

**NORBERTO SANGABOL AND VICTORINO ANGELES, PETITIONERS,
VS. THE SPECIAL THIRD DIVISION OF THE COURT OF APPEALS
COMPOSED OF THE HONORABLE MAGNO S. GATMAITAN,
GREGORIO N. NARVASA, E...**

G.R. No. L-25230. September 12, 1980

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari to review the decision of the Special Third Division of the Court of Appeals in CA-G.R. No. 03296-CR entitled "People of the Philippines, Plaintiff-Appellee, versus, Felix Santiago, Victorino Angeles and Norberto Sangabol, Defendants-Appellants", promulgated on August 11, 1965, the dis-positive part of which reads:

"While we are in accord with the judgment of conviction meted out against appellants Victorino Angeles and Norberto Sangabol, on reasonable doubt, we hereby pronounce appellant Santiago not guilty and acquit him of the charge.

Thus modified, the appealed judgment is affirmed in all other respects, with costs."[1]

On June 3, 1958, an information charging with the crime of theft Felix Santiago, Norberto Sangabol, Pablo Feliciano and Antonio Rivera was filed in the Court of First Instance of Nueva Ecija.

On June 12, 1958, Victorino Angeles, Antonio Garcia, Ely Yap, John Doe and Richard Doe were included in an amended information for qualified theft which reads:

"AMENDED INFORMATION

The undersigned Assistant Provincial Fiscal accuses Victorino Angeles alias Turing, Felix Santiago alias Eli, Norberto Sangabol alias Berto, Antonio Rivera alias Antonio Garcia alias Toning, Ely Yap, John Doe alias Amang, and one Richard Doe whose true names are unknown, of the crime of Qualified theft, committed as follows:

That on or about the 6th day of May, 1958, in the Municipality of Sta. Rosa, Province of Nueva Ecija, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Victorino Angeles, with grave abuse of confidence, being then the night guard and/or watchman of the Pampanga-Bongabon Rivers Irrigation Project at its Office in Sta. Rosa, Nueva Ecija, conspiring and confederating with his co-accused Felix Santiago alias Eli, then Chief of Police of Sta. Rosa, Nueva Ecija, Ely Yap; policeman of said municipality, Norberto Sangabol alias Berto, Antonio Rivera alias Antonio Garcia alias Toning, Pablo Feliciano, John Doe alias Amang and one Richard Doe, whose true names are still unknown, by taking advantage of the darkness of the night and of their respective positions, and with the intent to gain, did then and there wilfully, unlawfully and feloniously take, steal and carry away by means of a motor vehicle the following personal properties:

857 pcs. 3/8 inc. concrete reinforcing steel bars

605 pcs. 1/2 inc. concrete reinforcing steel bars

which were then under the responsibility of the accused Victorino Angeles as guard, belonging to the Government of the Philippines (Pampanga-Bongabon Rivers Irrigation Project) valued at P5,929.74, which were piled near the municipal building of Sta. Rosa, Nueva Ecija, without the consent of the said owner and to its damage and prejudice in the said sum of P5,929.74.

CONTRARY TO LAW.

Cabanatuan City, June 11, 1958.

(SGD.) APOLONIO V. PALMA

Assistant Provincial Fiscal"[2]

At the arraignment, the defendants, Felix Santiago, Norberto Sangabol and Victorino Angeles, pleaded not guilty to the charge.

On August 4, 1958, after a prosecution witness had testified, the Fiscal moved for the dismissal of the case against Pablo Feliciano in order to utilize him as a witness for the prosecution on the alleged ground that his testimony was absolutely necessary to prove the charge that otherwise no direct evidence was available; that Pablo Feliciano appeared to be the least guilty and that his testimony could be corroborated in its material aspect. The motion was granted and defendant, Pablo Feliciano, was discharged as an accused over the opposition of the defense.[3]

After trial, the Court of First Instance of Nueva Ecija, Branch II, promulgated a decision, the dispositive part of which reads:

"WHEREFORE, the court finds the accused guilty, beyond reasonable doubt, as follows: Victorino Angeles of the crime of Qualified Theft while Felix Santiago of Simple Theft, both as principals; Norberto Sanggabol as accomplice in the crime of Simple Theft; and, considering the surrounding circumstances, particularly the aggravating circumstance of abuse of public position as against the accused Felix Santiago, hereby sentences Victorino Angeles to suffer an indeterminate sentence of 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; Felix Santiago to an indeterminate sentence of from FOUR (4) months and ONE (1) day of ar-resto mayor as minimum, to TWO (2) years, ELEVEN (11) months, and ELEVEN (11) days of prision correccional, as maximum; and Norberto Sanggabol to FOUR (4) months of arresto mayor; the accused Victorino Angeles and Felix Santiago to pay jointly and severally an indemnity of P2,446.20 which is fixed as their quota as principals with subsidiary civil liability to pay the amount of P1,000 which is fixed as the quota of the accused Norberto Sanggabol as accomplice; the accused Norberto Sanggabol to pay the amount of P1,000 with subsidiary civil liability to pay the sum of P2,446.20; to suffer subsidiary imprisonment in case of insolvency with respect to the accused Felix Santiago and Norberto Sanggabol, and to pay proportionate costs. The recovered steel bars are hereby ordered delivered to the Pampanga-Bongabon Irrigation Project.

SO ORDERED.

Cabanatuan City, May 31, 1962.

(SGD.) GENARO TAN TORRES

Judge"[4]

The defendants, Felix Santiago, Victorino Angeles and Norberto Sangabol appealed to the Court of Appeals which acquitted Felix Santiago and affirmed the conviction of Victorino Angeles and Norberto Sangabol.

The petitioners assigned the following errors:

"I

THE RESPONDENT COURT ERRED IN HOLDING THAT THE DISCHARGE OF PABLO FELICIANO AS STATE WITNESS WAS LEGAL.

II

THE RESPONDENT COURT ERRED IN FINDING THAT THE CORPUS DELICTI WAS ESTABLISHED.

III

THE RESPONDENT COURT ERRED IN NOT ACQUITTING PETITIONERS."[5]

The issue on the discharge of Pablo Feliciano may no longer be passed upon because it appears from the record that the matter was elevated by the petitioners to this Court which dismissed the petition in a resolution of August 12, 1958 in G.R. No. L-14158.[6]

The contention of the petitioners that the Court of Appeals erred in affirming their conviction is meritorious.

The pertinent facts, as found by the Court of Appeals, are:

"About the year 1958, the Pampanga-Bongabon Irrigation Project had its offices and sphere of operation within the town of Sta. Rosa, Cabanatuan City and part of San Leonardo, Sta. Rosa, Nueva Ecija. Their principal office was located beside the Municipal Building compound located at Sta. Rosa, Nueva Ecija. In said compound were then deposited paraphernalia belonging to the government such as steel bars, cement, gravel, lumber, rails, wires, etc. and the watchman-storekeeper therein at the time was Francisco Regalado, in charge of receiving and releasing construction materials to be used at the irrigation project. He was assisted by a graduate engineer and a general foreman. During the months of September to December, inclusive, 1957, the sub-office at Sta. Rosa, Nueva Ecija received 10,600 pieces of 3" x 33' steel bars and 5,250 pieces of 1/2" x 30' steel bars for use by the aforementioned irrigation project. During these aforementioned months not all these materials had been used so much so that a considerable quantity of same were in store at the sub-office compound aforementioned, that is, 3,960 of 3" x 30' steel bars and 3,144 of the 1/2 x 30' steel bars were left unused. However, a subsequent check has revealed that 605 of the 3" x 30' as well as 857 of the 1/2" x 30' steel bars had disappeared. Delfin Garcia, the project engineer, informed of the loss, reported the same to the mayor and both conducted an investigation.

The watchman-storekeeper, Francisco Regalado, testified admitting such loss of the steel bars. One Ernesto Buenviaje testified that in the evening of May 6, 1958, he had driven a truck that carried the supposedly stolen steel bars from the compound of Sta. Rosa to Guimba, Pablo Feliciano, one of the witnesses investigated, had pointed at defendant Norberto Sangabol as having been one of those who had loaded the steel bars to the truck of Pedro Falcone - which steel bars had allegedly been taken to the store of Ong Sy Phay and when the investigator proceeded there they had actually recovered 143 pieces of the 1/2" x 30' steel bars and 60 pieces of the 3" x 30' steel bars."[7]

The evidence of the prosecution shows that it was only after twenty-three (23) days from May 6, 1958 that the alleged theft was discovered when an inventory of the steel bars was taken. Considering that the iron bars allegedly stolen consisted of 605 pieces of 3/8" x 30' and 857 pieces of 1/2" x 30', it is incredible that said steel bars were not missed immediately. The watchman-storekeeper, Francisco Regalado, should have discovered immediately the loss of said bars. It is, therefore, highly improbable that a total of 1,462 pieces of steel bars could have been stolen in the evening of May 6, 1958.

On motion of the prosecution, the accused, Pablo Feliciano, was discharged to be utilized as a state witness. It is to be presumed that without the testimony of said accused, the prosecution could not establish the guilt of the

remaining accused with proof beyond reasonable doubt.

If the testimony of Pablo Feliciano is to be given credence, it was the accused Chief of Police of Sta. Rosa, Felix Santiago, who was the mastermind of the theft of the steel bars. Pablo Feliciano declared that on May 6, 1958, Chief of Police Felix Santiago told Pablo Feliciano to call Ernesto Buenviaje, a driver of a truck; that it was Chief of Police Felix Santiago who procured the truck which was used in transporting the stolen iron bars to the warehouse of the Chinaman in Guimba; that Chief of Police Felix Santiago even provided the battery for the truck; and that at about 1:00 o'clock on May 7, 1958, the accused, Victorino Angeles, allegedly gave Pablo Feliciano in the presence of Chief of Police Felix Santiago the amount of P20.00 in payment of the services of Pablo Feliciano in loading the steel bars.

The pertinent portions of the testimony of Pablo Feliciano anent the accused Chief of Police Felix Santiago are:

"FISCAL

Q

Do you know the Chief of Police of Sta. Rosa on the day that you were talking in front of the house of Eliseo Angeles?

A

Yes, sir.

Q

What is the name?

A

Felix Santiago.

Q

If he is inside the court will you please point to him?

A

Witness points to the accused Felix Santiago.

Q

When you were talking with Norberto Sangabol with other persons do you remember where was Felix Santiago, the Chief of Police of Sta. Rosa, if you know?

ATTY. GARCIA

No basis.

COURT

He may answer if he knows.

A

He arrived.

FISCAL

Q

To what place did he arrive?

A

In front of the house of Eliseo Angeles.

Q

What did he do there if you know?

A

He called Sangabol and myself.

Q

Did you go to Felix Santiago when he called for you together with Norberto Sangabol?

A

Yes, sir.

Q

What did he ask you?

A

He sent me to call for Erning.

Q

What is the full name of Erning if you know?

A

Ernesto Buenviaje.

Q

From where is Ernesto Buenviaje?

A

Sta. Rosa, Nueva Ecija.

Q

Where did Felix Santiago re-quest you to call for Ernesto Buenviaje?

A

In his house.

Q

Why were you calling for him?

ATTY. GARCIA

We object, incompetent, your Honor.

COURT

He may answer the question.

A

Because the Chief wanted us to call him.

COURT

Q

Who is this Chief?

A

Felix Santiago.

FISCAL

Q

Were you able to see Ernesto Buenviaje in his house?

A

Yes, sir.

Q

What did you tell him?

A

I told him that the Chief wanted to see him.

Q

What was his answer?

A

According to him he would go.

Q

Did you go to see again Felix Santiago with Ernesto Buenviaje?

A

Yes, sir.

Q

Where did you see Felix Santiago in Sta. Rosa?

A

In front of the house of Felix Santiago.

Q

Were you able to see Felix Santiago in front of his house?

A

Yes, sir.

Q

When you arrived what did he do?

A

He talked to Ernesto Buenviaje.

Q

How far were you from Felix Santiago and Ernesto Buenviaje when they were talking?

A

More or less two meters.

Q

What were they talking about?

A

All I heard was that Ernesto Buenviaje said that the battery of his truck was weak.

Q

What was the answer of Felix Santiago when Ernesto Buenviaje told him that the battery of his truck was weak?

A

Felix Santiago had to borrow another battery.

Q

Was he able to borrow another battery for the truck of Ernesto Buenviaje?

A

Yes, sir.

Q

From whom was he able to borrow another battery?

A

From one Tamang.

Q

Do you know why Felix Santiago was in need of a truck?

A

I do not know.

Q

Who owns the truck that he was borrowing?

A

Pedro Palcone.

Q

Who was the driver of the truck of Pedro Palcone?

A

Ernesto Buenviaje.

Q

Who replaced the old battery of the truck?

ATTY. VIGILIA

Leading and no basis.

COURT

He may answer the question.

A

Ernesto Buenviaje.

FISCAL

Q

Who gave the battery which Ernesto Buenviaje placed in the truck?

A

The battery was borrowed.

Q

Who borrowed?

A

Felix Santiago.

Q

After a new battery was installed in place of the old battery of the truck what happened?

A

We rode on the truck with Berto Sangabol.

Q

Who was driving the truck?

A

Ernesto Buenviaje.

Q

Where did you go?

A

The truck proceeded near the municipal building."[8]

x x x

Q

What time did you arrive in Sta. Rosa the following morning, May 7?

A

11:00 noon.

Q

Upon reaching Sta. Rosa at 11:00 o'clock noon where did you go?

A

I went home.

Q

Did you leave your home that day?

A

At about 1:00 o'clock I went out.

Q

Where did you go?

A

I went to the place near the front of the market.

Q

What town?

A

Sta. Rosa, Nueva Ecija.

Q

What did you do there?

A

None, sir.

Q

Did you meet anybody?

A

Victorino Angeles and Felix Santiago saw me.

Q

What did you do when Victorino Angeles and Felix Santiago saw you?

A

We went to the store of Santos Castro.

Q

Who invited you to go to the store?

A

Victorino Angeles.

Q

While in the store of Santos Castro what did you do?

A

I was given P20.00.

Q

Who gave you the sum of P20?

A

Victorino Angeles.

Q

Why did he give you P20?

A

That was my fee for loading the iron bars.

Q

What was Felix Santiago doing when Victorino Angeles gave you the sum of P20 as your compensation in loading the iron bars?

A

He was in front of us."[9]

On motion for reconsideration, the majority of the division of five of the Court of Appeals acquitted the accused Chief of Police Felix Santiago. It is noteworthy that Justice Hermogenes Concepcion Jr., who is from Nueva

Ecija, now a member of this Court, maintained his vote to acquit all the accused.

If, from the testimony of Pablo Feliciano, the accused Chief of Police Felix Santiago was the mastermind, it is strange why the accused Victorino Angeles, who was merely the watchman in the irrigation office, was convicted as principal of the crime of qualified theft and the accused, Norberto Sangabol, who was only a bystander, was convicted as accomplice of the crime of theft.

The information alleges that 857 pieces of 3/8" x 30' of reinforcing steel bars and 605 pieces of 1/2" x 30' concrete reinforcing steel bars were stolen on May 6, 1958. The total of 1,462 concrete reinforcing steel bars must have weighed several tons. It is physically impossible for this quantity of concrete reinforcing steel bars to be loaded in one car.

The accused, Pablo Feliciano, turned state witness, testified that twelve (12) bundles of iron bars were loaded on the truck and that one (1) bundle had a diameter of about four (4) inches. The pertinent portion of his testimony reads:

"Q

How many iron bars did you load if you know into the truck?

A

More or less 12 bundles.

Q

Do you know how many pieces are there in one bundle?

A

I do not know.

Q

How big is a bundle? Will you please demonstrate by your hands?

A

Witness indicating a diameter of four inches."^[10]

If the twelve (12) bundles were tied together, the total diameter could be about 48 inches or 4 feet. The twelve (12) bundles must have had the diameter of a little over one (1) meter.

The evidence of the prosecution also shows that the loading took about three hours from 11:00 o'clock in the evening of May 6, 1958 to 2:00 o'clock in the morning of May 7, 1958. The truck which was being loaded was about 7 meters from the municipal building of Sta. Rosa. At about 10:00 o'clock in the evening of May 6, 1958, there were many policemen in the municipal building, according to the accused turned state witness, Pablo Feliciano, because of a robbery that had just taken place in Sta. Rosa. It is to be presumed that when the alleged loading of the iron bars commenced at 11:00 o'clock in the evening of May 6, 1958, there were still policemen inside the municipal building. And even after most of the policemen had gone, certainly, some policemen would have remained in the municipal building as guards. It is, therefore, highly in-credible that the 1,462 steel bars consisting of 12 bundles could have been loaded during a period of three hours without having been noticed by the policemen on guard in the municipal building. There is evidence that there were several persons in the irrigation office. It is again surprising why none of these persons inside the irrigation office noticed the alleged

loading of the iron bars on the truck.

The prosecution has failed to prove beyond reasonable doubt that the petitioners participated in any manner in the alleged theft of 1,462 steel bars on May 6, 1958.

In view of the foregoing, there is no basis to affirm the conviction of Victorino Angeles as principal of the crime of qualified theft and of Norberto Sangabol as accomplice of the crime of simple theft.

WHEREFORE, the decision of the Court of Appeals sought to be reviewed is hereby REVERSED and the petitioners are ACQUITTED of the crime charged in the amended information, with costs de oficio.

SO ORDERED.

Makasiar, Guerrero, and Melencio-Herrera, JJ., concur.

Teehankee, J., (Chairman), in the result.

De Castro, J., took no part.

[1] Decision, Brief for the Petitioners, p. 27, Rollo, p. 39. Decision was written by Justice Edmundo S. Piccio and concurred in by Justice Eugenio Angeles and Justice Hermogenes Concepcion Jr. Justice Gregorio N. Narvasa and Justice Magno S. Gatmaitan dissented.

[2] Record of Criminal Case No. 5369, p. 21.

[3] Decision of the Court of Appeals, Brief for the Petitioners, p. 19, Rollo, p. 39.

[4] Record of Criminal Case No. 5369, pp. 442-443.

[5] Brief for the Petitioners, pp. 34, Rollo, p. 39.

[6] Brief for the Respondent, p. 14, Rollo, p. 49.

[7] Decision, Brief for the Petitioners, pp. 20-22, Rollo, p. 39.

[8] T.s.n., pp. 3-6, September 8, 1958.

[9] T.s.n., pp. 14-15, September 8, 1958.

[10] T.s.n., p. 11, September 8, 1958.

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