

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DEMPSEY OLI Y BAYOTAS, ACCUSED-APPELLANT.

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

This is an appeal from the Decision dated September 12, 2013 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 212, in Criminal Case No. MC11-13669,[1] the decretal portion of which states:

WHEREFORE, IN VIEW OF THE FOREGOING, accused DEMPSEY OLI Y BAYOTAS is found GUILTY of the crime of Theft [and] is hereby sentenced to a prison term of two (2) years, four (4) months and one (1) day of prision correccional minimum to eight (8) years, eight (8) months and one (1) day of prision mayor plus one (1) year for the additional P10,000.00 in excess of P22,000.00 value of the property taken or a total of nine (9) years, eight (8) months and one (1) day, as maximum which is within the range of the penalty imposable.

Accordingly, the bond posted by accused Dempsey Oli y Bayotas is CANCELLED and let a COMMITMENT ORDER be issued for his confinement at the National Bilibid Prison, Muntinlupa City.

SO ORDERED.[2]

The Facts

Accused-appellant Dempsey Oli y Bayotas ("appellant" / "Oli") and co-accused John Doe were charged with the crime of theft, allegedly committed as follows:

"That on or about the 6[th] day of April 2011, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, conspiring and confederating and mutually aiding and abetting one another, did then and there willfully, unlawfully and feloniously take, steal and carry away one (1) unit Iphone 3GS cellular phone worth Php 35,000.00 belonging to JESLEY PALILLO y TORRES, to his damage and prejudice in the aforementioned amount.

CONTRARY TO LAW."[3]

Only appellant Oli was arrested. The other accused John Doe's identity and whereabouts are still unknown.[4] Upon arraignment, appellant pleaded not guilty.[5] During the pre-trial, the parties stipulated on and admitted the following facts:

- The identity of accused DEMPSEY OLI y BAYOTAS as the one named in the Information;
- The jurisdiction of the court to try the case;
- The existence of the Inquest Referral Letter;
- The existence of the Sworn Statement of Jesley Palillo y Torres;
- The existence of the Affidavit of Arrest of the arresting officer.[6]

Thereafter, trial ensued.

Prosecution's Version

In his testimony, private complainant Jesley Palillo narrated that on April 6, 2011, at around 8:20 to 8:30 in the morning, he was on board an MRT train going to Guadalupe, Makati.[7] He boarded at the Cubao station, and sometime after he had gotten in, he noticed that someone was touching his pants,[8] but he ignored it. When the train reached Ortigas station, he noticed somebody pull out his cellphone from his right pocket.[9] He looked at the person beside him and after he saw that person holding his cellphone, the latter passed the phone to another person.[10] The cellphone was a white Iphone 3GS.

After the phone was passed to another person, Palillo tried to reach for it but by then, he was being pushed inside the train by the rush hour crowd.[11] He also tried to reach the person who passed it on to the other but he had difficulty getting out of the train.[12] Finally, he was able to grab that person and called a security guard.[13] They looked for the person to whom the cellphone was passed but they failed to find him.[14] Meanwhile, the person he was able to get hold of was brought to the "outpost in Magallanes," from the Ortigas station.[15]

The subject phone was worth Php35,000.00 and its ownership was proven by Palillo through its original box, manual and charger.[16] It was bought in Japan by his sister.[17]

The person that Palillo got hold of and brought to the MRT police station is the accused-appellant Dempsey Oli, whom the former identified through a set of pictures attached to the latter's bail bond application.[18] He then proceeded to identify the sinumpaang salaysay he executed before the police station.[19] When asked how he came to know that it was the appellant who took his cellphone, Palillo answered, "I saw my cell phone in his left hand and it was inverted backwards with an apple logo at the back." [20] He also stated that his cellphone was not recovered.[21]

Palillo added that the other person to whom the cellphone was passed was "mentioned" at the police station by appellant as someone with the name Joseph or Richard.[22] Appellant did not mention the person's real name.[23]

On cross-examination, Palillo testified that when he restrained the person who took his cellphone, the latter did not react except that the latter's hands were raised while the former was holding him by the collar.[24] Palillo asked, "Saan mo ipinasa yung cellphone ko?," but the person was only silent.[25] Meanwhile, Palillo believes that the person to whom the cellphone was passed went to another car of the train because he could no longer be found at the ticket area.[26]

Next to testify was security guard Ronald Caubat, who corroborated the testimony of complainant Jesley Palillo. Caubat testified that on April 6, 2011, at around 8:25 in the morning, he was on duty at the MRT Ortigas Station as security guard.[27] His duty was to assist passengers boarding and alighting from the trains and inspect the ladder area.[28] Then, at around the said time, passenger Palillo sought his assistance as according to the latter, he had been a victim of theft.[29] Palillo pointed to a person whom he said was responsible for the theft of his Iphone.[30] Caubat then approached the person and "turned him over" to a certain police officer PO1 Tumbado.[31] He was able to know the name of the arrested person as Dempsey Oli whom he also identified and pointed to in open court.[32] He also knew that the item taken was an "Iphone 3G." [33] Then, he proceeded to identify the sinumpaang salaysay he executed before the police station.[34]

On cross-examination, Caubat stated that when he saw the person claiming to be a victim of theft, the latter was holding the "suspect" (appellant) and pointing at the latter.[35] He can no longer remember asking anything from the suspect.[36] And when the suspect was brought to the policeman on duty, he heard the suspect being asked about his personal circumstances like name, age, and address.[37] He did not hear the police asking the suspect whether he was really the one who took the victim's cellphone.[38] When the police officer brought the suspect to the Shaw Boulevard station, he did not go with them anymore because he had to guard his post.[39]

On re-direct examination, Caubat noted that he did not witness the appellant quarrelling nor resisting when the latter was brought to him by Palillo.[40]

Appellant Dempsey Oli testified for his defense. He testified that he is the accused in the case;[41] that on April 6, 2011, at around 8 o'clock in the morning, he was inside an MRT train at the Ortigas station;[42] that he had no companion;[43] that the train was going southbound;[44] that suddenly, he was collared and brought to the MRT office;[45] that he was surprised as there was no unusual incident that he could recall;[46] that he was accused of taking a cellphone;[47] that the one accusing him is Palillo;[48] that at the MRT office, he was forced to produce the allegedly stolen cellphone;[49] that he was brought to the MRT depot or storage yard in Pasay;[50] that in Pasay, he was still told to produce the cellphone;[51] that afterwards, documents were prepared and he was brought for inquest that same day;[52] and that he denies the accusation that on that day, he, with intent to gain, "took, stole and carried away" one cellphone belonging to Jesley Palillo.[53]

On cross-examination, appellant stated that on material date and time, he was on his way to his mother in Zapote;[54] that he boarded the MRT at the Quezon Avenue station;[55] that there were many passengers;[56] that Palillo boarded the train at the Cubao station;[57] that appellant noticed the same because he was in front of the door;[58] that after further questioning, he could no longer tell if the person who boarded in Cubao is the same person as the private complainant;[59] that the train was packed ("siksikan") and he and the private complainant were very close to each other;[60] that the private complainant stood next to his left shoulder;[61] that when private complainant collared him, he was already outside the train at Ortigas station;[62] that he was just standing when he was collared and told that he stole a cellphone and was dragged outside;[63] that he slapped the private complainant's hand, but the latter still brought him outside;[64] that he was unemployed;[65] that he used to be a construction worker;[66] that he was on his way to his mother to pick up a food steamer for making puto.[67]

On re-direct examination, appellant stated that he got mad when he was collared and he expressed his anger by telling the private complainant not to touch him and by shoving away his hand;[68] that he had been previously accused of taking food from a store, but such was not proven;[69] and that he has no criminal record.[70]

On re-cross-examination, appellant admitted having a tattoo of his name;[71] that his highest educational attainment is second year of high school;[72] and that he stopped schooling because of his father's incarceration for the crime of "physical injuries." [73]

The RTC's Ruling

In the appealed decision, the RTC found appellant guilty beyond reasonable doubt of the crime charged. The court found that the elements of theft have all been proven.[74] Rejecting the defense of "denial and alibi" interposed by appellant, the trial court ruled that the private complainant could not have mistakenly identified the appellant, having seen the latter holding the cellphone and passing the same to a companion.[75] Additionally, the court held that alibi and denial are the weakest of defenses and, unless substantiated by clear and convincing proof, they are negative, self-serving and undeserving of any weight in law.[76]

Hence, this appeal.

The appeal is centered on the credibility of the lone eyewitness, the private complainant Jesley Palillo. Appellant argues that Palillo is asking him "Saano mo ipinasa ang cell phone ko?" is a mere "reckless assumption." [77] Appellant also attacks Palillo's failure to shout for help when appellant's cohort was escaping as contrary to human experience.[78] Appellant alleges that the prosecution failed to prove its case through circumstantial evidence.[79] Further, appellant alleges that the value of Php35,000.00 attached to the cellphone is not supported by evidence like receipts and other documents.[80] He argues that the trial court should have imposed the minimum penalty corresponding to the value of Php5.00 for the stolen amount.[81]

The Issues

The issues for resolution are: Is the testimony of private complainant as sole eyewitness to the crime credible and enough to convict appellant? Is the penalty imposed by the trial court correct?

The Court's Ruling

We deny the appeal.

On the question of the credibility of the lone eyewitness, it has been consistently reiterated that basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are generally accorded great weight and respect on appeal. When the issue is one of credibility, this Court will generally not disturb the findings of the trial court unless it plainly overlooked certain facts of substance and value that, if considered, might affect the outcome of the case.[82] The reason therefor is not hard to discern. The trial courts are in a better position to decide questions of credibility having heard the witnesses and observed their deportment and manner of testifying during the trial.[83]

We agree with the trial court that the testimony of the private complainant Jesley Palillo as the lone eyewitness to the occurrence of the theft is enough to convict appellant. We find Palillo's testimony credible as it was clear and convincing enough especially on the matter of him witnessing the actual commission of the crime. Palillo clearly narrated that on the material date and time, he was on-board an MRT train going to Guadalupe, Makati;[84] that sometime after he had gotten in, he noticed that someone was touching his pants;[85] that when the train reached Ortigas station, he noticed somebody pull out his cellphone from his right pocket;[86] that he looked at the person beside him and saw that person holding his cellphone;[87] and that the said person passed on the cellphone to another person.[88]

The statement could not be clearer. There is no doubt in the witness Palillo having perceived and seen the commission of the crime by appellant and his co-conspirator. It was Palillo himself who grabbed the appellant and reported him to a security guard.[89] There is no proof of mistake having been committed; on the contrary, a mistake in identification was not possible, as Palillo never appeared to have lost sight of the appellant from the time he saw him take his cellphone up to the time that he grabbed and apprehended him and brought him to the security guard. Then, there is likewise no possibility of ill-motive to wrongly accuse the appellant. Such is not even alleged by the latter. Instead, Palillo is in fact motivated to find the taker or takers of his cellphone. He has nothing to gain by apprehending the wrong person who might be punished for the crime in lieu of the actual perpetrator and who would not be able to return the lost item as that innocent person would genuinely not know its whereabouts.

Appellant questions Palillo's inability to shout for help to apprehend the second suspect, deeming it contrary to human nature.

We disagree. Palillo, in fact, asked for help by going to the security guard and hoped to find the second suspect; unfortunately, however, he anticipated only finding him in the ticket area, but did not expect that the suspect would ride another car of the same train, enabling him to escape.[90] It is not fair, however, to second-guess Palillo's actuations and decisions during that startling occurrence. That he immediately apprehended the more accessible suspect, who could very well lead him to the other suspect, was, in fact, a good decision given the circumstances. The applicable English expression is, "a bird in hand is better than two birds in the bush."

On the other hand, appellant's defense is a denial. Contrary to the trial court's observation, he does not even plead alibi as a defense as he very well admits his presence in the locus criminis. However, denial alone would not suffice to be acquitted of the crime charged, especially in the face of the prosecution's positive testimony. A denial or negative assertion cannot prevail over the unimpeached testimony of the prosecution witness, which

describes in sufficient detail the active participation of the appellant in the commission of the crime charged.[91] As a rule, positive testimony as to a particular fact, uncontradicted by anyone, should control the decision of the court.[92]

Next, the appellant contends that the circumstantial evidence was not enough to convict him of the crime.

Appellant is mistaken. He was convicted, not on the basis of circumstantial evidence, but on the basis of the direct evidence and eyewitness testimony provided by the victim of the crime himself, the private complainant Jesley Palillo, who testified as to him actually perceiving the crime being committed on his person and property, and actually seeing his cellphone in the hand of the appellant. Such is not circumstantial but a direct evidence of the crime's commission.

To sustain a conviction for theft, the following elements must be proven: (1) personal property of another person must be taken without the latter's consent; (2) the act of taking the personal property of another must be done without the use of violence against or intimidation of persons nor force upon things; and, (3) there must be an intention to gain from the taking of another person's personal property.[93] The trial court, as related above, correctly explained its bases for finding that all the requisites have been satisfied beyond a shadow of doubt. They are evident in the testimonies of the prosecution witnesses.

Lastly, appellant questions the trial court's imposition of the penalty based on the alleged value of Php35,000.00 of the stolen cellphone. The Solicitor General, in the appellee's brief, and citing jurisprudence, agrees with appellant that no evidence was presented fixing the value of the cellphone stolen.[94]

We agree with the Solicitor General. There being no sufficient evidence presented such as receipts and other documents to prove the value of the thing stolen, this Court would fix the value thereof in the exercise of its sound judicial discretion.[95] Considering the attendant circumstances, and the fact that the prosecution had proven through testimony and documentary evidence that the item stolen was indeed an Iphone,[96] then We fix the value of the stolen cellphone at Php 20,000.00, which value would then be the basis of the penalty to be imposed on appellant.

The penalty for theft is determined by the value of the property taken. Article 309 of the Revised Penal Code (RPC) reads:

"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 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"

Since We fixed the value of the stolen cellphone at P20,000.00, the penalty to be imposed is prision mayor in its minimum and medium periods which has a duration of 6 years and 1 day to 10 years. As this penalty is not composed of three periods, it shall be divided into three equal portions of time, each of which shall form one period pursuant to Article 65 of the RPC,[97] thus: a) the minimum period is 6 years and 1 day to 7 years and 4 months; b) the medium period is 7 years, 4 months and 1 day to 8 years and 8 months; and c) the maximum period is 8 years, 8 months and 1 day to 10 years.

Applying the Indeterminate Sentence Law and there being no aggravating or mitigating circumstance, the maximum term of the imposable penalty should be taken from the above-stated medium period of prision mayor which is 7 years, 4 months and 1 day to 8 years, while the minimum term should be taken from the penalty next lower in degree which is prision correccional medium and maximum with a duration of 2 years, 4 months and 1 day to 6 years. Accordingly, We hold that appellant should be meted the indeterminate penalty of imprisonment of 2 years, 4 months, and 1 day of prision correccional as minimum, to 7 years, 4 months and 1 day of prision mayor, as maximum

WHEREFORE, the foregoing premises considered, the appealed Decision dated September 12, 2013 of the Regional Trial Court of Mandaluyong City, Branch 212, in Criminal Case No. MC11-13669, is AFFIRMED with the MODIFICATION ON THE PENALTY IMPOSED. Accused-appellant DEMPSEY OLI Y BAYOTAS is hereby sentenced to an indeterminate prison term of two (2) years, four (4) months and one (1) day of prision correccional as minimum to seven (7) years, four (4) months and one (1) day of prision mayor as maximum.

SO ORDERED.

Rosario, and Dimagiba, JJ., concur.

[1] Rollo, pp. 39-43; RTC records, 138-142; penned by Judge Rizalina T. Capco-Umali.

[2] Id. at 42; id. at 141.

[3] RTC records, p. 1.

[4] Id.

[5] Id. at 77-78.

[6] Id. at 80.

[7] Direct examination of Jesley Palillo, TSN, December 5, 2011, pp. 3-4.

[8] Id. at 4.

[9] Id.

[10] Id. at 4-5.

[11] Id. at 5.

[12] Id.

[13] Id.

[14] Id.

[15] Id. at 6.

[16] Id.

[17] Id.

[18] Id. at 7-9.

[19] Id. at 8-9.

- [20] Id. at 9.
- [21] Id. at 9-10.
- [22] Id. at 10.
- [23] Id.
- [24] Cross-examination of Jesley Palillo, id. at 11-12.
- [25] Id. at 12.
- [26] Id. at 13.
- [27] Direct examination of Ronald Caubat, TSN, June 11, 2012, pp. 3-4.
- [28] Id. at 5.
- [29] Id.
- [30] Id.
- [31] Id.
- [32] Id. at 6.
- [33] Id.
- [34] Id. at 7-8.
- [35] Cross-examination of Ronald Caubat, id. at 13-14.
- [36] Id. at 14.
- [37] Id. at 15.
- [38] Id.
- [39] Id. at 16.
- [40] Re-direct examination of Ronald Caubat, id. at 17.
- [41] Direct examination of Dempsey Oli, TSN, March 13, 2013, p. 4.
- [42] Id.
- [43] Id. at 5.
- [44] Id.
- [45] Id.
- [46] Id.
- [47] Id. at 6.
- [48] Id.
- [49] Id. at 6-7.
- [50] Id. at 7.

- [51] Id.
- [52] Id.
- [53] Id. at 7-8.
- [54] Cross-examination of Dempsey Oli, id. at 8.
- [55] Id.
- [56] Id. at 9.
- [57] Id.
- [58] Id.
- [59] Id. at 9-10.
- [60] Id. at 10.
- [61] Id. at 10-11.
- [62] Id. at 11.
- [63] Id. at 12.
- [64] Id.
- [65] Id.
- [66] Id. at 13.
- [67] Id.
- [68] Re-direct examination of Dempsey Oli, id. at 14.
- [69] Id. at 15.
- [70] Id.
- [71] Re-cross-examination of Dempsey Oli, id. at 16.
- [72] Id.
- [73] Id.
- [74] Rollo, p. 41.
- [75] Id.
- [76] Id. at 41-42.
- [77] Id. at 34-35.
- [78] Id. at 35.
- [79] Id. at 35-36.
- [80] Id. at 36.
- [81] Id.

[82] Tindoy v. People, G.R. No. 157106, September 3, 2008, 564 SCRA 39, 47, citing People v. Laceste, G.R. No. 127127, July 30, 1998, 293 SCRA 397.

[83] Id.

[84] Direct examination of Jesley Palillo, TSN, December 5, 2011, pp. 3-4.

[85] Id. at 4.

[86] Id.

[87] Id. at 4-5.

[88] Id.

[89] Id. at 5.

[90] Cross-examination of Jesley Palillo, id. at 13

[91] Cariaga v. Court of Appeals, G.R. No. 143561, June 6, 2001.

[92] Id., citing Ko Tieck vs. People, L-48535-36, Dec. 21, 1991.

[93] Lucas v. Court of Appeals, G.R. No. 148859, September 24, 2002.

[94] Rollo, pp. 61-65.

[95] Id. at 64, citing Lozano v. People, G.R. No. 165582, July 9, 2010.

[96] Exhibit "E," RTC records, pp. 103-106; Direct examination of Jesley Palillo, TSN, December 5, 2011, p. 6; Direct examination of Ronald Caubat, TSN, June 11, 2012, p. 3.

[97] Article 65. Rules in cases in which the penalty is not composed of three periods.-- In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

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