

MANUEL HUANG CHUA, AND NELSON (NESTOR) DAGANON GO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 128095. January 19, 2001

Ponente: PARDO, J.

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PARDO, J.:

The Case

The case is an appeal via certiorari from the decision of the Court of Appeals[1] modifying that of the Regional Trial Court, Branch 172, Valenzuela, Metro Manila,[2] which acquitted Paquito Lu Andaliza but affirmed the conviction of petitioner Manuel Huang Chua and sentenced them to an indeterminate imprisonment of ten (10) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum, for two (2) counts of attempted qualified theft, and affirmed the conviction of petitioner Nelson (Nestor) Daganon Go and sentenced him to an indeterminate imprisonment of six (6) years of prision correccional, as minimum, to fifteen (15) years, four (4) months and one (1) day of reclusion temporal, as maximum, for three (3) counts of attempted theft.

The Facts

Accused Paquito Andalaza and petitioner Manuel Huang Chua (hereafter "Paquito" and "Manuel") were employees of Clothman Knitting Corporation (hereafter "Clothman"). Paquito was a collector and caretaker of Clothman for about eight (8) months before he was dismissed. Manuel was over-all checker and caretaker of Clothman for almost a year before he was discharged. Petitioner Nelson (Nestor) Go Daganon (hereafter "Nestor") was a contractor/buyer of scrap materials from Clothman.[3]

We state the facts as appreciated by the trial court and the Court of Appeals:[4]

On October 16, 1989, at around 10:30 a.m., prosecution witness Nixon Uy Lee, Division Manager of Clothman (hereafter "Mr. Lee") was in his office when the company security guard, a certain Macaraeg Policarpio reported that a truck owned by Nestor was about to leave the compound. Apparently, the truck was only supposed to contain scrap materials such as plastic cones. However, upon inspection, the truck was loaded with finished materials, which were not authorized to be brought out by the truck.[5]

Mr. Lee discovered that the truck was loaded with finished fabric and cones of yarn valued at one hundred five thousand pesos (P105,000.00).[6] An inventory of the items found in the truck was prepared. An employee of Nestor drove the truck. He was also inside the truck.[7]

Mr. Lee asked Nestor why he was bringing finished products out of the compound. Nestor answered that Paquito and Manuel talked him into it and that they agreed that after the goods were sold, the three of them would share in the proceeds. When the truck was apprehended and while Mr. Lee was inspecting the same, Manuel and Paquito were supposedly in the compound, but not near the truck. When Mr. Lee confronted Manuel and Paquito, they disavowed any involvement in the incident.[8]

To legitimize the transport of the goods out of the compound, a gate pass was given to the guard. The gate pass was issued by Annabelle Go, Executive Secretary of Clothman. It was signed by Manuel, authorizing the release of the goods and by Nestor as bearer of the goods.

All of these happened in the morning to mid-afternoon as the taking of the inventory took two hours and the truck was allowed to leave the compound at two o'clock p.m. It was only between the hours of nine to nine-thirty p.m. when the matter was reported to the police.[9] To explain the delay in reporting the incident, the prosecution stated that Mr. Lee and Nestor both had previous engagements they had to attend to in the afternoon.[10]

Prosecution witness Maria Susan Chua, Officer In-Charge of Personnel (hereafter "Ms. Chua") testified that during the early morning of October 16, 1989, security guard Macaraeg Policarpio reported to her that the day before, which was a Sunday, he saw Manuel and Paquito in the company's yarn warehouse putting fabrics inside sacks. On account of the report, she instructed the security guard to closely supervise Manuel and Paquito as it was not their job to put fabrics inside sacks. According to Ms. Chua, she was with security guard Policarpio Macaraeg when they reported the matter of the intercepted truck to Mr. Lee. Ms. Chua also helped prepare the inventory of the truck's contents on October 16, 1989.[11]

Patrolman Arnold Alabastro testified that Paquito, Manuel and Nestor admitted to him their involvement in the crime. However, even the prosecution admits that such "admissions" were made before they were apprised of their constitutional rights.[12]

On October 17, 1989, Assistant Provincial Prosecutor Miguel C. Reyes of Bulacan filed an information with the Regional Trial Court, Valenzuela, Metro Manila, for attempted qualified theft against Paquito and petitioners Manuel and Nestor. We quote:

"That on or about the 16th day of October, 1989, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then employed as overseers/employees and contractor, respectively of Clothman Knitting, and as such have access to its goods and merchandise, conspiring, confederating together and helping each other, did then and there willfully, unlawfully and feloniously, with intent of gain and grave abuse of confidence and without the knowledge and consent of the owner thereof, commence the commission of the crime of qualified theft directly by overt acts, that is by taking away and removing eight (8) bundles in sack of clothing materials/finished products and rolls of thread amounting to P105,000.00 from the bodega of the Clothman Knitting and stealthily loaded the same in the truck, and if the said accused did not accomplish their unlawful purpose, that is, to steal, take and carry away the said eight (8) bundles in sacks of clothing material/finished product and rolls of thread, it was not because of their own voluntary desistance, but because of the timely discovery of the said attempt by the security guard of the company.

Contrary to law." [13]

On November 20, 1989, upon arraignment, Paquito, Manuel and Nestor all pleaded "not guilty" to the offense charged.[14] Trial ensued.

The Decision of the Regional Trial Court

On July 17, 1991, the trial court rendered a decision finding accused Paquito, Manuel and Nestor guilty, in this wise:

"WHEREFORE, in view of the foregoing, the Court finds Manuel Huang Chua and Paquito Lu Andaliza guilty beyond reasonable doubt of the crime of Attempted Qualified Theft and hereby sentences them to suffer the indeterminate penalty of imprisonment of TEN (10) YEARS as minimum to TWENTY (20) YEARS as maximum (2 counts each), with all the accessory penalties provided by law, and to pay the costs. The Court

finds Nestor Go guilty beyond reasonable doubt of Attempted Theft and hereby sentences him to suffer the indeterminate penalty of imprisonment of SIX (6) YEARS as minimum to FIFTEEN (15) YEARS FOUR (4) MONTHS and ONE (1) DAY as maximum (three (3) counts) with all the accessory penalties provided by law and to pay the costs. Due to the recovery of the materials, no civil indemnity is awarded.

SO ORDERED." [15]

In finding Paquito, Nestor and Manuel guilty, the trial court was persuaded by the following: (1) Mr. Lee's written statement given to the police. The trial court reasoned that since the statement was given on the evening of the same day that the incident occurred, there was no time to fabricate a story. Furthermore, since it was given during an unholy hour of the night, at eleven thirty in the evening, it stands to reason that Mr. Lee was truly aggrieved; (2) The inventory prepared by Mr. Lee and Ms. Chua which the court considered as corroborative; and (3) The pictures of the items supposedly unloaded from the intercepted truck were likewise considered; and (4) Pat. Alabastro's testimony that Nelson admitted to him Manuel's participation in the crime was persuasive of the fact of the guilt of the accused.[16]

In due time, Manuel and Nestor appealed to the Court of Appeals.[17]

The Decision of the Court of Appeals

Rejecting the appeal of petitioners Manuel and Nestor, the Court of Appeals held that the testimonies of the prosecution witnesses positively identifying Nestor on board the truck loaded with finished fabrics were enough to uphold his conviction. The Court of Appeals applied the oft-quoted rule that positive testimony prevails over a defense of alibi.[18]

Affirming Manuel's conviction, the Court of Appeals relied on the gate pass issued by Annabelle Go. The Court of Appeals reasoned that it was part of Manuel's job as a trusted employee to check and inspect outgoing vehicles, and that notwithstanding the fact that Manuel "must have known that there were indeed fabrics mixed with scrap items" inside the truck, he still requested Annabelle Go to issue a gate pass to clear its exit. To the Court of Appeals, such evinced Manuel's "common agreement" with Nestor to commit the thwarted theft.[19]

Acquitting Paquito, the Court of Appeals declared that there was "no evidence linking (him) to the crime charged." [20]

On August 7, 1996, the Court of Appeals promulgated its decision, thus:

"WHEREFORE, the judgment appealed from is MODIFIED in that appellant Paquito Lu Andaliza is ACQUITTED of the offense charged. The rest of said judgment is AFFIRMED. Costs against appellants Manuel Huang Chua and Nelson (Nestor) Daganon Go.

"SO ORDERED." [21]

On August 29, 1996, petitioners filed with the Court of Appeals a motion for reconsideration of the above quoted decision [22] with the Court of Appeals. [23]

On February 12, 1997, the Court of Appeals denied petitioners' motion for reconsideration for lack of merit. [24]

Hence, this appeal. [25]

The Court's Ruling

The question is one of law -- whether the prosecution met the quantum of proof necessary to establish the petitioners' guilt beyond reasonable doubt. We rule in the negative. Hence, we resolve to acquit petitioners of the charges against them.

In this jurisdiction, the main consideration is not whether the Court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. To justify a conviction, there must be moral certainty of guilt.[26] In this case, such moral certainty was not established for reasons we shall discuss in seriatim.

First, the written statement that Mr. Lee gave to the police on October 16, 1989, with respect to Manuel and Paquito's participation in the crime and the testimony of Ms. Chua[27] were hearsay and had no probative value. Mr. Lee and Ms. Chua merely narrated what the security guard Macaraeg Policarpio reported to them. A witness is competent to testify only to those facts which he knows of his personal knowledge; that is, which is derived from his own perception.[28] There is no showing that the matters stated in Mr. Lee's statement and Ms. Chua's testimony fall under any of the exceptions[29] under the hearsay rule.

Second, the non-presentation of the security guard Macaraeg Policarpio adds to the weakness of the prosecution's case. While it is true that non-presentation of a witness is not a plausible defense, and that the defense could have presented the security guard themselves if they believed the security guard's testimony would strengthen their case, still we are inclined to take this omission against the prosecution in view of its numerous other lapses. This is in line with the rule that even if the defense is weak, the case against the accused must fail if the prosecution is weaker, for the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution.[30]

Third, we cannot consider the admission or extra-judicial confession of Nestor to Pat. Alabastro. Such was given without the assistance of counsel and is inadmissible in evidence.[31] No less than the Constitution provides that "any person under investigation for the commission of an offense shall have the right to have competent and independent counsel preferably of his own choice." Any confession or admission obtained in violation of this right shall be inadmissible in evidence.[32]

Fourth, acquittal is also necessary given that the presence of the truck, which held the goods attempted to be stolen, in the compound in the morning of October 16, 1989, was not established. Only the bare allegations of Mr. Lee and Ms. Chua were presented to prove the existence of the truck. Allegations are not proof. There must be corroborative evidence. While pictures were supposedly taken of the stolen goods, there was not a single picture taken of the truck. We find this omission suspect given that the management of Clothman was equipped with a camera at the time they were conducting the inventory.

Fifth, we find absurd and contrary to common sense the behavior of Clothman's management in allowing the truck to leave the premises, allowing Nestor to attend his "previous engagement" as if nothing happened and as if Nestor did not commit the attempted theft involving goods worth a hundred thousand pesos. Prudent behavior would have prompted the management of Clothman to have Nestor immediately arrested and the truck impounded or at the very least, photographed along with the subject goods. The acts of Clothman's management and their testimonies invite incredulity. No better test has been found to measure the value of a witness' testimony than its conformity to the knowledge and common experience of mankind.[33]

Sixth, the gate pass supposedly issued to Nestor on the 16th of October likewise does not establish the presence of the truck or Manuel's participation in the crime. The gate pass was tampered. Originally, it was dated "October 15", but it was altered to show that it was issued not on the 15th, but on the 16th. While the prosecution tried to explain the alteration by stating that it was an innocent mistake on the part of Annabelle Go,[34] we cannot ignore the fact that Nestor categorically stated that the gate pass was actually issued to him on the 15[th], not on the 16th of October.[35] We have held consistently that when a circumstance is capable of two interpretations, one consistent with accused's guilt, and one with his innocence, the latter must prevail.[36]

Seventh, we also note that the inventory relied upon by the trial court and the Court of Appeals is useless and does

not attest to petitioners' supposed guilt. The inventory contains a list of items, nothing more. We are not allowed to speculate on the purpose of the list, neither can we surmise as to stories behind the items listed in it. While the prosecution insists that the inventory is a list of items taken from the truck, the list itself is silent as to this fact. Neither did any one of the accused sign it to express conformity to the purpose it claims to serve. This is a fact recognized by the trial court.[37]

Lastly, neither do the pictures supposedly taken of the finished fabrics lend credence to the prosecution's case. Pictures cannot tell stories more than what is shown therein. There were pictures of finished fabrics, but whether or not they were goods attempted to be stolen is not seen in the pictures. Judgment on the basis of mere guesses or surmises is anathema to our legal order.[38]

In short, the prosecution has not overcome constitutional presumption of innocence in favor of petitioners. We also call to fore the rule that while alibi is a weak defense, it assumes commensurate significance and strength when the evidence for the prosecution is frail and effete. It has been said often enough that conviction must rest on the strength of the prosecution's case, not on the weakness of the defense.[39]

The Fallo

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals in CA-G. R. CR No. 12191, convicting Manuel Huang Chua of Attempted Qualified Theft and of Nelson Nestor) Go Daganon of Attempted Theft, is REVERSED and SET ASIDE.

Petitioners Manuel Huang Chua and Nelson (Nestor) Go Daganon are hereby ACQUITTED of the charges against them. Their bail bonds are ordered CANCELLED.

Costs de oficio.

SO ORDERED.

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

Puno, J., no part

[1] In CA-G. R. CR No. 12191, promulgated on August 07, 1996, Associate Justice Pedro A. Ramirez, ponente, concurred in by Associate Justices Pacita Cañizares-Nye and Romeo J. Callejo, Sr.

[2] In Criminal Case No. 9906-V-89, dated July 17, 1991, Judge Teresita Dizon-Capulong, presiding.

[3] Regional Trial Court Decision, Rollo, p. 43-56.

[4] Ibid., at pp. 44-45.

[5] CA Rollo, p. 32.

[6] CA Rollo, p. 7.

[7] CA Rollo, p. 32.

[8] Ibid.

[9] CA Rollo, p. 33.

[10] Regional Trial Court Decision, Rollo, p. 45.

[11] CA Rollo, p. 32.

- [12] CA Rollo, p. 33.
- [13] Rollo, pp. 41-42.
- [14] Petition for Certiorari, Statement of Facts of the Case, Rollo, p. 12.
- [15] Rollo, pp. 43-56, at p. 56.
- [16] Regional Trial Court Decision, Rollo, pp. 52-55.
- [17] Docketed as CA-G. R. CR No. 12191. Nestor filed his appellant's brief with the Court of Appeals on May 22, 1992 (CA Rollo, pp. 57-84); Manuel filed his appellant's brief with the Court of Appeals on August 28, 1992 (CA Rollo, p. 100-122); Paquito did not file an appellant's brief.
- [18] CA Rollo, pp. 133-143, at pp. 134-135.
- [19] Rollo, pp. 140-141.
- [20] Rollo, p. 142.
- [21] Rollo, pp. 142-143.
- [22] CA Rollo, pp. 140-147.
- [23] Rollo, p. 14; CA Rollo, pp. 140-147.
- [24] Rollo, p. 144.
- [25] Petition filed on March 24, 1997, Rollo, pp. 10-40.
- [26] *Rueda v. Sandiganbayan*, G. R. No. 129064, November 29, 2000.
- [27] CA Rollo, p. 41.
- [28] Rule 130, Sec. 36, Revised Rules of Evidence.
- [29] The exceptions to the hearsay rule are: dying declarations, declarations against interest, acts or declarations about pedigree, family reputation or tradition regarding pedigree, common reputation, declarations part of the *res gestae*, declarations regarding entries in the course of business, entries in official records, commercial lists and the like, learned treatises and testimonies or depositions at a former proceeding (Rule 130, Secs. 37-47, Revised Rules of Evidence)
- [30] *Rueda v. Sandiganbayan*, *supra*, Note 26.
- [31] *People v. Rodriguez*, G. R. No. 129211, October 2, 2000.
- [32] 1987 Constitution, Article III, Sections 12 (1) and (4).
- [33] *People v. Cabiles*, G. R. No. 125005, October 3, 2000.
- [34] CA Rollo, p. 39.
- [35] *Ibid.*, p. 37.
- [36] *People v. Lomboy*, 309 SCRA 440 [1999]; *People v. Malapayon*, G. R. Nos. 111734-35, June 16, 2000.
- [37] Rollo, p. 52.
- [38] *People v. Decillo*, G. R. No. 121408, October 2, 2000.

[39] People v. Cabiles, *supra*, Note 33.

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