40]

More important, the defense's insistence that the accused-appellant could not be guilty of the crime charged loses even more credibility when it failed to adduce evidence to satisfactorily explain how he came into possession of the stolen microscopes he sold to Dr. Santillan and Cesar Miranda, because in such case it is safe to presume that he committed the theft. "When it is proven that the property stolen is found in the possession of a person, who is unable to give a satisfactory explanation as to his possession of such property, a prima facie case is made against

such person sufficient to justify his conviction of the crime of larceny of said property. Men who come honestly into the possession of the property have no difficulty in explaining the method by which they came into such possession."[41]

In trying to extricate himself, the accused-appellant invoked the defense of alibi and denial. “For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise physically impossible for him to be at the locus criminis at the time of the alleged crime.”[42] This, the accused-appellant failed to do so. Not an iota of evidence was adduced by the accused-appellant to establish his presence in his school at around the time the robbery incident occurred in Dauin National High School. Yes, Allan Alcoran, accused-appellant's neighbor, met the accused-appellant on the road at around 11:45 in the morning coming from the direction of the latter's school. But that is all. Accused-appellant's whereabouts before 11:45 in the morning or thereafter is not known. Elsewise stated, the accused-appellant failed to satisfy the proof required to establish the physical impossibility for him to have been at the scene of the crime.

Notwithstanding, the accused-appellant cannot and should not be made to answer for the other sets of microscopes, dissecting set, cover glass, beakers and one unit of fire extinguisher. The trial court based its judgment with heavy reliance on the testimonies of the police officers and total value of the items stolen both recovered and not recovered. No convincing evidence exist in the records to prove that the rest of the stolen items were, after the commission of the crime, in the possession and exclusive control of the accused-appellant. For one, the microscope recovered from Steve Teves did not come from the accused-appellant but allegedly from the late Eddie Flores. It would have been a different story if conspiracy was proven because then the accused-appellant, being the co-conspirator of Eddie Flores, is made equally culpable for the microscope sold to Steve Teves. For another, while the police officers testified that the late Jessie Mendoza purchased one (1) set of compound microscope from the accused-appellant, no other evidence was adduced to prove that, indeed, it was from the accused-appellant that the late Jessie Mendoza purchased the said microscope. In this jurisdiction, the burden to prove that indeed the microscope surrendered by the late Jessie Mendoza to the police came from the accused-appellant lies on the prosecution. On this note, the prosecution should have endeavored to look for other witnesses to testify for the late Jessie Mendoza. Surely, there is someone who may have known from whom the late Jessie Mendoza purchased the microscope, perhaps a member of his family or household. Still for another, according to the police officers, the accused-appellant sold the fire extinguisher to Dr. Santillan. However, Dr. Santillan only admitted to the purchase of one set of compound microscope from the accused-appellant nothing more as can be gleaned from the Receipt dated September 17, 2008, marked as Exh. “D”[43] and in the stipulation on the gist of his testimony. The records will, however, show that it was the late Jessie Mendoza who returned one (1) portable stored pressure-type fire extinguisher as indicated in the Receipt dated September 18, 2008, issued to the late Jessie Mendoza marked as Exh. “E”.[44] All told, there is a paucity of evidence to show that the accused-appellant was in possession and control of the rest of the stolen microscopes and the stolen beakers, glass covers and dissecting sets. Applying the jurisprudential doctrine laid down in Mabunga v. People, supra, and as no conspiracy was proven, the accused-appellant can only be held liable for the two (2) sets of compound microscope each recovered from Dr. Augusto Santillan and Cesar Miranda.

WHEREFORE, the Judgment dated 9 December 2011 of the Regional Trial Court, 7[th] Judicial Region, Br. 42 and its Order dated 15 December 2011 are hereby AFFIRMED with modification that the accused-appellant is ORDERED to restore to the Dauin National High School two (2) sets of compound microscope, Unicon brand, Model GE-29, made in India. The rest of the dispositions of the Regional Trial Court in its Judgment of 9 December 2011 in Crim. Case No. 2010-19802, are hereby AFFIRMED.

SO ORDERED.

Maxino, and Francisco, JJ., concur.

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[1] Original Records, pp. 438-445.

[2] Original Records, pp. 446-447.

[3] Original Records, pp. 3-4.

[4] As reflected in the original Information dated August 20, 2009.

[5] Original Records, p. 20.

[6] Original Records, pages 21 and 23.

[7] Original Records, p. 29.

[8] Original Records, pp. 41.

[9] Original Records, p. 42.

[10] Original Records, p. 44.

[11] Original Records, p. 45.

[12] Certificate of Arraignment dated March 15, 2010, Original Records, p. 46.

[13] Certificate of Arraignment dated March 18, 2010, Original Records, p. 67.

[14] Death Certificate, Original Records, p. 103.

[15] Original Records, p. 318.

[16] Original Records, pp. 368-372.

[17] Original Records, p. 373.

[18] Original Records, pp. 460-461.

[19] Original Records, pp. 454-457.

[20] Original Records, p. 465.

[21] TSN of August 12, 2011, p. 10.

[22] People of the Philippines v. Raul Fuentes @Jerry Ignacio Fuentes @ Gerry Beriber @ Bong @ Raul Fuentes, G.R. No. 195243, August 29, 2012.Citing People v. Uy, G.R. No. 174660, May 30, 2011, 649 SCRA 236, citing Salvador v. People, G.R. No. 164266, July 23, 2008, 559 SCRA 461, and People v. Almoguerra, 461 Phil. 340, 356 (2003); and Salvador v. People, supra, citing People v. Padua, G.R. No. 169075, February 23, 2007, 516 SCRA 590.

[23] Modesto “Moody” Mabunga v. People of the Philippines, G.R. No. 142039, May 27, 2004. Citing Black’s Law Dictionary (6th ed. 1990) at 1185; Martin v. Court of Appeals, 205 SCRA 591 (1992); A. Bautista, Basic Evidence, (2004) citing Mueller and Kirkpatrick, §3.4; U.S. v. Catimbang, supra at 371-372; R.J. Francisco, Evidence, (3rd ed., 1996) at 419-420; 9 J.H. Wigmore, A Treatise on the Anglo-American System of Evidence in Trials at Common Law, (3rd ed., 1940) sec. 2513 at 422; Black’s Law Dictionary at 1163; and United States v.

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Simbahan, 19 Phil. 123 (1911).

[24] SEC. 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x

(j) That a person in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him.

[25] 2 Okl.Cr. 155 (1900).

[26] Ibid., citing Greenleaf, §31.

[27] TSN of Jovenito Abejero dated December 3, 2010.

[28] TSN of Lorenza P. Trumata dated September 30, 2010.

[29] Exh. "F", Joint Affidavit of SPO4 Romulus Cada Delfin and SPO2 Galileo Macalipay Quio, Sr., Original Records, p. 10 and Exh. "G", Affidavit of Carmelita A. Alcala, Original Records, p. 11. TSN of Carmelita A. Alcala dated October 28, 2010, pp. 9-10.

[30] Stipulation on the gist of the testimony of Dr. Augusto Ceasar Santillan, Order dated 11 February 2011, Original Records, pp. 314-315.

[31] Stipulation on the gist of the testimony of Steve Teves, Ibid.

[32] Exhibit "E", Receipt dated September 18, 2008, Original Records, p. 15.

[33] TSN of February 28, 2011, p. 7.

[34] TSN of October 28, 2010, p. 17.

[35] Ibid., p. 31.

[36] TSN dated October 28, 2010, pp. 21-22.

[37] TSN of October 28, 2010, p. 31.

[38] Order dated February 11, 2011, p. 314.

[39] TSN of February 24, 2011, p. 12.

[40] TSN of August 12, 2011, p. 10.

[41] People of the Philippines v. Renato Alhambra, et. al., G.R. No. 103272, July 4, 1994. Citing People v. Mendoza, G.R. No. 97430, June 26, 1992, 210 SCRA 517. [See also People v. Newman, et al., L-45354, July 26, 1988, 163 SCRA 496] and Sec. 3 (j), Rule 131, Rules of Court.

[42] People vs. Umali, 242 SCRA 17, March 1, 1995; People vs. Hortillano, 177 SCRA 729, September 19, 1989; and People vs. Cabresos, 244 SCRA 362, May 26, 1995.

[43] Original Records, p. 13.

[44] Original Records, p. 15.

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