

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO BAGO Y MADRID, ACCUSED-APPELLANT, ARMANDO CAPARAS Y CUENCO AND RODOLFO ONGSECO Y VEGO, ACCUSED.

G.R. No. 122290. April 06, 2000

Ponente: PUNO, J.

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PUNO, J.:

Appellant REYNALDO BAGO was charged with qualified theft, while his co-accused ARMANDO CAPARAS and RODOLFO ONGSECO were charged with simple theft, in an Information[1] which reads:

"That sometime during the period from January 1992 to March 23, 1992, in Quezon City, Philippines, REYNALDO BAGO y MADRID, being then employed as factory worker of the Azkcon Metal Industries detailed with the Power Construction Supply Company located at No. 130 Judge Juan Luna Street, San Francisco del Monte, this City, and as such has free access to the different departments of the company, with grave abuse of confidence, in conspiracy with his co-accused ARMANDO CAPARAS and RODOLFO ONGSECO y VEGO, conspiring together, confederating with and mutually helping one another, with intent to gain and without the knowledge and consent of the owner thereof, did then and there wilfully, unlawfully and feloniously take, steal and carry away assorted cold rolled sheets and scraps valued in the total amount of P194,865.00, Philippine Currency, belonging to Power Construction Supply Company, represented by WILLIAM HILO, to the damage and prejudice of the owner thereof in the aforementioned amount.

"CONTRARY TO LAW."

Appellant and his co-accused pled not guilty. Trial ensued.

Appellant was an employee of Azkcon Metal Industries (Azkcon for brevity) from 1988 to 1992. He started working as a factory worker and later became a machine operator and a truck helper. From 1991 to 1992, he served as team leader at the cutting department under the supervision of Material Comptroller WILLIAM HILO who kept track of all the materials coming in and going out of the company's plant in Kalookan City.[2]

Azkcon has a business arrangement with Power Construction Supply Company (Power Construction) whereby Azkcon buys cold rolled sheets from the latter. These cold rolled sheets are also cut by Power Construction for a fee and Azkcon converts them into drums or containers. Appellant's job was to go to Power Construction's establishment in Quezon City to oversee the cutting of the cold rolled sheets and ensure their delivery to Azkcon using the trucks sent by Hilo.[3]

On April 21, 1992, appellant and his co-workers[5] went to Power Construction and loaded two cold rolled sheets in a truck owned by Azkcon.[5] Before entering the premises of Azkcon, appellant presented to security guard RUBEN DE LA CRUZ MANANGAN two receipts,[6] both dated April 21, 1992, covering the cold rolled sheets from Power Construction. Manangan inspected the contents of the truck. As everything was accounted for, Manangan stamped on the two receipts covering the materials. Appellant then presented a third receipt,[7] with Invoice No. 51111, dated March 23, 1992, for stamping. Manangan likewise stamped the third receipt. As the

third receipt bore a different date, Manangan asked appellant if the materials covered by said receipt were in the truck. Appellant replied that the materials had long been delivered. Manangan did not investigate further but later reported the incident to the Chief of Security Department, AFLOR ONG. Ong checked the third receipt and when he failed to find the materials listed thereon, he reported to Hilo.[8]

Upon receipt of the report, Hilo discreetly conducted a more in-depth investigation. He found out that the materials covered by the third receipt, worth P192,000.00, were not delivered to Azkcon. He checked the third receipt and the gate pass of Power Construction for March 23, 1992 - the date of the questioned transaction - and discovered that the truck used by appellant on said date did not belong to Azkcon. It also turned out that the subject materials had already been paid for by Azkcon.[9]

Power Construction's security guard, JUN GAVARAN, confirmed that on March 23, 1992, appellant and his companions picked up cold rolled sheets from Power Construction and loaded them in a truck. The truck did not bear the logo of Azkcon. Gavarán noted on a ledger that the truck came at 2:15 p.m. and left at 3:35 p.m.

Hilo did not immediately report the matter to his superior. He chose to wait for appellant to commit a similar misdemeanor and catch him red-handed. He waited in vain. He then decided to inform his superiors about the theft in May 1992. Hilo was directed to report the theft and file a complaint with the police authorities.

A police team, led by SPO3 ALFREDO ALFARO, investigated appellant at Azkcon. Appellant insisted that the materials covered by the third receipt had been delivered to Azkcon. The investigation of appellant continued at the police station. PO3 Andres Balod interrogated appellant. Appellant asked for a lawyer and was brought to the Integrated Bar of the Philippines (IBP) where he was assisted by Atty. Florimond C. Rous. Atty. Rous talked to him and inquired if he was willing to give a statement to the police. The interrogation then proceeded and appellant admitted his participation in the theft. He disclosed that his cohorts on May 23, 1992 were ARMANDO CAPARAS and RODOLFO ONGSECO, former employees of Azkcon. He revealed that they usually loaded the stolen materials in a truck rented by Caparas and Ongseco. He received P10,000 to P35,000[10] for his participation in the different thefts.[11] Appellant affixed his signature on the written statement.[12] After the investigation, PO3 Balod referred the case to Fiscal Paragua.

The next day, the police went to Malinta, Valenzuela and apprehended accused Caparas and Ongseco. It was appellant who pointed out the residence of Caparas and Ongseco to the police. The two identified a certain Chua as the alleged buyer of the stolen goods. The police invited Chua for investigation. Inexplicably, the investigation of Chua was not reduced to writing.[13]

Appellant denied participation in the crime charged. He described his job as team leader at the cutting department of Azkcon. He said that Hilo would order him to proceed to Power Construction Supply to oversee the cutting and procurement of the materials needed by Azkcon. Hilo would then instruct him to wait for his call and the arrival of their truck at Power Construction Supply. They would usually use Azkcon's trucks, but at other times, Hilo would rent trucks from others.[14]

As soon as the truck would arrive at the premises of the supplier, the driver would ask for appellant. He would then load the materials in the truck and would show the receipts covering the materials to the security guard of Power Construction Supply for stamping. The materials inside the truck would be counterchecked against the quantity and quality stated in the receipts. Appellant would then return to Azkcon usually at about 4:00 p.m. Thus, he would mainly stay at the supplier's premises to oversee the cutting of the cold rolled sheets.[15]

Appellant claimed he does not know prosecution witness Jun Gavarán, the security guard of Philippine Construction Supply. He also denied knowing accused Caparas and Ongseco. Allegedly, he saw them for the first

time at the police station. He admitted knowing prosecution witnesses Manangan and Ong. He acknowledged that he had no quarrel with Gavaran, Manangan and Ong.[16]

On May 21, 1992, four (4) policemen in civilian clothes arrested him without a warrant while working in Azkcon. They told him that Hilo filed a complaint against him. He was detained at the La Loma police station. Hilo came and pointed him as the one responsible for the theft but without informing him what he stole. Upon orders of Hilo, the policemen started to beat him. They forced him to admit the crime. They also compelled him to give a statement but he refused.[17]

The next day, the policemen and Hilo brought him to Valenzuela. Hilo indicated to the policemen the residence of accused Caparas and Ongseco. That was the first time he saw his co-accused.[18]

Then, the policemen forced appellant to go to the IBP office in Quezon City. They gave him Atty. Rous as counsel although he insisted on hiring his own counsel. Atty. Rous never conferred with him. No investigation was conducted at the IBP. The police did not ask him a single question. Without reading his prepared statement, he signed it as the police threatened to harm him. He acknowledged his signatures on the invoices marked as Exhibits "A" to "D",[19] but claimed he could not recall the circumstances under which he signed them.[20]

After seven (7) days at the La Loma police station, he was taken to the Fiscal's Office in Quezon City. The inquest fiscal did not talk to him. He was asked about the voluntariness of his signature in his extra-judicial confession.[21]

Thereafter, he was brought back to the station.[22]

Appellant's father, PABLO BAGO, testified that on June 15, 1992, he went to the NBI to seek protection for his son as they were receiving threats from Hilo and police officers Balod and Alfaro. Days later, Hilo, Alfaro and Balod went to his house in Quezon City looking for appellant. Hilo warned that appellant should admit the crime lest something untoward would happen to him.[23] Again, after his son's arraignment, a certain Col. Hernandez visited their house and insisted on taking appellant to Azkcon. Pablo refused, arguing that the case had already been filed in court.[24] On another occasion, Col. Hernandez and his lady friend dropped by his house and convinced him and his son to talk to Mr. King, the owner of Azkcon. During their meeting, Mr. King allegedly told Pablo that he knew that appellant was innocent but asked him to testify against the persons responsible for the crime. Pablo replied that they would think about the proposal.[25] Mr. King's lawyer, Atty. Capistrano, also gave him the same advice. Atty. Capistrano requested them to go to his office where appellant could execute a statement. Instead of going there, Pablo and the appellant proceeded to the office of appellant's lawyer.[26]

Allegedly, appellant was maltreated while in the custody of the police. Pablo claimed that he reported the physical abuse to the NBI.[27]

Prosecution's rebuttal witness ATTY. FLORIMUND C. ROUS, free legal aid counsel of IBP, testified that on May 22, 1992, appellant was brought to their office for the execution of his extra-judicial confession. As a matter of procedure, he first examined the body of appellant to determine any sign of physical abuse or maltreatment while the latter was in police custody. Finding none, he inquired from appellant whether he was willing to confess to the commission of the theft. Beforehand, he already informed appellant of the consequence of his confession, i.e., that it could be used against him. Nonetheless, appellant affirmed his willingness to execute a written confession. Thus, the policeman proceeded to take the statement of appellant. Appellant signed his extrajudicial confession[28] in his (Atty. Rous') presence.

Rebuttal witness ATTY. MELANIO CAPISTRANO testified that he was Azkcon's legal counsel. He confirmed that a conference was held at Azkcon premises in connection with the theft. Present were appellant, Pablo Bago,

Mr. King and a former employee of Azkcon. Due to the complexity of the modus operandi, Mr. King suspected that appellant had other companions in committing the theft. Mr. King then informed him that appellant had agreed to turn state witness. Appellant confessed that his supervisor William Hilo, a certain Severino Encarnacion and his co-accused Ongseco and Caparas took part in the heist. Allegedly, Encarnacion was the brains behind the theft; Hilo took care of the operations on the Azkcon side, while Ongseco and Caparas took care of the procurement of the stolen goods. Atty. Capistrano expressed reservations about the involvement of Hilo as he was the one who reported the theft to the management. After the conference, he advised appellant to consult his own lawyer and execute a statement so he could determine if they would use appellant as a state witness. Prior to his arraignment, appellant was told that he should decide whether he wanted to be a state witness. In their next scheduled meeting, appellant and his lawyer, Atty. Jambora, failed to appear.[29]

On sur-rebuttal, Pablo Bago insisted that on July 1992, Col. Hernandez went to Peñaranda, Nueva Ecija and took pictures of his house. Col. Hernandez invited him and appellant to go to Azkcon. They refused as appellant had already posted bail at that time. Atty. Capistrano, on the other hand, insisted that appellant should name the other employees involved in the theft so that they could be dismissed from the company.[30]

On April 26, 1995, the Regional Trial Court of Quezon City[31] convicted appellant of qualified theft. Accused Caparas and Ongseco were acquitted for insufficiency of evidence. The dispositive portion of the decision[32] reads:

"WHEREFORE, in view of all the foregoing, the Court finds accused REYNALDO BAGO y MADRID guilty beyond reasonable doubt as principal of the crime of Qualified Theft as defined and penalized under Article 308, in relation to Article 309, paragraph 1 and Article 310 of the Revised Penal Code, and hereby sentences said accused to an indeterminate penalty of imprisonment ranging from Twenty (20) years and One (1) day of Reclusion Perpetua as minimum to Twenty-Eight (28) years, Ten (10) months and One (1) day of Reclusion Perpetua as maximum, with the accessory penalties of the law and to indemnify the complainant in the sum of P194,865.00, representing the value of the stolen cold rolled sheets, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"Accused ARMANDO CAPARAS Y CUENCO and RODOLFO ONGSECO Y VEGO are hereby ACQUITTED for insufficiency of evidence.

"SO ORDERED."

Appellant moved for reconsideration of the trial court's decision. The motion was denied for lack of merit,[33] although the dispositive portion of the trial court's decision was amended, thus:

"WHEREFORE, in view of all the foregoing reasons, the Motion for Reconsideration is hereby DENIED for lack of merit.

"Pursuant to People vs. Conrado Lucas (240 SCRA 66), [the] dispositive portion of the decision is hereby modified but only insofar as accused Reynaldo Bago is concerned to read as follows:

"WHEREFORE, in view of all the foregoing, the Court finds accused Reynaldo Bago y Madrid GUILTY beyond reasonable doubt as principal in the crime of Qualified Theft as defined and penalized under Article 309, paragraph 1 and Article 310 of the Revised Penal Code, and hereby sentences said accused to the penalty of reclusion perpetua, with the accessory penalties of the law, and to indemnify the complainant in the sum of P194,865.00, representing the value of the stolen cold rolled sheets, without subsidiary imprisonment in case of insolvency, with costs.

"SO ORDERED."

The Appellant's Brief raises two issues, to wit:

I.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF QUALIFIED THEFT BASED ON CIRCUMSTANTIAL EVIDENCE PRESENTED BY THE PROSECUTION.

II.

THE TRIAL COURT ERRED IN CONCLUDING THAT THE PROSECUTION HAS PROVEN THE GUILT OF THE ACCUSED, REYNALDO BAGO, BEYOND REASONABLE DOUBT.

We affirm with modification.

Appellant contends that the prosecution failed to prove even by circumstantial evidence that he asported the cold rolled sheets in question. He asserts that these materials were delivered to Azkcon as evidenced by the receipt[34] duly stamped by the guard on duty. He states:

"x x x [T]he best evidence that the materials were actually delivered at Azkcon Metal Industries is the receipt duly stamped by the guard on duty. Res ipsa loquitur. To receive the testimony of the security guard, that he stamped the receipt even without the goods because he trusted the accused, would set a precedent that will eventually convict an innocent person. After duly stamping the receipt, it is very easy for the security guard to claim otherwise to avoid liability." [35]

Appellant also contends that his task was to oversee the delivery of the materials from their supplier to Azkcon. Allegedly, it was erroneous to conclude that he stole the materials just because they could not be found in its premises as he was not responsible for any material lost therein.

Lastly, appellant belittles the documents showing that the truck he used in taking out the materials from Power Construction on March 23, 1992 did not belong to Azkcon. He claims that said documents had no bearing on his culpability.

We reject these contentions.

First. Appellant, in effect, assails the testimony of Ruben Manangan, the security guard who stamped the receipt marked as Exhibit "C", on the ground that the receipt itself shows that the materials were delivered to Azkcon. Appellant argues that the receipt is the best evidence and should be given more credence than Manangan's testimony. Appellant's argument is bereft of merit for Manangan's testimony is corroborated by another witness, William Hilo, Material Comptroller of Azkcon who kept track of all materials coming in and going out of Azkcon's plant. He testified that on April 21, 1992, he received three (3) receipts but only two (2) materials were delivered to Azkcon's premises. The receipt marked as Exhibit "C" covered the missing materials. Manangan's testimony is further corroborated by two (2) pieces of documentary evidence: first, by Power Construction Supply Co. Gatepass Invoice No. 51111 dated March 22, 1992[36] which shows that the materials covered by Exhibit "C" were taken out by appellant from the premises of Power Construction Supply on March 23, 1992, about a month before the receipt was stamped; and second, by a document from Power Construction Supply dated March 23, 1992 containing information about the truck used in pulling out the materials from Power Construction Supply on said date. The truck bore license plate no. PRC-513 and was not owned by Azkcon. The truck belonged to a certain Ruel Fernando who had no contractual relation with Azkcon and said vehicle was not to be used to take out materials from Power Construction Supply. In view of these corroborations, we hold that the trial court did not err in giving credence to Manangan's testimony despite the receipt.

Appellant can not rely on the best evidence rule which states:

"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, except in the following

cases:

- (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; a
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office."[37]

The rule cannot be invoked unless the content of a writing is the subject of judicial inquiry, in which case, the best evidence is the original writing itself. The rule pertains to the admissibility of secondary evidence to prove the contents of a document. In the case at bar, no secondary evidence is offered to prove the content of a document. What is being questioned by appellant is the weight given by the trial court to the testimony of Manangan over the receipt which on its face shows that the materials in question were delivered to Azkcon's premises. Clearly, the best evidence rule finds no application on this issue.

Second. It is well settled that before conviction can be based on circumstantial evidence, the circumstances proved should constitute an unbroken chain of events which leads to one fair and reasonable conclusion pointing to the defendant, to the exclusion of others, as the author of the crime.[38] Thus, the following requisites must be met: 1) there must be more than one circumstance; 2) the facts from which the inferences are derived are proven; 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[39]

In the case at bar, the trial court convicted the appellant based on this chain of events: Courtä

"1. Azkcon Metal Industries is engaged in metal business and for this purpose contracted a business arrangement with Power Construction Supply whereby Azkcon purchases the cold rolled sheets from the latter and the cold rolled sheets are cut by Power Construction Supply;

"2. Accused Bago is a trusted employee of Azkcon and detailed with Power Construction Supply Company in charge of the Cutting Department; and that as such he was authorized by Mr. William Hilo, Controller Manager of Azkcon, to pull out from the Power Construction Supply the cut materials and to deliver the same to Azkcon;

"3. On April 21, 1992, accused Bago, together with his co-employees, Danilo Baylosis and Candido Querobin entered the Azkcon premises with deliveries of two cold rolled sheets loaded in the truck. Security Guard Manangan inspected the materials in the truck and after confirming that the materials were loaded in the truck, he stamped the receipts upon request of accused Bago. Thereafter, accused Bago brought out another receipt and requested Security Guard Manangan to likewise stamp the same. Security Guard Manangan checked the goods covered by the third receipt and found there were no cold rolled sheets for the third receipt. The third receipt carried a different date. Security Guard Manangan asked accused Bago as to the whereabouts of the materials covered by the third receipt and the latter replied that they had long been delivered. Nevertheless, Security Guard Manangan stamped this last receipt because he trusted that accused would not do anything bad;

"4. On April 21, 1992, William Hilo, the material controller of Azkcon, discovered that there were three (3) receipts which came in, but only two materials were delivered inside the company compound. The materials covered by the two (2) receipts were delivered but the materials covered by the third receipt were not. Hilo conducted an inventory and asked accused Bago the whereabouts of the materials in question. Accused Bago insisted that the materials had long been delivered. Hilo proceeded with his investigation and was able to

secure from the Power Construction Supply Company Gatepass Invoice No. 51111 dated March 22, 1992 (Exh. "D") which shows that the materials covered by the third receipt were taken out by accused Bago from the premises of Power Construction Supply on March 23, 1992;

"5. Hilo was able to secure from Power Construction Supply a document dated March 23, 1992 (Exh. "E") which contained information on the truck used in pulling out the materials from Power Construction Supply on March 22, 1992 (sic). The truck bears Plate No. PRC-513 and is not owned by Azkcon. As per copy of the certificate of registration secured from the Land Transportation Office, the truck is owned by a certain Ruel Fernando who has no contractual relations with Azkcon. Said vehicle is likewise not authorized to pull out materials from the Power Construction Supply."

The trial court concluded that the foregoing circumstances lead to a reasonable conclusion that appellant asported the materials covered by Exhibit "C".

We agree.

Appellant cannot rely on the fact that the third receipt was duly stamped by security guard Ruben Manangan on April 21, 1992. Manangan explained well why he stamped the receipt. He said:[40]

"Q: On April 21, 1992, did you report for work as security guard at AZKCON Metal Industries?

A: Yes, sir.

Q: And was there any unusual incident that transpired on that day, if you recall?

A: There was a truck which was carrying two (2) cold rolled sheets.

x x x x x x x x

Q: By the way, who were with (sic) the truck which carried the (2) cold rolled sheets which you mentioned?

A: Bago sir.

x x x x x x x x

Q:

Now, when this truck came [in], with Reynaldo Bago with Bailosis and Querubin, carrying deliveries of two (2) cold rolled sheets, what happened after that, if anything happened?

A: After I inspected the two (2) cold rolled sheets, I stamped the receipts for them.

Q: Before you stamped the receipts for these two (2) cold rolled sheets, did you make sure that the goods were there?

A: Yes sir.

Q: What happened after that?

A: After I stamped the two (2) receipts, he brought out another receipt which they asked me to stamp also.

Q:

By the way, who asked you to stamp the two (2) receipts covering the two (2) cold rolled sheets loaded in the truck?

A: Bago sir.

x x x x x x x x

COURT

x x x x x x x x

Q: And who was the one who brought out this other receipt for stamping?

A: Bago sir.

Q: And what did he tell you, if he told you anything about this receipt?

A: He said "please put a stamp on this receipt".

Q: Did you?

A: Yes, because I trusted him.

Q: And did you also check whether the goods covered by this 3rd receipt was (sic) in the truck unloaded?

A: Sir there was no cold rolled sheet for that receipt.

Q: And why did you stamp this receipt for cold rolled sheets for that receipt? (sic)

A: Because I trusted him that he would not do anything bad.

x x x x x x x x

Q:

Now, in spite of the fact that your personal knowledge of the person Reynaldo Bago was in the course of your performance of your duty, including Reynaldo Bago (sic), you would like to impress upon us that in spite of that you trusted him?

ATTY. CAPISTRANO:

Argumentative, your Honor.

COURT:

Witness may answer.

A: Yes sir.

Q:

In spite of the fact that the 3rd receipt according to you, when you inspected it, there was no cold rolled sheets covering "Exhibit "C"?"

A: No material sir.

Q:

In spite of the fact that you did not find any Cold Rolled Sheets material you still honored the receipt by affixing you signature after you stamped it, correct?

A: Yes sir, but when I saw the receipt it had a different date.

Q:

xxx [D]id you ask Reynaldo Bago "why is it a different date" and "why are there no Cold Rolled Sheets is (sic) the 3rd receipt"?

A: I asked him "where these materials are" and he told me that it has (sic) long been delivered.

Q:

Now did you ask him where it was (sic) delivered and what place of AZKCON did he deposit these Cold Rolled Sheets which are (sic) covered by this 3rd receipt?

A: No, sir.

Q: Now with regards (sic) to your duty as security guard, did you call the attention of the management about this 3rd receipt with no Cold Rolled Sheets and you stamped the receipt knowing that there was (sic) no materials inside. Did you ask the management, the president, the manager, the foreman or whoever it is (sic) on duty at the time?

A: I reported it to our chief Aflor Ong.

Q: Who is this Aflor Ong?

A: Chief. "[41]

The fact of non-delivery of the subject materials to Azkcon was established through the testimony of two other witnesses, namely, William Hilo and the Chief Security Officer Aflor Ong. Hilo declared:[42]

"ATTY. CAPISTRANO

Q: On April 21 (1992), would you please tell us what happened on that date?

A:

On April 21, the materials arrived and the guard checked it (sic) and I checked it (sic) also. We found out that there were three (3) receipts but there were only two (2) materials inside the company.

Q: How did you come to know this, Mr. Witness?

A: It was reported by the OIC of the Security Guard, sir.

Q: You spoke of three (3) receipts, did you come to see these receipts?

A: Yes, sir.

Q: If I will show you them again (sic), will you be able to identify the same?

A: Yes, sir.

Q:

I am showing to you these receipts which was (sic) previously marked as Exhibits "A", "B" and "C", are these the three (3) receipts which you mentioned a while ago?

A: Yes, sir.

Q:

Would you kindly take a look at these receipts and tell the Honorable Court, which particular receipt is controversial in the sense that the goods described therein did not enter your company premises?

ATTY. HAMBON: (sic)

I will object to that, Your Honor, incompetent.

COURT:

The witness may answer.

(The witness is examining the document)

INTERPRETER:

Witness is pointing to Exhibits "A" and "B", as the one with the materials arrived (sic) and pointed to Exhibit "C" as the controversial receipt.

ATTY. CAPISTRANO:

x x x x x x x x

Q: For how long have you known Reynaldo Bago?

A: Since (sic) two (2) years, sir.

Q: What is the specific function of Reynaldo Bago in your company?

A: Reynaldo Bago is in charge of Cutting Department.

Q: As a Material Controller, do you have any supervision of (sic) Reynaldo Bago?

A: Yes, sir.

Q:

By the way, at the bottom portion of Exhibits "A", "B" and "C", there appears a signature, can you go over this (sic) and tell the Honorable Court, whose signatures stated (sic) therein?

A: This is a signature of Reynaldo Bago.

INTERPRETER:

Witness is pointing to a signature on Exhibit "A".

ATTY. CAPISTRANO:

Which I request, Your Honor, to be marked as Exhibit "A-2".

COURT:

Mark it.

ATTY. CAPISTRANO:

Q: How about in Exhibit "B"?

A: The same it was the signature of Reynaldo Bago.

ATTY. CAPISTRANO:

At this juncture, Your Honor, may I request that this portion be marked as Exhibit "B-2".

Q: How about Exhibit "C"?

A: The same Mr. Reynaldo Bago's signature.

ATTY. CAPISTRANO:

May I request, Your Honor, that the pointed portion of Exhibit "C", be marked in evidence as Exhibit "C-2".

Q: Why do you know that these are the signature (sic) of Reynaldo Bago?

A: Because I am in charge of Reynaldo Bago, and I know his signature.

Q: If Reynaldo Bago is in Court, can you point to him?

INTERPRETER:

Witness is pointing to a person who identified himself as Reynaldo Madrid Bago.

ATTY. CAPISTRANO:

Q:

You said that this matter was reported to you by the OIC of the Security Guard, (sic) when this matter was reported to you, what step or steps did you take, if any?

A:

I conducted an actual inventory and confronted Reynaldo Bago and asked him where are (sic) the materials which is (sic) in question.

Q: You said that your (sic) conducted an actual inventory what was your findings in your inventory?

A: According to my findings the materials did not reach the company.

ATTY. HAMBON: (sic)

Your Honor, may I request that [that] portion be stricken-off the record.

COURT:

The witness may answer, place that on record.

ATTY. CAPISTRANO:

When you said that according to your findings that (sic) the materials did not arrive, to what particular receipt are (sic) you referring to?

This one, sir.

INTERPRETER:

Witness is pointing to Exhibit "C".

Q: You said that you confronted Reynaldo Bago, what transpired during your confrontation?

A: He told me that the material arrived long before but when I checked it out, I found out that it didn't arrived" (sic).

Prosecution witness Aflor Ong testified as follows: [43]

"Q:

And would you kindly inform this Honorable Court whether there is any unusual incident that transpired on

April 21, 1992 as you were then performing your duty as chief security guard.

A: About the receipts of materials delivered, Sir.

Q: Would you kindly elaborate on that?

A: There were 3 receipts but only two (2) items were delivered.

Q: And how did you come to know this?

A: It was reported to me by the security guard on duty.

Q: And who was this security guard who reported the matter to you?

A: Security guard Ruben Manangan, Sir.

Q: And when this matter was reported to you, what did you do, if you did anything?

A: I checked it also and after I checked, I reported it to William Hilo.

Q: What precisely did you check?

A: The items.

Q: Did you find these items for the 3rd receipt?

A: None, Sir.

x x x x x x x x

Q: Now according to you, on April 21, 1992 you were at AZKCON Metal Industries?

A: Yes Sir.

Q: And your attention was invited on the first two receipts, containing the Cold Rolled Materials?

ATTY. CAPISTRANO:

Misleading your Honor.

COURT:

Three (3) Receipts.

Q: Your attention was invited by 3 receipts.

A: After the guard reported it to me, Sir.

Q: Who was this guard who reports (sic) to you?

ATTY. CAPISTRANO:

Already answered your Honor.

COURT:

Witness may answer.

A: Ruben Manangan.

Q: What time did he make the report?

A: Four to Five in the afternoon Sir.

Q: And what was the report all about?

A: About two (2) cold rolled sheets, Sir.

Q: What is it?

A: Only two (2) cold rolled sheets were delivered, one is (sic) missing.

Q:

And, of course, the security guard showed to you the 3rd receipt which did not cover the materials in the cargo truck?

ATTY. CAPISTRANO:

Misleading again, your Honor.

COURT:

Witness may answer.

A: Witness may answer (sic).

Q: You are, of course, referring to Exhibit "C"?

A: Yes, Sir.

Q: At the time the report was shown to you, did you inspect the truck?

A: Yes, Sir.

Q: And you did not find actually the materials?

A: I did not find the material covering this Exhibit "C".

Q: Covering the 3rd receipt?

A: Yes, Sir.

Q: After you inspected, what action did you take, because it was reported to you by the security guard?

A: I reported it to Mr. William Hilo, the one in-charge of the materials."[44]

The trial court correctly found that appellant was a trusted employee of Azkcon. He was in-charge of overseeing the cutting of the materials at Power Construction and ensuring their delivery to Azkcon. Due to this trust, he succeeded in withdrawing from the said supplier the cold rolled sheets covered by Exhibits "A" and "B" dated April 21, 1992 and Exhibit "C" (Invoice No. 51111), dated March 23, 1992. Appellant signed these receipts to signify that he obtained the materials from the supplier. However, only the materials covered by Exhibits "A" and "B" were delivered to Azkcon on April 21, 1992. Those covered by Exhibit "C" were not delivered. Significantly, the materials procured on April 21, 1992 were delivered that same day, as shown by the stamp marks on Exhibits "A" and "B". In contrast, the materials he took from the supplier on March 23, 1992 could not be found in the premises of Azkcon and there was no evidence that he delivered them on said date or on any other day thereafter. Inexplicably, appellant presented the third receipt (Invoice No. 51111) dated March 23, 1992 for stamping only on April 21, 1992. The reasonable conclusion is that he asported the materials covered by Exhibit "C".

Clearly, all the elements of theft were established, to wit: (1) there was a taking of personal property; (2) the

property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was accomplished without violence or intimidation against the person or force upon things.[45] As the theft was committed with grave abuse of confidence, appellant is guilty of qualified theft.

Third. We now come to the correctness of the penalty imposed on appellant.

The trial court sentenced the appellant to suffer the penalty of reclusion perpetua. In its Comment, the Office of the Solicitor General opined that the penalty was erroneous. It noted that:

"The present case falls under Article 308, in relation to Article 309, paragraph one (1) and Article 310 of the Revised Penal Code, for the purpose of determining the penalty to be imposed on appellant. x x x.

"Since the lower court found that the value of the thing stolen was P194,865.00, the penalty prescribed in this case, had it been a case of simple theft, is imprisonment of 20 years corresponding to reclusion temporal. Since the offense was committed with grave abuse of confidence, then the prescribed penalty for qualified theft proven in this case is death, which is the penalty next higher by two degrees than the given penalty for simple theft above mentioned. In which event, this case is subject further to the rules provided in Article 74, in relation to Article 40 of the Revised Penal Code. They provide:

'ART. 74. Penalty higher than reclusion perpetua in certain cases – In cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, if such higher penalty should be that of death, the same penalty and the accessory penalties of article 40, shall be considered as the next higher penalty.

x x x x x x x x

'ART. 40. Death – Its accessory penalties – The death penalty, when it is not executed by reason of commutation or pardon, shall carry with it that of perpetual absolute disqualification and that of civil interdiction during the thirty years following the date of the sentence, unless such accessory penalties have been expressly remitted in the pardon.'

Consequently, the penalty actually prescribed in this case for the crime of qualified theft is twenty (20) years of reclusion temporal, together with the accessory penalties of perpetual absolute disqualification and that of civil interdiction during thirty (30) years following the date of the sentence.

"Since this case is subject to the Indeterminate Sentence Law, the determination of the maximum and minimum ranges of the sentence is governed by rules contained in the analogous case of *People v. Pabalan*, to wit:

'Applying the mandate of the Indeterminate Sentence Law, the maximum penalty shall therefore be taken from the maximum period of said basic penalty in Article 315 as augmented by the additional years of imprisonment, while the minimum term of the indeterminate sentence shall be within the range of the penalty next lower in degree to that provided by law, without considering the incremental penalty for the amounts in excess of P22,000.00. xxx'

Based on the foregoing considerations, the penalty imposed on appellant should fall within the minimum range of prision correccional in its medium and maximum periods, with a duration of two (2) years, four (4) months and (1) day to six (6) years, and twenty (20) years of reclusion temporal with the accessory penalties of death, as maximum. It is respectfully recommended that appellant be sentenced to the penalty of six (6) years of prision correccional as minimum, to twenty (20) years of reclusion temporal with the accessory penalties of death as maximum."

We disagree.

Article 309 of the Revised Penal Code provides the penalty for simple theft. It reads:

"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 exceed 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."

The value of the property stolen by appellant was P194,448.00. Under Article 309, the basic penalty is prision mayor in its minimum and medium periods to be imposed in the maximum period since the value of the stolen goods exceeded P22,000.00. To determine the additional years of imprisonment prescribed in Article 309 (1), we have to deduct the amount of P22,000.00, thus leaving the amount of P172,448.00. Next, the net amount should be divided by P10,000.00, disregarding any amount below P10,000.00. Thus, seventeen (17) years must be added to the basic penalty of the maximum period of prision mayor minimum and medium periods.[46] The penalty of prision mayor in its minimum and medium periods has a range of six years (6) and one (1) day to ten (10) years. Its maximum period is eight (8) years, eight (8) months and one (1) day to ten (10) years, and the incremental penalty is seventeen (17) years. Had appellant committed simple theft, the penalty should have been twenty years of reclusion temporal, the maximum penalty allowable under Article 309, subject to the Indeterminate Sentence Law.

Considering that the theft is qualified by grave abuse of confidence, the penalty is two degrees higher than that specified under Article 309.[47] In the case of *People vs. Cañales*,[48] we were confronted with the same issue of determining how the penalty under Article 309 should be increased by two degrees. In said case, we adopted the disquisition of the appellate court, thus:

"x x x. Under Article 25 of the Revised Penal Code, two degrees higher than reclusion temporal is death. This is likewise conformable with Article 74 of the Revised Penal Code, which provides that:

‘ART. 74. Penalty higher than reclusion perpetua in certain cases.—In cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, if such higher penalty should be that of death, the same penalty and the accessory penalties of Article 40, shall be considered as the next higher penalty.’ x x x.

"The provision however, proscribes the imposition of the death penalty resulting from the graduation of the penalty. It bears stressing that Article 74 of the Revised Penal Code was based on Article 93 of the old Penal Code which provided that if the penalty is reclusion perpetua, the next higher penalty would be the same penalty but the convict in such cases cannot be pardoned until forty years had elapsed (Aquino, *Comments on the Revised Penal Code*, 1987 ed., Volume 1, page 709).

But there is a pervading divergence of opinion among commentators of the Revised Penal Code as to what the higher penalty referred to in Article 74 of the Revised Penal Code should be. Some authors are of the view that the higher penalty would be reclusion perpetua with the accessory penalties for the said penalty. But then, under Article 74 of the Revised Penal Code, the accessory penalties under Article 40 of the Revised Penal Code should be imposed. Still others, like former Senator Ambrosio Padilla, are of the view that the higher penalty is reclusion perpetua with the accessory penalties of death under Article 40 of the Revised Penal Code if the death penalty is commuted. But then, the accessory penalty under Article 40 of the Revised Penal Code is perpetual absolute disqualification and civil interdiction during thirty (30) years following the date of sentence, whereas, the accessory penalty of reclusion perpetua under Article 41 of the Revised Penal Code is civil interdiction for life and perpetual absolute disqualification. As aptly observed by former Chief Justice Ramon C. Aquino, there seems to be an absurdity under the latter view (Aquino, *Comments on the Revised Penal Code*, supra). On the other

hand, Justice Albert is of the firm view that:

‘The Code meant to say here that the judgment should provide that the convict should not be given the benefit of the provisions of Article 27 until forty years should have elapsed; otherwise, there could be no difference at all between reclusion perpetua when imposed as a penalty next higher in degree and when it is imposed as the penalty fixed by law. (Albert, Comments on the Revised Penal Code, 1932 edition, page 240).’

to which Justice Luis Reyes subscribes (Reyes, Comments on the Revised Penal Code, 1981 ed., Vol. 1, page 746). Former Chief Justice Ramon C. Aquino likewise is in accord with the opinion of Justice Albert.

‘x x x.

Justice Albert believes that the ‘penalty higher than reclusion perpetua’ is reclusion perpetua for forty years with the accessory penalties of death under Art. 40. Otherwise, as he said ‘there could be no difference at all between reclusion perpetua, when imposed as the penalty next higher in degree and when it is imposed as the penalty fixed by law.’ This opinion is supported by Art. 93 of the old Penal Code from which Art. 74 was taken. Art. 93 provides that if the given penalty is cadena perpetua or reclusion perpetua, the next higher penalty shall be these same penalties but the convict in such case cannot be pardoned ‘until forty years have elapsed. (Aquino, Comments on the Revised Penal Code, 1987 ed., Volume 1, pages 708-709).’

"We are likewise in accord with the opinion of Justice Albert as a logical explanation of Article 74 of the Revised Penal Code. Consequently, Cañales should be meted the penalty of Reclusion Perpetua for Forty Years with the accessory penalties of death under Article 40 of the Revised Penal Code. In fine, Cañales is not entitled to pardon before the lapse of the forty-year period (Reyes, Comments on the Revised Penal Code, 1977 ed., Volume 1, page 747)."

This reiterated our ruling in *People vs. Reyes*,^[49] where we held:

"In the crime of theft, if the value of the thing stolen exceeds P22,000.00, the penalty shall be prision mayor in its maximum period and one year for each additional P10,000.00, but the total penalty shall not exceed twenty years or reclusion temporal. However, if that crime of theft is attended by any of the qualifying circumstances which convert the taking into qualified theft, the penalty next higher by two degrees shall be imposed, that is, at least, reclusion perpetua."^[50]

In accord with the foregoing, we hold that appellant was correctly meted the penalty of reclusion perpetua, with the accessory penalties of death under Article 40 of the Revised Penal Code.

Fourth. As regards the grant of actual damages, the rule is that actual damages cannot be allowed unless supported by evidence in the record.^[51] William Hilo testified that the value of the missing cold rolled sheets was P192,000.00 and the incurred cutting cost was P2,448.00, for a total value of P194,448.00.^[52] Thus, the award for actual damages must be reduced by P417.00.

IN VIEW WHEREOF, the April 26, 1995 Decision of the Regional Trial Court of Quezon City (Branch 92), in Criminal Case No. Q-92-30833, as amended by the Order dated August 15, 1995, is **AFFIRMED** subject to the modification that the actual damages is reduced to P194,448.00.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Original Records, p. 1.

- [2] TSN, Reynaldo Bago, March 16, 1993, pp. 3-4; July 19, 1993, pp. 4 and 7.
- [3] TSN, William Hilo, August 24, 1992, pp. 18-19; TSN, Reynaldo Bago, March 16, 1993, pp. 5-8.
- [5] Danilo Baylosis and Candido Querobin.
- [5] TSN, Jun Gavarán, September 7, 1992, pp. 8-9.
- [6] Exhibits "A" and "B". TSN, Ruben De La Cruz, August 18, 1992, pp. 3-4.
- [7] Exhibit "C".
- [8] TSN, Ruben Manangan, August 18, 1992, pp. 3-8, 11-15; TSN, Aflor Ong, August 18, 1992, pp. 20-27.
- [9] TSN, William Hilo, August 24, 1992, pp. 3-10, 14-17.
- [10] TSN, Andres Balod, September 7, 1992, pp. 25-28.
- [11] TSN, Andres Balod, September 7, 1992, pp. 25-28.
- [12] *Id.*, pp. 48-49.
- [13] TSN, Alfredo Alfaro, August 10, 1992, pp. 4-6, 10-13.
- [14] TSN, Reynaldo Bago, March 16, 1993, pp. 5-8; July 19, 1993, pp. 36-37.
- [15]
- [16] TSN, Reynaldo Bago, July 19, 1993, pp. 14, 34-35.
- [17] TSN, Reynaldo Bago, March 16, 1993, pp. 9-13.
- [18] TSN, Reynaldo Bago, September 9, 1993, pp. 6-7.
- [19] Invoice Nos. 51429, 51428, 51111 (Customer's Copy) and 51111 (Gate Pass), Original Records, pp. 90-93.
- [20] TSN, Reynaldo Bago, March 16, 1993, pp. 13-19; September 9, 1993, p. 4.
- [21] Exhibit "K"; Original Records, pp. 101-102.
- [22] TSN, Reynaldo Bago, September 9, 1993, pp. 9-12.
- [23] TSN, Pablo Bago, September 13, 1993, pp. 5-7.
- [24] *Id.*, pp. 7-9.
- [25] TSN, Pablo Bago, September 13, 1993, pp. 10-14.
- [26] *Id.*, pp. 15, 20.
- [27] *Id.*, pp. 27-28.
- [28] Exhibit "K"; TSN, Atty. Florimund Rous, November 29, 1993, pp. 6-14.
- [29] TSN, Atty. Melanio Capistrano, April 25, 1994, pp. 7-18.
- [30] TSN, Pablo Bago, August 1, 1994, pp. 4-9.
- [31] Branch 92.
- [32] Rollo, pp. 39-62. Penned by Presiding Judge Juan Q. Enriquez.

[33] Order dated August 15, 1995, Original Records, pp. 291-294.

[34] Exhibit "C".

[35] Appellant's Brief, Rollo, pp. 140-141.

[36] Exhibit "D".

[37] Rules of Court, Rule 130, Sec. 3.

[38] People vs. Maqueda, 242 SCRA 565 (1995); People vs. Lorenzo, 240 SCRA 624 (1995).

[39] People vs. Cadevida, et al., 219 SCRA 218 (1993).

[40] TSN, Ruben Manangan, August 18, 1992, pp. 3-5, 13-14.

[41] Emphasis ours.

[42] TSN, William Hilo, August 24, 1992, pp. 4-8.

[43] TSN, Aflor Ong, August 18, 1992, pp. 20-25.

[44] Emphasis ours.

[45] Article 308, Revised Penal Code. "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. "

[46] Cf. People vs. Pabalan, 262 SCRA 574, 591 (1996).

[47] Article 310, Revised Penal Code provides: "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 ... with grave abuse of confidence ..."

[48] 297 SCRA 667, 676-678 (1998).

[49] People vs. Reyes, 212 SCRA 402, 411-412 (1992).

[50] Emphasis ours.

[51] People vs. Nialda, 289 SCRA 521 (1998).

[52] TSN, William Hilo, August 24, 1992, p. 17.

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