

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY SANCHEZ Y CARLOS, ACCUSED-APPELLANT.

Ponente: ROMILLA-LONTOK, J.

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ROMILLA-LONTOK, J.:

Accused-appellant was convicted in Criminal Case No. Q-99-81733, Branch 79, RTC, Quezon City in a Decision dated September 25, 2000, the dispositive portion of which states:

“WHEREFORE, it is hereby rendered in this case finding accused Jimmy Sanchez y Carlos a.k.a. Benito Puno, guilty beyond reasonable doubt of the crime of Qualified Theft punishable under Art. 310, and the Court hereby sentences him to suffer the penalty of reclusion perpetua.

“The accused shall be credited in full of his preventive imprisonment by reason of this case.

“SO ORDERED.” (Records, p. 92)

An Information for Qualified Theft was filed against accused Jimmy Sanchez y Carlos a.k.a. Benito Puno y Roman and Jaime Sanchez y Teves, in the words as follows:

“The undersigned accuses JIMMY SANCHEZ Y CARLOS a.k.a. BENITO PUNO Y ROMAN a.k.a. JAIME SANCHEZ Y TEVES of the crime of QUALIFIED THIEF (ARTICLE 310 OF THE REVISED PENAL CODE) committed as follows:

“That on or about the 6th day of March 1999 in Quezon City Philippines, the said accused being then the second degree cousin of complainant Raquel Acuna and who lived in her residence located at 46 Zalazar St. BF Homes Brgy Holy Spirit, this city and as such has free access to the different rooms of the house with intent to gain and with grave abuse of confidence reposed upon him by his cousin and without the knowledge and consent of the owner thereof did then and there willfully, unlawfully and feloniously take steal and carry away the following, to wit:

“One pair of earrings (sic.)

“One bracelet

“Seven pcs of US Dollar in different denomination

“One Rolex wristwatch

“One necklace

“One diamond ring

“all in the total amount of P360,000.00 Philippines Currency belonging to Raquel Acuna y Carlos to the damage and prejudice of the owner thereof in the aforementioned amount of P360,000.00 Philippine Currency.

“CONTRARY TO LAW.” (Records, p. 1)

Upon arraignment, accused entered a plea of not guilty.

Pre-trial was held and terminated.

Trial on the merits followed.

The prosecution presented three (3) witnesses: private complainant Racquel Acuña, Myrna Dagaang and Pedro Acuña.

Racquel Acuña testified that at 2:00 o'clock in the afternoon of March 6, 1999, her maid Myrna Dagaang, called from her BF Homes, Quezon City residence that Jimmy Sanchez entered her room and took her valuables. She found the drawer where she kept said valuables forcibly opened and one (1) Rolex watch (P160,000.00); two (2) necklaces (P50,000.00); two (2) gold necklaces with diamond pendants (P50,000.00); one (1) pair of diamond earrings (P60,000.00); and one (1) bracelet (P30,000.00) missing. Dollar bills were also stolen. When her father, Pedro Acuña, arrived at about 7:30 in the evening he reported the incident to the barangay authorities. A barangay official took Jimmy, brought him to the barangay hall and then to the police station. Jimmy admitted the stealing and told her father, Pedro, where he kept the items. Racquel recovered the earrings, necklace and ring buried in a neighbor's garden; the bracelets together with other items were found near a drainage and the stolen dollar bills in Jimmy's room. Jimmy, previously a detention prisoner, is Racquel's cousin whose family lived in the latter's house rent free. During the preliminary investigation, Jimmy admitted having stolen Racquel's valuables. (TSN, August 16, 1999, pp. 2-16)

Myrna Dagaang, Racquel's household help, also took the witness stand. She declared having seen Jimmy enter Racquel's room at about 2:00 o'clock in the afternoon of March 6, 1999. She followed, saw him surreptitiously go out of the backdoor and jump over the wall. The drawers of cabinets inside Racquel's room were already open. She called up Raquel (TSN, August 26, 1999, pp. 5-11). On cross-examination, she admitted that in her written statement she declared having seen accused already leaving Racquel's room. It was unusual for him to enter said room. He was not allowed to do so. At the time of the incident only Jimmy, his child and Myrna were in the house (TSN, October 26, 1999, pp. 11-17).

Pedro Acuña is Racquel's father. While in Pampanga on March 6, 1999 Racquel called to inform him that Jimmy entered her room and took her jewelry. He went home to Quezon City and reported the theft to their barangay. A barangay tanod took Jimmy and brought him to the Police Station where the latter was charged. The next day, he returned to the Police Station and told Jimmy that he found Racquel's dollar bills in his (Jimmy's) room. In the presence of SPO1 Roldan Dapat, accused admitted having taken the dollar bills. Jimmy also told them where he kept the jewelry. They were, thus, recovered. Jimmy is Pedro's nephew. (TSN, October 26, 1999, pp. 17-21)

After the prosecution rested its case, defense evidence was presented. Accused and his son, Noel, were presented for the defense.

Accused claimed being a metal craft artist. He denied having taken Racquel's jewelry. He, however, admitted having told Pedro Acuña where to find them on the claim that the latter entrusted said pieces of jewelry to him when Pedro left for the province on February 19, 1999. He did not know that the jewelry belonged to Racquel. He, together with his family, occupies a store adjacent to the Acuña residence. At about 2:00 o'clock in the afternoon of March 6, 1999, while in the garage, Dindin, the maid, asked him who last entered the house because Racquel's drawers were open. He told her he did not see anyone. Dindin entered. He followed. When Pedro Acuña arrived on March 6, he asked Jimmy about the jewelry entrusted to the latter when he left for the province. Racquel asked him to go with her and Dindin to the barangay hall where the two (2) were asked questions. They proceeded to Police Station No. 6 where a case was filed against him. Upon inquiry, he told Mr. Acuña where he kept the jewelry. The next day, Mr. Acuña informed Jimmy of the recovered dollar bills in his house. He was asked to produce the pieces of jewelry he claimed were entrusted to him. He was released on March 8. He gave

the jewelry to Racquel. He returned to the police station. On March 9, he was informed that Racquel's jewelry were missing again. She said the bag which contained them was entrusted to her father. (TSN, June 14, 2000, pp. 4-10)

On cross-examination, Jimmy said that on March 6, he, the maid, his son and a nephew were the ones in the house. He had the same address with Racquel although they occupy separate houses. He did not pay rentals but provided for his family's sustenance. As a metal craftsman, he earned P15,000.00 a month. (TSN, Aug. 7, 2000, pp. 3-8)

Noel Buluran, Jimmy's son, thirteen years old, corroborated his father's defense. Noel said that at about 11:00 in the morning of February 6, 1999, his Lolo Pedro (Pedro Acuña) gave a bracelet and a necklace to his father to be kept. On March 6, his Lolo Pedro came to the store looking for his father. (TSN, Aug. 23, 2000, pp. 3-15)

On cross-examination, Noel declared that his Lolo Pedro's back was turned on him when he handed the jewelry to Jimmy. The necklace Racquel wore was the same necklace his Lolo Pedro handed to his father. (TSN, Aug. 23, 2000, pp. 15-20)

The trial court, in a Decision dated September 25, 2000, convicted the accused.

Accused appealed on the following assigned errors:

“I

“THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

“II

“ASSUMING ARGUENDO THAT ACCUSED-APPELLANT IS GUILTY, HE SHOULD HAVE BEEN CONVICTED OF SIMPLE THEFT ONLY AND NOT QUALIFIED THEFT SINCE THE QUALIFYING CIRCUMSTANCE OF GRAVE ABUSE OF CONFIDENCE WAS NOT DULY PROVEN.”

The trial court found the accused guilty of Qualified Theft. Art. 308 of the Revised Penal Code provides that theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent. Article 310 of the same Code provides that the crime of theft shall be punished by the penalties next higher by two degrees than those respectively prescribed in Article 309, if committed x x with grave abuse of discretion x x . The trial court declared the requisites for commission of qualified theft present in this case. There was taking of personal property belonging to the complainant; there was intent to gain; the taking of the items lost was without the consent of the owner; there was no use of violence against or intimidation of persons nor force upon things; and the offense was committed with grave abuse of discretion. Racquel's parents provided shelter for accused and his family out of charity.

The trial court in its decision recognized that the prosecution built its case against the accused based primarily on circumstantial evidence and convicted accused on the strength thereof.

Circumstantial evidence is sufficient for conviction if: (1) there is more than one circumstance; (2) the circumstances from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt (Sec. 4, Rule 133, Rules of Court, as amended).

The trial court in its decision, noted the following circumstances to have been established:

“First, on March 6, 1999 at about 2:00 in the afternoon, accused was seen by the maid Myrna Baga-ang (sic, should be Dagaang) entering the room of the complainant and passed by the back door surreptitiously, and then he jumped over the fence (tsn., Oct. 26, 1999, pp. 6-7). Second, immediately after leaving the room, the maid observed that the drawer of the complainant was already open (tsn., Oct. 26, 1999, p. 7). Third, accused admitted that he was the one who pointed to the policeman where he kept the jewelries and handed the same to the complainant (tsn., June 14, 2000, p. 18). Fourth, the stolen dollar bills (Exh. F - F-4) were recovered in the room of the accused.” (Records, p. 91)

Aforesaid circumstances found by the trial court to have been established by the prosecution constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to accused, to the exclusion of all others, as the guilty person. (People vs. Santos, 333 SCRA 319; citing People vs. Geron, 281 SCRA 196 [1997]; People vs. Quitorio, 285 SCRA 196 [1998] and People vs. Llaguno, 285 SCRA 124 [1998]).

Appellant tries to discredit the credibility of Myrna, Racquel's household help, by alleged discrepancies between her affidavit and her testimony in open court. Whereas, Myrna, in her affidavit stated having seen the accused leave Racquel's room, she testified in court having seen him enter Racquel's room. Testimonial discrepancies may, however, be due to natural fickleness of memory. Aforesaid seeming discrepancies do not necessarily discredit a witness, it being a matter of judicial experience that affidavits, being taken ex-parte, are almost always incomplete and often inaccurate. Said seeming inaccuracies, on the contrary, tend to strengthen, rather than weaken, credibility as they erase any suspicion of rehearsed testimony. (Teodisio vs. CA, G.R. No. 124346, June 8, 2004, 431 SCRA 194, 205; citing People vs. Medina, 311 SCRA 517, 526 [1999]).

There were likewise many details, appellant argues, in Myrna's testimony which she failed to mention in her written statement. Such discrepancies and inconsistencies, according to the appellant, erode the credibility of the testimony of Ms. Dagaang. In particular, appellant made reference to the statements of Ms. Dagaang to the effect that she saw the accused leave the room of the private complainant surreptitiously; that from there, she followed him go out at the back door; that thereafter she entered the said room and saw the drawer was broken; that she accompanied the private complainant to the barangay hall; that at said hall, a conference was held between the barangay officials and private complainant; that she was present when the accused was arrested; and that she went to the police station together with the private complainant and the accused. (TSN, Oct. 26, 1999, pp. 15-16). Said omissions, however, are neither discrepancies nor inconsistencies. They are merely incompleteness of narrations brought about by a variety of reasons including want of suggestion and inquiries (People vs. Torrecampo, 423 SCRA 433; citing People vs. Ortiz, 361 SCRA 274 and People vs. Abrera, 283 SCRA 1 [1997]). There is no rule of evidence to the effect that omission of certain particulars in a sworn statement would estop an affiant from making an elaboration thereof or from correcting inaccuracies during the trial (Ibid; citing Cariaga vs. CA, et. al., G.R. No. 143561 [June 6, 2001], 358 SCRA 583).

Appellant argues that the allegation in the information that he is a second degree cousin and was living with the complainant at the time of the taking cannot qualify the crime by reason of grave abuse of confidence. Appellant claimed he was gainfully employed and was not dependent on complainant for his sustenance. Complainant never entrusted anything to him. The fact that he was not paying any rent was of no consequence, he said. Contrary to appellant's claim, it is his relationship with complainant and the fact that her family provided him shelter out of charity which qualified the offense because he gravely abused the confidence reposed in him by his relative.

The Court, however, finds that the trial court erred in imposing the proper penalty.

Qualified theft is penalized by Article 310 of the Revised Penal Code in relation to Article 309 of the same Code.

Article 310 of the Revised Penal Code provides, to wit:

“Art. 310. Qualified Thief.—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.”
(Underlining and emphasis supplied)

Article 309 of the Revised Penal Code, on the other hand, provides, inter alia, as follows:

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

“1. The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

x x x x x x x x .”

(Underlining and emphasis supplied.)

The value of the items alleged to have been stolen is pegged at P360,000.00. Since the value of the items stolen exceeds P22,000.00, the penalty to be imposed is reclusion temporal in its medium and maximum periods, which is higher by two degrees than prision mayor in its minimum and medium periods, the penalty imposable for the crime of theft under paragraph 1, Article 309 of the Revised Penal Code. Under the Indeterminate Sentence Law however, the court is mandated to impose upon the accused an indeterminate sentence the maximum of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense. (Act No. 4103 as amended by Act No. 4225). In the instant case, the maximum penalty is reclusion temporal in its medium period and maximum periods and the minimum penalty shall be anywhere between prision mayor maximum to reclusion temporal minimum. Thus, the Court fixes the penalty imposed upon appellant to an indeterminate sentence of 10 years and 1 day of prision mayor, minimum to 20 years of reclusion temporal, maximum.

WHEREFORE, in view of the foregoing, the Decision of the trial court is hereby AFFIRMED, but with MODIFICATION as to the penalty imposed. Accordingly, accused-appellant is sentenced to an indeterminate sentence of ten (10) years and one (1) day of prision mayor, minimum, to twenty (20) years of reclusion temporal, maximum.

SO ORDERED.

ARCANGELITA M. ROMILLA-LONTOK

Associate Justice

WE CONCUR:

PORTIA ALIÑO-HORMACHUELOS

Associate Justice

AMELITA G. TOLENTINO

Associate Justice

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