

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHRIS JOEL GONZALES Y POBLETE, ACCUSED-APPELLANT.

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is an appeal from the Decision[1] dated March 16, 2011 of the Regional Trial Court of Imus, Cavite, Branch 20, in Criminal Case No. 2491-06, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court finds accused CHRIS JOEL GONZALES y POBLETE GUILTY beyond reasonable doubt of the crime of Qualified Theft under the Revised Penal Code and he is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from Four (4) Years, Two (2) Months and One (1) Day of prision correccional, as minimum, to Nine (9) Years, Four (4) Months and One (1) Day of prision mayor, as maximum.

SO ORDERED.

Accused-appellant Chris Joel Gonzales y Poblete was charged with Qualified Theft in an Information[2] dated May 2, 2006, the accusatory portion of which reads:

That on or about the 29th day of April 2006 in the Municipality of Imus, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then employed as Sales Assistant, with intent to gain, with grave abuse of trust and confidence reposed on them, and without the knowledge and consent of Pure Gold Price Club, Inc., did then, and there, willfully, unlawfully and feloniously, take, steal and carry away one (1) Promac DVD Player model AFX-5104 with amplifier & MP4 with serial numbers 20051034951 worth THREE THOUSAND EIGHT HUNDRED PESOS (P3,800.00) Philippine Currency belonging to Pure Gold Price Club, Inc., to the damage and prejudice of Pure Gold Price Club, Inc., represented by MICHAEL J. SINGSON.

CONTRARY TO LAW.

When arraigned on August 31, 2006, accused-appellant pleaded not guilty.[3] During the pre-trial,[4] accused-appellant admitted the following:

- the identity of the accused as the person charged in the Information;
- the jurisdiction of the Court to try and hear this case;
- the fact that accused was a contractual employee of the complainant corporation with a period of employment from December 30, 2005 to May 29, 2006.

On the other hand, the prosecution admitted the following:

- the accused on April 29, 2003 (sic) at about 8:30 in the evening was at the Home Section of the complainant company's store Puregold Price Club;
- that accused was arrested thereat without warrant of arrest;

- that it was the private complainant who caused the arrest of the accused for investigation while the accused was inside the store.

Thereafter, trial on the merits ensued.

The prosecution's evidence established the following facts, as summarized by the trial court:

Prosecution witness, Reynaldo Abad identified and confirmed the statements in his Sinumpaang Salaysay that he executed in relation to the instant case. He averred that on 29 April 2006 or about 12:30 in the afternoon, while he was on duty at the Home Section of Puregold, Imus, he saw the accused surreptitiously enter the baggage counter and placed a box inside. The accused got the claim tag numbered 186 and left. Such act of the accused roused Abad's suspicion for it is against Puregold policy to leave things in the baggage counter without permission from the guard. Later that evening, around 8:30 p.m., a certain Cris Escala came with claim tag number 186 in his possession to claim the box deposited. Abad learned that the accused asked Cris Escala to claim the box. It prompted Abad to examine the content of the box and he discovered that there was another box containing a DVD player. Thus, he summoned the accused who claimed that the subject DVD player belongs to his brother. However, accused could not present a receipt therefore (sic) as proof of ownership and his brother, upon coming to Puregold, denied ownership of the DVD player. Abad averred that the questioned DVD player is really owned by Puregold as evidenced by the QC Code appearing on the box. Then, he identified photographs of the box containing the DVD player. In addition, he presented and identified a certificate of ownership of the DVD player issued by the officer-in-charge of Puregold.[5]

The prosecution did not present other witnesses.

Meanwhile, accused-appellant's evidence was summarized by the trial court as follows:

Accused Chris Joel Gonzales, for his part, testified that on 29 April 2006 at around 11:55 in the morning he reported for work at Puregold, Imus as a Sales Assistant assigned in the plastic wares of the Home Section department. He averred that in going inside the department store, he uses the entrance for the exclusive use of the employees wherein a two-tier security check is in place. First in line is the security guard who checks the things being brought inside and/or outside by the employee. Then the security check would be completed upon passing the Internal Security who would frisk the employee. While inside the store, accused met his Assistant Store Manager who told him that he will be given specific instructions regarding his work for the day. He worked continuously until 7:00 p.m. except for that time when he took his lunch break from 3:40 p.m. to 4:46 p.m. and his snack break from 7:35 p.m. to 7:44 p.m. as evidenced by his break time card. He identified the signature of the Internal Security appearing therein. At around 8:30 p.m., he was invited to go to the security office for an investigation because he asked a certain Cris Escala to claim from the store's package counter a DVD player owned by Puregold. He alleged that the previous day, at around 9:20 p.m. while waiting for a ride home, he saw a certain Boy Negro who offered to sell to him a DVD player for only One Thousand Pesos (P1,000.00). He said to Boy Negro that they would just talk about it the following day. Thus, on 29 February (sic) 2009, at around 7:35 p.m. while taking his break, he met Boy Negro who told him that the DVD player was deposited in the package counter of Puregold. The claim tag was given to him and Boy Negro immediately left telling him that they would just meet when he gets off from work. Then, he chanced upon Cris Escala, a tenant of Puregold, when the latter was also having a break. He asked Cris Escala to claim the DVD player for him considering that it is prohibited for employees to claim packages from the package counter. However, Cris Escala came back to him empty handed as the guard was asking for a receipt. He decided to go with Escala to the package counter and the Chief Officer asked him for the receipt. He answered that his brother owns it. Thinking that he was being framed for a crime, he excused himself by saying that he would just log-in because he was still on a break. Upon entering the home section of the store, a guard approached him and invited him to the security office. After a series of questions, he was brought to the Municipal Police Station where a criminal complaint was filed against him. Finally, he presented and identified the following documents, to wit: a letter from Puregold's H.R. Department; his Affidavit of Explanation and Counter Statement; and Report and

Recommendation from Puregold.[6]

On March 16, 2011, the court a quo rendered its now assailed Decision finding accused-appellant guilty beyond reasonable doubt of Qualified Theft. According to the court, the prosecution's evidence clearly established the elements of the crime. Also, the court observed that the testimony of the accused-appellant was self-serving and inconsistent especially on the issue of ownership of the DVD player.

From the said decision, accused-appellant filed the present appeal, assigning the following as errors:

- THE HONORABLE LOWER COURT COMMITTED REVERSIBLE ERROR WHEN IT FIND (SIC) THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF QUALIFIED THEFT.
- THE HONORABLE LOWER COURT COMMITTED REVERSIBLE ERROR WHEN IT GAVE CREDENCE TO THE LONE WITNESS SECURITY GUARD REYNALDO ABAD DESPITE THE GLARING INCONSISTENCIES IN HIS STATEMENT AND HIS UNUSUAL BEHAVIOR AT THE TIME OF THE ALLEGED COMMISSION OF THE CRIME.
- THE HONORABLE LOWER COURT COMMITTED REVERSIBLE ERROR WHEN IT ADMITTED IN EVIDENCE THE CERTIFICATE OF OWNERSHIP (EXHIBIT 'D' OF THE PROSECUTION) NOTWITHSTANDING THE UNJUSTIFIABLE FAILURE OF THE PROSECUTION TO PRESENT THE ORIGINAL AND OVER THE OBJECTIONS FROM THE ACCUSED.
- THE HONORABLE LOWER COURT COMMITTED REVERSIBLE ERROR WHEN IT RENDERED THE DECISION BASED ON THE WEAKNESS ON (SIC) THE DEFENSE RATHER ON THE STRENGTH OF THE PROSECUTION.[7]

The People of the Philippines, through the Office of the Solicitor General (OSG), opposes the appeal, claiming that the court a quo did not err in convicting the accused-appellant and the alleged inconsistency adverted to merely pertains to the time that the prosecution witness saw accused-appellant depositing the box at the baggage counter. Said inconsistency is minor and trivial, without anything to do with the commission of the crime.[8]

Thus, the main issue in this appeal is whether or not the court a quo committed a reversible error in convicting the accused-appellant of Qualified Theft and in imposing the penalties therefor.

The appeal is without merit.

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.[9] A judgment of conviction must be based upon the evidence presented in court and such evidence must prove him guilty beyond reasonable doubt.[10] The prosecution must rely on the strength of its evidence rather than on the weakness of the defense.[11] Absolute certainty as to the guilt of the accused is, of course, not required; only moral certainty, or that degree of proof which produces conviction in an unprejudiced mind, is needed.[12]

Related to the said rule is the doctrine that findings of fact made by a trial court are accorded the highest degree of respect by this Court and absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored.[13]

The crime of theft, as defined under Article 308 of the Revised Penal Code, 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. The elements of theft are: (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.[14]

The crime of theft is qualified, under Article 310 of the Revised Penal Code, 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 a plantation, 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 disobedience.

In the case at bar, all the elements of the crime of Qualified Theft were established.

Accused-appellant was a Sales Assistant of Pure Gold Price Club, Inc. (hereinafter "Pure Gold"). While in the performance of his functions as Sales Assistant on April 29, 2006, he surreptitiously deposited a suspicious box at the baggage counter. This immediately drew the attention of the security guard, prosecution witness Reynaldo Abad, because it was against company policy for employees to deposit and claim things at the baggage counter. The security guard became more alarmed when another person, named Cris Escala, came to claim the box that was earlier deposited by the accused-appellant. When the security guard asked to open the box, a DVD player was found inside it. Cris Escala said that he was just asked to claim it for the accused-appellant. When accused-appellant was asked for the receipt, he said that it belonged to his brother. But his story was adamantly denied by his brother, who said that he did not own the DVD player. After confirming that the DVD player was among the inventory of Pure Gold, accused-appellant was charged with, and convicted of Qualified Theft.

Accused-appellant, however, claims that the element of "taking" was absent because it was not shown that he was in possession, much less in control, of the DVD player.

Accused-appellant's claim is without merit.

The element of "taking" was explained in *Laurel vs. Abrogar*,^[15] thus:

There is "taking" of personal property, and theft is consummated when the offender unlawfully acquires possession of personal property even if for a short time; or if such property is under the dominion and control of the thief. The taker, at some particular amount, must have obtained complete and absolute possession and control of the property adverse to the rights of the owner or the lawful possessor thereof. It is not necessary that the property be actually carried away out of the physical possession of the lawful possessor or that he should have made his escape with it. Neither asportation nor actual manual possession of property is required. Constructive possession of the thief of the property is enough. The essence of the element is the taking of a thing out of the possession of the owner without his privity and consent and without animus revertendi. Taking may be by the offender's own hands, by his use of innocent persons without any felonious intent, as well as any mechanical device, such as an access device or card, or any agency, animate or inanimate, with intent to gain. Intent to gain includes the unlawful taking of personal property for the purpose of deriving utility, satisfaction, enjoyment and pleasure.^[16]

In the case at bar, it was established that it was accused-appellant who placed the DVD player inside an innocent looking box at the baggage counter of Pure Gold Imus, Cavite branch. It was also established that he used another person to take it for and on his behalf. Clearly, the element of "taking" is present in this case. Accused-appellant had possession and control over the DVD player, first by placing it in a box, and then putting it at the package counter, without the knowledge and consent of Pure Gold.

Undaunted, accused-appellant further claims that the crime of theft was not consummated because the DVD player was still within the premises of Pure Gold when he was accosted. Thus, accused-appellant posits that he should be convicted of either attempted or frustrated theft.

A similar question was raised and settled in *Valenzuela vs. People*.^[17] In that case, the two accused were sighted by a security guard of SM Supermarket in North EDSA, Quezon City, unloading several cases of Tide Ultramatic

at the open parking area of the supermarket. Later, one of the accused hailed a taxi cab and loaded the cases of the detergent. They then boarded the vehicle. But before it could leave the parking area, the security guard stopped the taxi cab. When the security guard asked the accused for the receipt for the detergents, the two accused fled on foot. The security guard fired a warning shot to alert the other watchmen. The two accused were apprehended and the stolen merchandise were recovered.

In affirming the trial court's decision which convicted the two accused of consummated theft, the Supreme Court held:

For the purpose of ascertaining whether theft is susceptible of commission in the frustrated stage, the question is again, when is the crime of theft produced? There would be all but certain unanimity in the position that theft is produced when there is deprivation of personal property due to its taking by one with intent to gain. Viewed from that perspective, it is immaterial to the product of the felony that the offender, once having committed all the acts of execution for theft, is able or unable to freely dispose of the property stolen since the deprivation from the owner alone has already ensued from such acts of execution. This conclusion is reflected in Chief Justice Aquino's commentaries, as earlier cited, that "[i]n theft or robbery the crime is consummated after the accused had material possession of the thing with intent to appropriate the same, although his act of making use of the thing was frustrated."

It might be argued, that the ability of the offender to freely dispose of the property stolen delves into the concept of "taking" itself, in that there could be no true taking until the actor obtains such degree of control over the stolen item. But even if this were correct, the effect would be to downgrade the crime to its attempted, and not frustrated stage, for it would mean that not all the acts of execution have not been completed, the "taking not having been accomplished." Perhaps this point could serve as fertile ground for future discussion, but our concern now is whether there is indeed a crime of frustrated theft, and such consideration proves ultimately immaterial to that question. Moreover, such issue will not apply to the facts of this particular case. We are satisfied beyond reasonable doubt that the taking by the petitioner was completed in this case. With intent to gain, he acquired physical possession of the stolen cases of detergent for a considerable period of time that he was able to drop these off at a spot in the parking lot, and long enough to load these onto a taxicab.[18]

In the case at bar, accused-appellant took, with intent to gain, and without the consent or knowledge of Pure Gold, the DVD player by placing it in a box and depositing it at the baggage counter. By doing so, accused-appellant had effectively deprived Pure Gold of the thing. He had complete control and possession over the same, having in fact instructed someone else to bring it out of the store. That the DVD player was later recovered does not negate the consummation of the crime. What was prevented was not the "taking" but merely the "free disposal" of the stolen property. As explained in Valenzuela, the free disposal of the thing is not an element of the crime of theft. It is enough that the accused-appellant had "taken" the thing without the consent and knowledge of the owner.

Furthermore, Pure Gold's ownership of the DVD player was established by the Certificate of Ownership (Exhibit "D") signed by James N. Balingit, Jr., Pure Gold's Store Officer-in-Charge. Accused-appellant, however, claims that said Exhibit should not have been admitted because it is a mere photocopy.

Indeed, the Certificate of Ownership is a mere photocopy and during its presentation in court, the prosecution provisionally marked it with the undertaking to later present the original.[19] Unfortunately, the original was never presented. That is why, accused-appellant is invoking the best evidence rule as stated in Section 3 of Rule 130 of the Rules of Court.[20]

But the best evidence rule is not without exceptions. The original document need not be presented:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.[21]

In the case at bar, the Certificate of Ownership is not the subject of inquiry. That the DVD player was among the inventory of Pure Gold was testified to by prosecution witness Reynaldo Abad.[22] He was able to say so based on the box, the Pure Gold quality number and the certificate issued by the Supervisor, which certificate, apparently, is Exhibit “D”.

Clearly, the Certificate of Ownership is merely corroborative of the testimonial evidence that the DVD player was owned by Pure Gold. It need not be in its original copy to be considered as evidence. It can fall under Section 3(c), Rule 130 of the Rules of Court, that the fact sought to be established from it is only the general result of the whole, meaning it is only presented to further establish that the DVD player was in fact owned by Pure Gold.

Undoubtedly, the crime was proven on the basis of the lone testimony of Reynaldo Abad. However, accused-appellant is trying to bore holes into his testimony. More specifically, accused-appellant is saying that the testimony of the prosecution witness is inconsistent as to the time he saw accused-appellant deposited the box at the baggage counter.

The Court is not convinced.

First, it is well-settled that the testimony of a single witness, if found to be convincing and trustworthy is enough to sustain a conviction because testimonies of witnesses are to be weighed, not numbered.[23] Second, minor inconsistencies are sometimes indicia of truth rather than badges of falsehood, for they erase any suspicion of a rehearsed testimony.[24]

In the case at bar, time is not an element of the crime. Whether it was 11:55 A.M. or 12:30 P.M. when Reynaldo Abad saw the accused-appellant entered the baggage counter, the fact remains that accused-appellant placed the box containing the DVD player at the baggage counter for retrieval later on. Besides, the alleged inconsistency is too minor or trivial. The difference is just a matter of 35 minutes. Indeed, it has no effect whatsoever to the credibility of the testimony of the prosecution witness.

Next, accused-appellant avers that, assuming arguendo that the crime of theft was committed, it cannot be considered qualified because the element of grave abuse of confidence, which is an element of qualified theft, was not established. He claims that, as sales assistant, his function was limited to assisting customers in his section.

Again, the Court is not convinced.

Article 310 of the Revised Penal Code, which defines and punishes qualified theft, provides:

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 a plantation, 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.

In the case at bar, the prosecution charged accused-appellant with qualified theft by alleging that he committed the

theft with “grave abuse of confidence.” As correctly pointed out by the OSG:

Sixth, from these, it is clear that all the elements of theft are obtaining in this case. However, did appellant commit the crime with grave abuse of confidence as to make him liable for qualified theft? Under Article 310 of the Revised Penal Code, theft becomes qualified when it is, among others, committed with grave abuse of confidence. The grave abuse of confidence must be the result of the relation by reason of dependence, guardianship, or vigilance, between the appellant and the offended party that might create a high degree of confidence between them which appellant abused. It is submitted that appellant committed the crime with grave abuse of confidence is clear. From the nature of his position as Sales Assistant, appellant's position entailed a high degree of confidence, having access to the subject item. As a sales assistant having unlimited access to the items inside Puregold, the latter puts its trust and confidence on appellant which trust and confidence he exploited to take away the DVD player to the damage and prejudice of Puregold. Sales assistants are entrusted with the possession of the items of the store. Thus, due to the confidence reposed in them as such, they occupy positions of confidence. Precisely, by using the trust and confidence, appellant was able to perpetrate the theft. Furthermore, the subject item was taken with grave abuse of confidence inasmuch as appellant could not have taken the DVD player with ease if not for the position he held in the company.[25]

As for the penalty, the Court finds the penalty imposed by the trial court correct. According to Article 310 of the Revised Penal Code, the penalty next higher by two degrees, than that imposed for the crime of theft, shall be imposed. Here, the stolen item had a value of P3,800.00. According to Article 309(3) of the Revised Penal Code:

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

x x x

3. The penalty of prison 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.

x x x

The penalty next higher by two degrees than prison correccional in its minimum to medium periods is prison mayor in its medium and maximum periods, consisting of 8 years and 1 day to 12 years.[26] However, applying the Indeterminate Sentence Law which provides that in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which, in view of the attending circumstances, could be properly imposed under the rules of the Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense,[27] accused-appellant may be imposed a penalty, the minimum period of which can be taken from prison correccional in its maximum period to prison mayor in its minimum period, or from 4 years and 2 months to 12 years, and the maximum period of which can be taken from prison mayor in its medium and maximum periods, or from 8 years and 1 day to 12 years. Therefore, the imprisonment of 4 years, 2 months and 1 day of prison correccional, as minimum, to 9 years, 4 months and 1 day of prison mayor, as maximum, which was imposed by the court a quo is correct.

There is no pronouncement as to civil liability because the stolen DVD player was recovered.

WHEREFORE, the instant appeal is DISMISSED and the Decision dated March 16, 2011 of the Regional Trial Court of Imus, Cavite, Branch 20, in Criminal Case No. 2491-06 is AFFIRMED IN TOTO.

SO ORDERED.

Zalameda and Carpio,[*] JJ., concur.

[*]Acting Junior Member vice J. Diy per Office Order No. 283-14-ABR dated June 16, 2014.

[1]Rollo, pp. 46-49.

[2]Record, p. 1.

[3]Record, p. 42.

[4]Record, p. 44.

[5]Decision, 2; Rollo, p. 47.

[6]Decision, pp. 2-3; Rollo, pp. 47-48.

[7]Appellant's Brief, pp. 1-2; Rollo, pp. 30-31.

[8]Appellee's Brief, p. 3; Rollo, p. 69.

[9]Section 14 (2), Article III, Constitution.

[10]Gimenez vs. Nazareno, L-37933, April 15, 1988.

[11]People vs. Sumingsing, G.R. Nos. 104942-43, November 25, 1993.

[12]People vs. Garcia, G.R. No. 94187, November 4, 1992.

[13]Dela Cruz vs. People, G.R. No. 105213, December 4, 1996.

[14]People vs. Bustinera, 431 SCRA 284 (2004).

[15]G.R. No. 155076, February 27, 2006.

[16]Emphasis ours.

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

[18]Emphasis ours.

[19]TSN dated April 25, 2007, p. 19.

[20]SEC. 3. Original document must be produced; exceptions.—When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself x x x.

[21]Ibid.

[22]TSN dated April 25, 2007, p. 13.

[23]People vs. Gallo, G.R. No. 133002, October 19, 2001.

[24]People vs. Veloso, G.R. No. 130333, April 12, 2000.

[25]Appellee's Brief, p. 7.

[26]Art. 76, Revised Penal Code.

[27]The penalty next lower in degree is Arresto Mayor (Art. 71, Revised Penal Code).

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