

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULKIPLI ASAMUDDIN Y SALAPUDIN, ACCUSED-APPELLANT.

Ponente: TOLENTINO, A.G., J.

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TOLENTINO, A.G., J.:

Challenged in this appeal[1] is the decision dated October 15, 2012[2] of the Regional Trial Court (RTC) of Mandaluyong City, Branch 212, the dispositive portion of which states:

“WHEREFORE, IN VIEW OF THE FOREGOING, the court finds the accused JULKIPLI ASAMUDDIN Y SALAPUDIN @ 'Jul' and 'Rey' GUILTY beyond reasonable doubt of Violation of Republic Act No. 6539 (Anti-Carnapping Act of 1972) as amended and he is hereby sentenced to an indeterminate imprisonment of fourteen (14) years and eight (8) months, as minimum, to seventeen (17) years and four (4) months, as maximum. Likewise the court finds JULKIPLI ASAMUDDIN Y SALAPUDIN @ 'Jul' @ 'Rey' GUILTY beyond reasonable doubt of Qualified Theft and he is hereby sentenced to suffer the penalty of reclusion perpetua but with all the accessories of the penalty imposed under Article 40 of the Revised Penal Code. Accused is also condemned to pay the offended party, EMELINA GLORIA Y UMALI the sum of Php1,877,995.00 as actual damages representing the total amount of the money entrusted to him by the said offended party.”[3]

The antecedent facts follow:

The appellant is charged with violation of Republic Act No. 6539 (RA 6539), otherwise known as the “Anti-Carnapping Act of 1972” for allegedly stealing a motorcycle, and with the crime of qualified theft for taking and stealing cash money of various currencies, belonging to his employer Emelina Gloria y Umali.

The accusatory portion of the Information for violation of RA 6539 reads:

“That on or about the 11[th] day of July 2007, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, without the knowledge and consent of the owner, did then and there willfully, unlawfully and feloniously take, steel (sic) and carry away a motorcycle, Honda XRM with plate number UU-9142 amounting to P49,000.00 belonging to EMELINA GLORIA y UMALI without the latter's consent, to the damage and prejudice of the latter in the aforementioned sum of P49,000.00.

CONTRARY TO LAW.”[4]

On the other hand, the accusatory portion of the Information for qualified theft states:

“That on or about the 11[th] day of July 2007, in the City of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then employed as a messenger of E. Gloria's Money Changer owned by Emelina Gloria y Umali, with grave of confidence and taking advantage of the trust reposed upon him, with intent to gain, without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away cash money of various denominations P800,000.00, Yen 660,000.00, Pounds 50.00, Dirham 530.00, Brunei Dollar 100.00 and Singapore Dollar 467.00 with an aggregate amount of P1,077,995.00, to the damage and prejudice of the

complainant in the aforementioned amount of P1,077,995.00.

CONTRARY TO LAW.”[5]

During his arraignment on August 19, 2009, the appellant, duly assisted by counsel de oficio from the Public Attorney's Office (PAO), pleaded not guilty to both charges.[6] Thereafter, trial on the merits ensued.

The Version of the Prosecution

In 2006, Emelina Gloria hired the appellant as a messenger for her money changer business. His duty was to bring money to other money changers and to deliver money to the clients. On July 11, 2007, at around 12:30 in the afternoon, Emelina asked the appellant to buy dollar from her friend, Rina Rosalial, who also owns a money changer in Mabini, Manila. The private respondent gave the appellant P800,000.00 to buy dollars and different foreign currencies to be exchanged to peso. After receiving the money, the appellant left driving a blue Honda XRM motorcycle with plate number UU 9142. At around 1:30 in the afternoon, Emelina received a call from Rina informing her that the appellant had not yet arrived. Emelina then called the appellant in his cellular phone, but she cannot contact him because his phone was turned off. She also tried to call the appellant's wife's cellular phone, but the same was also turned off. Without any word from the appellant, at around 5:30 in the afternoon of the same day, Emelina and her husband went to Camp Crame to report the incident. At Camp Crame, Emelina prepared a complaint and executed a Sworn Statement.[7] Sometime in August, 2007, the motorcycle with plate number UU 9142 was found abandoned in Silang, Cavite.[8]

Imee Garbo, Emelina's stay-in housemaid, testified that on July 11, 2007, the appellant received from Emelina different currencies for currency exchange in a money changer in Manila. She was present at the money changing shop where Emelina handed the different currencies to the appellant. She said that Emelina gave the appellant 660,000.00 yen, 50 pounds, 530 dirhams, 100 Brunei dollar, 467 Singapore and P800,000.00 to the appellant. She came to know about the exact amount when Emelina listed down the said currencies, the amount and its value at the time they were given to the appellant. After receiving the money, the appellant used the subject motorcycle in going to Manila. The appellant did not come back or even return on some other day, and they were not able to contact him. The appellant likewise took the motorcycle and it was recovered in some other place.[9]

To prove ownership of the subject motorcycle, the prosecution marked in evidence the Sales Invoice Retail No. 16607 (as Exhibit “I”[10]) from Triumph Marketing Corporation where the subject motorcycle was bought, the Official Receipt (Exhibit “J”[11]) and the certification that Manolito is the owner thereof (Exhibit “K”[12]). The prosecution likewise marked as Exhibit “F”[13] the handwritten list of different monetary currencies which Emelina gave to the appellant on July 11, 2007.

The Appellant's Version

The appellant worked as a Messenger/Runner at E. Gloria Money Changer from October 2006 until his resignation on July 10, 2007. On July 11, 2007 at around 8:00 o'clock in the morning, he was at home at No. 531 San Andres, Malate, Manila, when he received a call from Emelina informing him to claim his salary for July 1, 2007 to July 10, 2007. He proceeded to E. Gloria Money Changer at No. 98 General Kalentong, Mandaluyong City. Emelina asked him his final decision about his resignation and he intimated his lack of interest in continuing his job. Thereafter, he received his salary and went home.

Due to the high cost of living in Manila, his family returned to Zamboanga on September 7, 2007. On February 25, 2009, he was at the public market in Zamboanga City when policemen in civilian clothes approached him and showed a warrant of arrest. He believes that the charges against him were Emelina's ploy to cover up the bankruptcy the money-changing business has incurred from the latter's business partners.[14] According to the

appellant, his mother-in-law borrowed money from Emelina's money changing business which she failed to pay.[15]

After trial on the merits, the court a quo rendered its assailed decision ruling that all the elements of carnapping were duly proven by the prosecution. The court a quo further pronounced that all the elements of theft were proven by the prosecution. The court a quo was also convinced that the element of grave abuse of confidence to make the same qualified was sufficiently established by the prosecution. Having entrusted money for the purpose of conversion into a particular currency or delivery to complainant's clients and with high level of confidence reposed on him by the private complainant as his employer, a fiduciary relationship was established which the accused greatly breached when he carted away the Php800,000.00 and the different foreign currencies. The categorical and straightforward testimony of Emelina Gloria positively identifying the appellant as the perpetrator of the crimes of carnapping and theft prevails over the defense of denial and alibi. Moreover, the appellant's flight to Zamboanga after he carnapped the subject motorcycle and stashed away the private complainant's money is competent evidence to indicate his guilt.[16]

Hence, this appeal. The accused-appellant assigned the following errors allegedly committed by the trial court:

“I.

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S TESTIMONY.

II.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF QUALIFIED THEFT AND CARNAPPING DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.”[17]

The appeal lacks merit.

Being interrelated, the assigned errors shall be discussed jointly.

The appellant argues that the court a quo relied entirely on the testimony of the private complainant and lent utmost credence to her testimony while totally disregarding his claim of innocence. The court a quo erred when it capitalizes on the fact that the appellant raised merely the defenses of denial and alibi. The fact that he simply denies authorship of the crimes charged should not be taken against him. Citing the case of *Lejano v. People of the Philippines*, [18] the appellant contends that not all denials and alibis should be regarded as fabricated. [19]

We disagree. Well-entrenched is the rule that the defense of denial can easily be overcome by a positive identification that is categorical, consistent, and untainted by any ill motive on the part of the eyewitnesses testifying on the matter. Nothing is more settled in criminal law jurisprudence than that denial and alibi cannot prevail over the positive and categorical testimony of the witness. [20] In this case, Emelina (private complainant) and Imee Gerbon categorically testified that the appellant received from Emelina P800,000.00 and other various foreign denominations, in the total amount of P1,077,995.00 to be brought to a money changer in Mabini, Manila for currency exchange. They testified that the appellant used the subject motorcycle in going to Mabini, Manila, and that the appellant did not return as instructed. Emelina and Imee Gerbon positively identified the appellant as the person who took away with him the P800,000.00 and other various foreign currencies (660,000.00 yen, 50 pounds, 530 dirhams, 100 Brunei dollar, 467 Singapore), and the subject motorcycle.

Further, denial is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. To be sure, it is negative, self-serving evidence that cannot be given evidentiary weight greater

than that of credible witnesses who testify on affirmative matters. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former indisputably deserves more credence and evidentiary weight.[21]

The appellant likewise claims that the court a quo's sweeping conclusion that his (appellant) flight to Zamboanga is indicative of his guilt has no factual basis. According to him, the record shows that it was only on September 7, 2007 that his family moved to Zamboanga.[22] We cannot give credence to the appellant's claim. Apart from his (appellant) self-serving testimony that it was only on September 7, 2007 that his family moved to Zamboanga, he failed to present any other convincing and corroborative evidence to prove the same.

The appellant also submits that his conviction for qualified theft and carnapping did not pass the test of moral certainty as required in criminal conviction. Other than Emelina's bare and self-serving assertion, there was no evidence that indeed, the appellant received the said P800,000.00 plus other various foreign denominations with a total amount of P1,877,995.00 from Emelina. In fact the existence of the P800,000.00 is highly doubtful, considering that the private complainant failed to present the withdrawal slip or any other pertinent document to substantiate her assertion.

The appellant also claims that Emelina's testimony cannot even draw strength from the testimony of her maid, Imee Gerbon, for she cannot be expected to divulge facts and information which are damaging to her employer's case. The inventory of the cash items cannot be given weight for being self-serving. Hence, the first and second elements of theft were not clearly established. The existence and ownership of the amounts of money, as well as the unlawful taking thereof, were not clearly proven by the prosecution.[23]

The appellant's arguments must fail.

At the outset and to set the records straight, the total amount of money subject of the qualified theft case was P1,077,995.00 and not P1,877,995.00. The amount of P1,077,995.00 finds basis in the handwritten list (Exhibit "F") submitted in evidence by the prosecution where Emelina converted to their peso equivalent the foreign currencies ((660,000.00 yen, 50 pounds, 530 dirhams, 100 Brunei dollar, 467 Singapore). Thus, the total amount involved in the qualified theft, including the P800,000.00, is P1,077,995.00. Likewise, the amount involved as per the Information for qualified theft is P1,077,995.00.

We shall now proceed to discuss the elements of qualified theft. In *Ringor v. People of the Philippines*[24], the Supreme Court held that:

"In précis, the elements of qualified theft punishable under Article 310 in relation to Article 308 of the 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; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the RPC, i.e., with grave abuse of confidence."

We take exception to the appellant's claim that the elements of theft, as well as the element of grave abuse of confidence, to make it qualified, were not clearly established by the prosecution. The categorical and straightforward testimony of Emelina clearly proved all the elements of qualified theft and that the appellant was the author thereof. Hence, the non-presentation of the withdrawal slip or any other document to further prove the amount involved in the qualified theft is immaterial. Moreover, Emelina testified that the appellant did not sign anything when he received the money because he trusted the appellant.[25] Emelina's relevant testimony follows:

"FISCAL MAGPANTAY:

xxx. Madam witness, do you recall of any unusual incident that happened on July 11, 2007?

WITNESS:

Yes, sir, in 2007 July 11, I asked Rey to buy dollar from my friend worth P800,000.00, I gave him different currencies so that he could change it to peso.

Q:

Who is this friend that you mentioned that you are going to buy dollar from?

A:

Rina Rosalial in Mabini. xxx

Q:

Can you enumerate the different currencies that you gave the accused?

A:

Sixty-six (66) pieces of lapad worth P660,000.00; fifty (50) pounds; five hundred thirty (530) dirhams; four hundred sixty seven (467) singaporean (sic) dollars and one hundred brunei (sic) dollars.

Q:

So where in(sic)the accused going to bring this P800,000 to change is (sic) to dollars?

A:

In Mabini, sir.

Q:

To whom?

A:

To my friend Rina Rosalial to buy dollars.

Q:

How about the different currencies that you gave to the accused, where he is going to change it to peso?

A:

To Rina also, sir.

Q:

You said you gave those different currencies and P800,000 to the accused, what time of the day on July 11, 2007 when you instructed the accused to go to Mabini in Rina's place?

A:

12:30 in the afternoon, sir.

Q:

And what time did he leave the office after you gave him that instruction?

A:

Immediately after I gave him the money, 12:30 in the afternoon.

Q:

What mode of transportation did he use?

A:

Motorcycle, sir.

Q:

What motorcycle?

A:

It's an XRM colored blue with plate number UU9142.

Q:

By the way, Madam witness, where is your office located?

A:

At No. 82 Gen. Kalentong Street, Mandaluyong City.

Q:

When the accused left, what happened next?

A:

My friend called me at around 1:30, she told me that Rey hasn't arrived yet in their office.

Q:

Who is the friend of yours who called you?

A:

Rina, sir.

Q:

What did you do when Rina told you that the accused has not yet arrived in her place?

A:

I got my cell phone and I called Rey's number but it was already closed, cannot be reached.

Q:

What did you do when you were not able to call the accused?

A:

I also called his wife but her number's cannot be reached also.

Q:

When the accused's wife did not answer her phone, what did you do next?

A:

I thought maybe the motorcycle has some troubles because it's only one hour so I told Rina just to wait because this is the first time that Rey did not call me.

Q:

How long did you wait?

A:

When it was already 3:00 o'clock in the afternoon, I asked my husband to go to Rina so that he could get the dollar because we have a transaction, so my husband went to Rina to get the dollar and transact it to the bank, thereafter, me and my husband went to Camp Crame to lodge the problem.

Q:

What time did you go to Camp Crame?

A:

Around 5:30 o'clock in the afternoon of the same day.

Q:

What did you do at Camp Crame?

A:

We complained about Julkipli Asamuddin's whereabouts.”[26]

The foregoing testimony clearly established that the appellant took Emelina's money worth P800,000.00 and assorted foreign currencies: 660,000.00 yen, 50 pounds, 530 dirhams, 100 Brunei dollar, 467 Singapore. The taking was accomplished without the use of violence or intimidation against persons, or force upon things.

Moreover, intent to gain or animus lucrandi is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain.[27]

The appellant further argues that granting without admitting that he committed the act complained of, the mere fact that he was employed as messenger or that he had performed delivery services does not ipso facto create a

fiduciary relationship between him and Emelina, so as to make the act qualified by grave abuse of confidence.

This contention deserves scant consideration. 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 the appellant abused.[28] In this case, it was clearly established that as messenger, the appellant was tasked to bring money to the other money changers and to some of the clients who wanted delivery service. The appellant gravely abused the confidence reposed upon him when he took away the money of Emelina which he was only tasked to bring to a money changer for currency exchange.

Again, contrary to the appellant's assertion, appellant's conviction for violation of RA 6539 (Anti-Carnapping Act of 1972), as amended, was proven beyond reasonable doubt.

"Carnapping" is the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things.

The elements of carnapping as defined and penalized under the Anti-Carnapping Act of 1972 are the following:

1. That there is an actual taking of the vehicle;
2. That the vehicle belongs to a person other than the offender himself;
3. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and
4. That the offender intends to gain from the taking of the vehicle.[29]

In this case, there was actual taking of the subject motorcycle, which was registered in the name of Emelina's husband. The taking by the appellant of the subject motorcycle was initially lawful, considering that as messenger, he was supposed to use the same to bring money to a money changer in Mabini, Manila. However, the appellant's act of not returning the motorcycle, which he was supposed to do so given the nature of his duty, transformed the character of the possession into an unlawful one. Further, the taking of the subject motorcycle was without the consent of the owner. Again, the intent to gain is presumed from the unlawful taking of the motor vehicle. Actual gain is irrelevant as the important consideration is the intent to gain. The term gain is not merely limited to pecuniary benefit but also includes the benefit which in any other sense may be derived or expected from the act which is performed. Thus, the mere use of the thing which was taken without the owner's consent constitutes gain.[30]

Furthermore, the fact that the subject motorcycle was not recovered from the appellant is of no moment as the same is not among the elements of the crime of carnapping.

The appellant's attempt to discredit the testimony of Imee Gerbon must also fail. On the contrary, this Court gives merit to Imee Gerbon's testimony who corroborated the testimony of Emelina in all its material points. The testimony of a witness is not discredited by the mere fact that he is an employee of the complainant.[31]

At this juncture, it is noteworthy to state that factual findings of the trial courts involving the credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses having heard their testimonies and observed their deportment and manner of testifying during the trial.[32] In this case, we find no plausible reason to depart from the factual findings of the trial court.

All told, the prosecution was able to establish the appellant's guilt beyond reasonable doubt of the crimes of qualified theft and carnapping. Accordingly, no error was committed by the trial court in convicting the appellant for the said crimes.

WHEREFORE, premises considered, the appeal is DISMISSED for lack of merit. The decision dated October 15, 2012 is AFFIRMED with modification, as follows:

“WHEREFORE, IN VIEW OF THE FOREGOING, the court finds the accused JULKIPLI ASAMUDDIN Y SALAPUDIN @ 'Jul' and 'Rey' GUILTY beyond reasonable doubt of Violation of Republic Act No. 6539 (Anti-Carnapping Act of 1972) as amended and he is hereby sentenced to an indeterminate imprisonment of fourteen (14) years and eight (8) months, as minimum, to seventeen (17) years and four (4) months, as maximum. Likewise the court finds JULKIPLI ASAMUDDIN Y SALAPUDIN @ 'Jul' @ 'Rey' GUILTY beyond reasonable doubt of Qualified Theft and he is hereby sentenced to suffer the penalty of reclusion perpetua but with all the accessories of the penalty imposed under Article 40 of the Revised Penal Code. Accused is also condemned to pay the offended party, EMELINA GLORIA Y UMALI the sum of Php1,077,995.00 as actual damages representing the total amount of the money entrusted to him by the said offended party.”

SO ORDERED.

Sorongon[*] and Corales, JJ.,[**] concur.

[*] Vice Justice Ricardo R. Rosario, per Raffle conducted on May 20, 2014.

[**] Vice Justice Leoncia R. Dimagiba, per Raffle conducted on May 20, 2014.

[1] Rollo, pp. 7-32

[2] Records, pp. 203-211

[3] Records, p. 211

[4] Records, p. 1

[5] Records, p. 19

[6] Records, p. 73

[7] tsn, hearing on August 2, 2010, pp. 10-23

[8] id., p. 32

[9] tsn, hearing on November 21, 2011, pp. 11-20

[10] Records, p. 169

[11] Records, p. 170

[12] Records, p. 171

[13] Records, p. 166

[14] Rollo, p. 31; tsn, hearing dated May 16, 2012, pp. 11-20, 39-42

[15] tsn, hearing dated May 16, 2012, p. 43

[16] Records, pp. 207-209

[17] Rollo, p. 38

[18] Lejano v. People of the Philippines, G.R. No. 176389, December 14, 2010.

- [19] Rollo, pp. 32-33
- [20] People of the Philippines v. Corpuz, G.R. No. 191068, July 17, 2013.
- [21] People of the Philippines v. Dela Rosa, G.R. No. 201723, June 13, 2013.
- [22] Rollo, p. 33
- [23] Rollo, pp. 34-35
- [24] G.R. No. 198904. December 11, 2013
- [25] tsn, hearing dated August 2, 2010, p. 37
- [26] tsn, hearing dated August 2, 2010, pp. 16-23
- [27] People v. Ringor, G.R. No. 198904. December 11, 2013.
- [28] People of the Philippines v. Tanchanco, G.R. No. 177761, April 18, 2012.
- [29] People of the Philippines v. Lagat, G.R. No. 187044, September 14, 2011.
- [30] People of the Philippines v. Bustinera, G.R. No. 148233, June 8, 2004.
- [31] People v. Gomez, 251 SCRA 455, 470, G.R. No. 115067, December 19, 1995.
- [32] People of the Philippines v. Zapuiz, G.R. No. 199713, February 20, 2013.

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