

JONATHAN D. CARIAGA, PETITIONER, VS. COURT OF APPEALS, PEOPLE OF THE PHILIPPINES AND DAVAO LIGHT AND POWER CO., RESPONDENTS.

G.R. No. 143561. June 06, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is a petition for review on certiorari seeking the reversal of the decision[1] of the Court of Appeals in CA-G.R. No. 13363 entitled *People v. Jonathan Cariaga*, promulgated on April 24, 1995 affirming the decision of the Regional Trial Court of Davao City, Branch 11,[2] which convicted petitioner Jonathan Cariaga of the crime of Qualified Theft.

In an amended Information[3] dated October 3, 1989, petitioner was charged with qualified theft as follows:

"That sometime during the period from October, 1988 to January, 1989, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being then an employee of Davao Light & Power Co. Inc., Davao City, and as such has access to the said company, with intent to gain, with grave abuse of confidence and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away electrical equipment, supplies and materials totaling P7,038.96 belonging to Davao Light & Power Company, to the damage and prejudice of the said company, in the aforesaid amount of P7,038.96.

Contrary to law."

The factual background of this case as summarized by the trial court and adopted by the Court of Appeals is as follows:

"Luis Miguel Aboitiz, employed at the time of the incident in question and for sometime prior thereto as Systems Analyst of the Davao Light & Power Company, Inc. (DLPC), whose duty was to devise systems, procedures or controls to promote efficiency, prevent losses due to waste, pilferage or theft of company property, etc., received reports that some private electricians were engaged in the clandestine sale of DLPC materials and supplies. He initiated a covert operation with the following objectives: (1) ascertain how DLPC materials were being stolen, the frequency of the thefts, who were perpetrating the thefts; and (2) 'catch' at least one (1) DLPC employee that may be involved.

In October, 1988, he sought the assistance of Sgt. Fermin Villasis, Chief, Theft & Robbery Section, San Pedro Patrol Station, Davao METRODISCOM. He also hired one Florencio Siton, a welder by occupation and a Civilian Home Defense Forces (CHDF) member, as his undercover agent under the pseudonym 'Canuto Duran', an 'electrician from Kabakan, Cotabato.'

'Canuto Duran' struck an acquaintance with one Ricardo Cariaga, a private electrician, at the Miguel Store, situated in front of the DLPC office along Ponciano Reyes (now Bangoy) Street, Davao City. He told Ricardo that his boss ordered him to buy electrical materials to be brought to Diwalwal, a gold panning area in

Monkayo, Davao (formerly Davao del Norte).

Ricardo offered to supply 'Canuto Duran' with electrical materials, saying that he has a cousin from whom he can procure the same. 'Canuto' purchased small electrical wires which, according to Ricardo, came from his cousin, Jonathan Cariaga, nicknamed Totoy.

On November 17, 1988, Ricardo introduced 'Canuto' to Jonathan at Miguel Store. It turned out that Jonathan was the assigned driver of DLPC Service Truck 'S-143' assigned to Work Gang 'Venus'. 'Canuto' inquired from Jonathan if he could supply him with two (2) 15 KVA transformers. Jonathan replied that he could for P16,000. 'Canuto' placed an order for the transformers. The deal did not materialize, however, as 'Canuto's' boss (Miguel Aboitiz) who would provide the funds happened to be out of town. Jonathan appeared piqued. To appease him, 'Canuto' assured him that they shall continue their 'business' relationship. Not long after, he placed an order for a lightning arrester. Ricardo, Jonathan and 'Canuto' agreed to meet at the corner of Jacinto and Arellano Streets.

Jonathan got DLPC Truck 'S-143' which was inside the DLPC Compound at Ponciano Reyes Street and drove it to the designated meeting place, leaving 'Canuto' and Ricardo at Miguel Store. After a while, Ricardo and 'Canuto' followed. On the way, 'Canuto' gave Ricardo P1,800. At the meeting place, Ricardo gave the money to Jonathan, after which the latter got a lightning arrester (Exh. M) from his truck's toolbox and handed it to Ricardo, who, in turn gave it to 'Canuto'.

On January 23, 1989, Ricardo accompanied 'Canuto' to Jonathan's house at Doña Pilar Village, Sasa, Davao City, to get a roll of Electrical Wire No. 2 (300 meters long) valued P5,010 (Exh. J) and 2 lightning arresters with cutout, valued P1,185.75 each, or P2,371.50 for both (Exhs. I and I-1) from Jonathan. 'Canuto' paid P2,500.00 only for the items. He gave the money to Ricardo; Ricardo, in turn, gave it to Jonathan.

Siton's undercover work came to an abrupt end on February 1, 1989 when members of Sgt. Villasis' team 'apprehended' 'Canuto' and turned him over, including the electrical wires that he previously purchased from Jonathan through Ricardo, to the San Pedro Patrol Station. The team was unable to arrest Ricardo as he had already left when the team arrived at his house. 'Canuto Duran' 'confessed' in order to persuade Ricardo - and the others who were involved - to likewise come out with the truth. Thus, when Ricardo and Sergio Jamero appeared at the San Pedro Patrol Station on the invitation of the police, they confessed to their crimes (Exhs. A and G, respectively).

Ricardo revealed that he acted as a fence for his cousin, Jonathan Cariaga and 'Canuto Duran' on November 27, 1988 and again on January 23, 1989; that the items that 'Canuto Duran' bought from Jonathan, thru him, were DLPC properties.

Jamero also confessed that Ricardo was his fence in disposing of DLPC electrical materials that he pilfered but the items were not sold to 'Canuto Duran' but to someone else.

The recitals of Ricardo and Jamero in their sworn statements are substantially corroborated by entries in the Daily Record of Events (blotter) of the San Pedro Patrol Station (Exhs. B, B-1; C, C-1; D, D-1; E, E-1; and F, F-1).

The accused was also invited to the San Pedro Patrol Station but, according to Sgt. Villasis, he refused to give a statement.

The prosecution was unable to present Ricardo as its witness as the subpoena could not be personally served upon him as according to his wife, Antonieta Cariaga, he was in Sultan Kudarat and the date of his return to Davao City was not certain (Exhs. Y, Y-1).

Acting on the extrajudicial confessions of the suspects, the reports of Siton to the police and the bust, the team under Sgt. Villasis recovered the following items:

1. 1 pc. Lightning Arrester MEW Valve Type V (Exh. "I");
2. 1 pc. Lightning Arrester MEW Valve Type (Exh. "I-1");
3. 1 pc. Lightning Arrester MEW Thorex Type (unmarked);
4. 1 pc. Fuse Cut-out S&C Brand with Bracket (unmarked);
5. 1 pc. Fuse Cut-out with Fuse Holder, AB Chance (Exh. "M");
6. 1 roll (330 meters) Aluminum Wire No. 8 (Exh. "K");
7. 1 roll (300 meters) Aluminum Wire No. 2 (Exh. "J");
8. 1 roll (36 coils) Aluminum Wire No. 6;) One of these
9. 1 roll (74 coils) Aluminum Wire No. 8;) rolls is
10. 1 roll (41 coils) Aluminum Wire No. 2;) marked Exh.
11. 1 set bracket for cut-out.) "AA"

Sgt. Villasis testified that Exh. "U" and Exh. "AA" were the wires recovered from Siton during the bust while the rest, particularly Exhs. "I" and "I-1" "J" and "M" were recovered at Roselo Toledo's house where Siton ("Canuto Duran") brought them; x x x."[4]

According to the trial court, "the prosecution's evidence considered as a whole is strong, clear and convincing. The statements in the extrajudicial confessions of Ricardo Cariaga (Exhs. A; O,O-1) implicative of the accused as the source of the stolen articles, corroborated by Siton's testimony and the police records (Exhs. D to F-2, inclusive) are formidable compared to the mere puny denial of the accused."

In due course, the trial court on November 18, 1991, rendered judgment, the decretal portion reading:

"WHEREFORE, the Court finds accused Jonathan Cariaga guilty beyond reasonable doubt of theft, qualified by grave abuse of confidence, under Article 310, in relation to Article 309, par. 2, of the Revised Penal Code, as charged, aggravated by the use of motor vehicle which is not offset by any mitigating circumstance. Applying the Indeterminate Sentence Law, he is sentenced to suffer an indeterminate penalty ranging from TEN (10) Years, EIGHT (8) MONTHS AND ONE (1) DAY, of prision mayor, as minimum, to EIGHTEEN (18) YEARS, TWO (2) MONTHS AND TWENTY ONE (21) DAYS of reclusion temporal, as maximum; and to pay the costs.

No civil indemnity is awarded to DLPC, the private complainant, as the items stolen were recovered. The return to DLPC of all the items recovered by the police is ordered.

SO ORDERED."[5]

On appeal by Jonathan Cariaga, the Court of Appeals affirmed on April 24, 1995, the decision of the trial court. The Court of Appeals reasoned out that the sworn statement of Ricardo Cariaga who did not testify in open court during the criminal proceedings against petitioner is admissible in evidence and properly considered by the trial court as this was annexed as part of DLPC's position paper submitted to the National Labor Relations Commission in Case No. RAB-11-05-00308-89, a complaint filed by the accused for illegal dismissal, as an exception to the hearsay rule under Section 47, Rule 130 of the Revised Rules of Court. The Court of Appeals likewise upheld the credibility of Siton's testimony which corroborated that of Ricardo Cariaga's sworn statement.

Hence, the instant petition raising the following errors:

"I

The trial court erred in admitting in evidence the sworn statement of Ricardo Cariaga without him taking the witness stand since it violates the fundamental right of the accused to meet the witnesses against him face to face. Hence, Ricardo Cariaga's sworn statement is not admissible under Section 1(f), Rule 115 of the Revised Rules of Court for failure of the prosecution to comply with the strict requirements of said rule, to wit:

a]

Ricardo Cariaga did not orally testify in the labor case;

b]

Inability to testify must be for a grave cause almost amounting to death and the prosecution must exhaust all available remedies to secure the presence of its witnesses at the trial;

c]

That the former proceeding must also be criminal in nature.

II.

The appellate court erred in holding that the lone testimony of the prosecution's alleged eyewitness who is a paid witness and whose testimony was admittedly corrected or revised on the witness stand and which materially and significantly varies with his previous sworn statement on very vital and pivotal details is sufficient to prove the guilt of the accused beyond reasonable doubt.

III.

The appellate court erred in failing to appreciate the reasonable doubt engendered by the exculpatory statements of the superiors of the accused in favor of the latter."^[6]

In his first assignment of error, petitioner argues that the sworn statement of Ricardo Cariaga who was not presented in court is inadmissible. The prosecution presented in evidence as Exh. P-2, Ricardo Cariaga's sworn statement which was attached as Annex "8-A" to DLPC's position paper in the labor case filed by Jonathan Cariaga against the latter for illegal dismissal. The trial court admitted the same in evidence despite the timely objection of the defense counsel; and the Court of Appeals upheld the admission thereof citing as basis, Section 47, Rule 130 of the Rules on Evidence and Section 1(f), Rule 115 of the Rules on Criminal Procedure.

Section 47 of Rule 130 reads:

SEC. 47. Testimony or deposition at a former proceeding. - The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him.

More specific however is the rule prescribed in Rule 115, Section 1(f) of the Rules of Court in respect of the admissibility in evidence in a criminal case of the previous testimony of unavailable witnesses which reads:

Section 1. Rights of accused at the trial. - In all criminal prosecutions, the accused shall be entitled:

f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having had the opportunity to cross-examine him;

In *Toledo, Jr. vs. People*,^[7] this Court emphasized that "the preconditions set forth in Section 47, Rule 130 for the admission of testimony given by a witness out of court must be strictly complied with and that there is more reason to adopt such a strict rule in the case of Section 1(f) of Rule 115, for apart from being a rule of evidence with additional specific requisites to those prescribed by Section 47, more importantly, said provision is an implementing translation of the constitutional right of an accused person "to meet the witnesses (against him) face

to face." In *Tan vs. Court of Appeals*,^[8] it was ruled that "'unable to testify' or for that matter 'unavailability', does not cover the case of witnesses who were subpoenaed but did not appear. It may refer to inability proceeding from a grave cause, almost amounting to death, as when the witness is old and has lost the power of speech. It does not refer to tampering of witnesses."

The threshold question then is the admissibility of the sworn statement of Ricardo Cariaga which was attached to DLPC's position paper in the labor case filed by Jonathan Cariaga against it for illegal dismissal.

The records reveal that witness Ricardo Cariaga was subpoenaed only once and did not appear to testify in the criminal case against petitioner. Concededly, this witness was not deceased or out of the Philippines. In fact, the private prosecutor informed the court that he is in Sultan Kudarat,^[9] and previously, his wife informed the sheriff that he was in Sultan Kudarat which is in Cotabato, a mere four hours drive from Davao City. Against this backdrop, can this witness be categorized as one that cannot be found despite due diligence, unavailable or unable to testify. We are inclined to rule in the negative and reverse the Court of Appeals on this point.

It must be emphasized that this rule is strictly complied with in criminal cases, hence, "mere sending of subpoena and failure to appear is not sufficient to prove inability to testify. The Court must exercise its coercive power to arrest."^[10] In the instant case, no efforts were exerted to have the witness arrested which is a remedy available to a party-litigant in instances where witnesses who are duly subpoenaed fail to appear. On this score alone, the sworn statement of Ricardo Cariaga should not have been admitted as evidence for the prosecution, and we shall no longer delve into the other aspects of this rule.

In his second assignment of error, petitioner assails the testimony of prosecution witness Florencio Siton alias "Canuto Duran", the undercover agent, as not credible because it is allegedly inconsistent in very material and pivotal details from the sworn statement he made at the police station and that he is admitted by the prosecution to be a paid witness. According to petitioner, Siton's testimony was overhauled and corrected to meet the crisis created by eyewitness Ricardo Cariaga's non-appearance in court. Petitioner argues further that Siton had thousands of reasons to vary or exaggerate or pervert the truth in his testimony because he admitted that he was given by DLPC through Mr. Aboitiz, a 15 KVA transformer worth P15,000.00 to P18, 000.00 and he also admitted on cross-examination that "after the hearing he (Mr. Aboitiz) will hire me as an employee or that he will give me privilege."

He alleges that Siton never mentioned in his sworn statement that he bought anything directly from petitioner and only stated that the latter was around when he bought some wires and lightning arresters from Bondying and Bebing Tumali, and then claimed on the witness stand that he had direct dealings with petitioner. Siton also failed to state in his sworn statement that he went to the house of petitioner to purchase DLPC materials; and he mentioned therein that the arrangement was that the materials will be delivered three days after payment, but in his testimony, the materials were delivered upon payment.

As we have so frequently ruled, the trial judge who sees and hears witnesses testify has exceptional opportunities to form a correct conclusion as to the degree of credit which should be accorded their testimonies.^[11] Next, the rule has also always been that the contradictions between the contents of an affiant's affidavit and his testimony on the witness stand do not always militate against the witness' credibility because we have long taken judicial notice that affidavits, which are usually taken ex parte, are often incomplete and inaccurate.^[12] Indeed, a sworn statement taken ex parte is generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross examination.^[13]

We have carefully gone over the records and evidence in this case and we are persuaded that Siton's testimony in court deserves credence. We further find the same sufficient for conviction. Siton was consistent and

straightforward in his testimony and had not been shaken by the lengthy and exhaustive cross-examination by the defense counsel. Having thoroughly convinced the trial and appellate courts as well as this Court of the truth of his testimony, we do not see how he could have fabricated the entire story. The fact that he stated on direct examination that he "corrected" his statement and that he was offered compensation for his undercover work does not necessarily discredit him. There is no rule of evidence to the effect that omission of certain particulars in a sworn statement would estop an affiant from making an elaboration thereof or from correcting inaccuracies during the trial. It appears that he was paid for his services rendered as an undercover agent and not for purposes of concocting a story and imputing a crime as that made out in the information. Similarly, the alleged inaccuracies in the testimony of Siton in open court relating to such minute details as whether the petitioner's house was two-stories high and located in a corner are too negligible to consider.

Finally, we reject petitioner's claim that the testimonies of three witnesses for the prosecution, namely, Sauro, Saligan and Aboitiz, engendered reasonable doubt sufficient to exculpate him. He points out that "Rodolfo Sauro, gang crew supervisor of petitioner testified that he has not reported any missing materials in the truck driven by the petitioner; that Luis Aboitiz testified that he asked Estelito Saligan to conduct investigation if there were materials missing but the latter came out with the report that he could not find any missing materials"; and that Estelito Saligan, head of Materials Management Department of the DLPC confirmed on cross-examination that there were no properties lost or missing."

However, a more accurate reading of the testimonies of the said witnesses reveals that Rodolfo Sauro[14] testified that petitioner is permanently assigned as driver to the S-143 truck; that he is in charge of all the equipment and supplies stored in the truck; that there were always reserve materials kept in the truck for emergency operations during the night and that he trusted him that these materials were being used for emergencies.[15] He also testified that he took Jonathan's word that the reserve materials were used for emergencies because he found him trustworthy.[16] On the other hand, Engr. Estelito Saligan was recalled to the witness stand to clarify Mr. Aboitiz's statement that "he was ordered to make inventories and that he did not find any missing." He clarified that he only inventoried the materials inside the warehouse which are within his jurisdiction, but he did not conduct inventory of materials or properties already in the possession of the operations department[17] of which petitioner belonged to. In sum, nothing in the cited testimonies confirm petitioner's insistence that there were no stolen electrical supplies and materials from DLPC.

In fine, we are satisfied that the participation of the petitioner in the commission of the crime at bar was well established by the testimony of witness Siton. In the determination of the sufficiency of evidence, what matters is not the number of witnesses but their credibility and the nature and quality of their testimonies.[18] It is axiomatic that witnesses are weighed, not numbered and the testimony of only one witness, if credible and positive and if it satisfies the court beyond reasonable doubt, is sufficient to convict. The inadmissibility of Ricardo Cariaga's sworn statement as discussed above will not exculpate him.

The defense, verily, anchors itself on the bare denial of petitioner of the specific acts imputed by the prosecution against him. Certainly, this negative assertion cannot prevail over the unimpeached testimony of the prosecution witness, Florencio Siton alias "Canuto Duran" describing in sufficient detail the active participation of petitioner in the commission of the crime charged. As aptly observed by the trial court:

"The accused's defense consisted of a general denial; that the items alleged by the prosecution as having been pilfered from DLPC were available in any store selling electrical supplies. Despite having been positively pointed to as the person who sold small electrical wires, lightning arresters and a roll of Electrical Wire No. 2 that were pilfered from DLPC to "Canuto Duran" (Siton), thru Ricardo Cariaga, he did not categorically deny the imputation: he merely declared that he did not know Siton (he did not say that he did not know "Canuto

Duran") nor did he say that he did not sell anything to "Canuto Duran" thru Ricardo Cariaga. As a rule, positive testimony as to a particular fact, uncontradicted by anyone, should control the decision of the court (Ko Tieck vs. People, L-48535-36, Dec. 21, 1991)."

We note that the information alleged that petitioner was an employee of DLPC; that he had access to the electrical supplies of said company; and that with grave abuse of confidence, he stole electrical materials belonging to DLPC. The prosecution established that petitioner who was permanently assigned as driver of Truck "S-143" had charge of all the DLPC equipment and supplies kept in his vehicle, including lightning arresters, cut-out and wires, which were generally used for the installation of transformers and power lines; and specifically stored therein for emergency operations at night when the stockroom is closed. While the mere circumstance that the petitioner is an employee or laborer of DLPC does not suffice to create the relation of confidence and intimacy that the law requires to designate the crime as qualified theft, it has been held that access to the place where the taking took place or access to the stolen items changes the complexion of the crime committed to that of qualified theft.[19] Thus, theft by a truck driver who takes the load of his truck belonging to his employer is guilty of qualified theft[20] as was proven in this case. The trial court correctly considered petitioner's use of a motor vehicle in the commission of the crime as a generic aggravating circumstance thus raising the penalty to its maximum.[21] While the aggravating circumstance of "by means of motor vehicle" was not alleged in the information, there is evidence that the same was employed to facilitate the commission of the crime. A generic aggravating circumstance may be proved even if not alleged.[22] The theft could not have been effected without the aid of the motor vehicle,[23] as proven by the prosecution, the service truck was used in storing and then transporting the stolen electrical materials to the place where they were sold.

We now come to the correctness of the penalty imposed. The trial court meted on petitioner an indeterminate penalty ranging from ten (10) years, eight (8) months and one (1) day, of prision mayor, as minimum, to eighteen (18) years, two (2) months and twenty one (21) days of reclusion temporal as maximum. Since the value of the electrical materials is P7,038.96, the imposable penalty for the felony of theft is prision correccional in its medium and maximum periods in accordance with Article 309, paragraph 2 of the Revised Penal Code.[24] However, under Article 310 of the Revised Penal Code,[25] the crime of qualified theft is punished by the penalties next higher by two (2) degrees than that specified in Article 309 of the Revised Penal Code. Under Article 25 of the Revised Penal Code, two (2) degrees higher than prision correccional in its medium and maximum periods is prision mayor in its maximum period to reclusion temporal in its minimum period which is ten (10) years and one (1) day to fourteen (14) years and eight (8) months. Considering there is one generic aggravating circumstance, the penalty should be reclusion temporal in its minimum period. Applying the Indeterminate Sentence Law, the correct penalty is eight (8) years, eight (8) months and one (1) day of prision mayor as minimum to thirteen (13) years, one (1) month and eleven (11) days of reclusion temporal as maximum.

WHEREFORE, the decision of the Court of Appeals dated April 24, 1995 is hereby **AFFIRMED** with the **MODIFICATION** that the penalty is reduced to **EIGHT (8) years, EIGHT (8) months and ONE (1) day of prision mayor as minimum to THIRTEEN (13) years, ONE (1) month and ELEVEN (11) days of reclusion temporal as maximum.**

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Penned by Justice Eubolo G. Verzola, with Justices Artemon D. Luna and B.A. Adefuin-Dela Cruz concurring.

[2] Judge Nicasio O. De Los Reyes presiding.

[3] Original Records, pp. 56-57.

[4] Rollo, pp. 104-107.

[5] Rollo, p. 112.

[6] Rollo, pp. 39-40.

[7] 85 SCRA 355 (1978).

[8] 20 SCRA 54 (1967).

[9] TSN dated December 21, 1990, p. 27.

[10] Tan, *supra*.

[11] *People vs. Lapuz*, 250 SCRA 250 (1995).

[12] *People vs. Fulinara*, 247 SCRA 28 (1995); *People vs. Lusa*, 288 SCRA 296 (1998).

[13] *Ibid*.

[14] Of the Operations Department tasked to install lines, transformers and other electrical supplies to consumers.

[15] TSN dated January 7, 1991, pp. 3-9.

[16] *Ibid*.

[17] TSN dated January 7, 1991, pp. 1-2.

[18] *De Guzman vs. IAC*, 184 SCRA 128 (1990).

[19] *People vs. Seranilla*, 161 SCRA 193 (1988).

[20] Luis B. Reyes, *The Revised Penal Code*, (12th ed., 1988), p. 692-293.

[21] Art. 64 (3) of the Revised Penal Code.

[22] *People vs. Bragas*, 315 SCRA 216 (1999).

[23] *People vs. Cayan*, 245 SCRA 66 (1995).23

[24] ART. 309. Penalties. - Any person guilty of theft shall be punished by:

xxx.

2. The penalty of prision correccional in its medium and maximum periods, if the value of the property stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

[25] ART. 310. 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 by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

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