

ROSE AOAS Petitioner, vs. PEOPLE OF THE PHILIPPINES, Respondent.

G.R. No. 155339. March 03, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals, dated February 22, 2002, in CA-G.R. CR No. 22439 affirming the conviction of petitioner of the crime of theft, and the Resolution[2] dated September 3, 2002 denying the motion for reconsideration thereof.

The Information reads as follows:

That on or about the 15[th] day of October, 1992 in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, with intent to gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away, eighteen (18) sacks of red and white beans, all valued at P24,720.00 belonging to NATY MADON-EP, to the damage and prejudice of the owner thereof in the aforementioned amount of TWENTY-FOUR THOUSAND SEVEN HUNDRED TWENTY PESOS (P24,720.00), Philippine Currency.

When arraigned, petitioner pleaded not guilty.

The prosecution presented two witnesses: private complainant and barangay tanod Gregorio Garcia. As summarized by the Court of Appeals, the evidence for the prosecution are as follows:

Private complainant Naty Madon-ep testified that she is a businesswoman engaged in the buy and sell of assorted seeds such as white beans, red beans, black beans, mongo beans, peas, peanuts and malagkit rice. She owns four (4) stalls in the city market of Baguio. One of these stalls is located at no.1, mongo section. The other three stalls namely: Stalls, A, B, and C are located at the muslim section of the said city market. Stalls A and B with mezzanines are adjacent to each other. Upon the other hand, stall C which has also a second floor is located at the back of the stall owned by Laila Saguid. She uses the mezzanines of stalls A, B and C as storeroom/bodega for sacks of beans. The ground floor of stall B was being occupied/rented by Henry Saguid. As to stall A, she occupied a portion of the ground floor thereof together with Miling and Janet Gavino who were engaged in the buy and sell of gold and broken jewelry. Adjacent to her stall is the stall of the accused-appellant which has also a mezzanine, and used by the accused-appellant as her business store for selling and buying gold and broken jewelry. Sometime in 1992, the accused-appellant removed the partition wall separating the mezzanines without her consent, claiming that she would convert her own mezzanine floor to a restaurant. Despite demand to restore the said partition wall, the accused-appellant refused. On October 16, 1992, when she arrived at her stall at the mongo section, she noticed that there were red and white beans scattered in front of the stall of the accused-appellant and at the parking space of the rice section. When she reported the matter to the authorities, it was discovered that there were also scattered beans inside the ground floor and mezzanine of the stall of the accused-appellant. Later, she found out that her 18 sacks of beans stored at the mezzanine of her stall A, worth P24,000.00, more or less, were missing. Upon inquiry from the persons in the city market she was informed by a certain Gregorio Garcia that the accused-appellant was the culprit.

Gregorio Garcia testified that he is a barangay tanod assigned at the rice section of the city market of Baguio. On October 2, 1992, at around 8:30-9:00 in the evening, he saw the accused-appellant together with her two daughters at the end of the rice section leading towards the buko section. The accused-appellant told him that they were going to fix their stall. Thereafter, he saw the accused-appellant open the door of her stall and bring out one sack of beans and loaded the same inside the jeep with the help of its driver. On October 12, 1992, at around 8:00 in the evening, while he was 10 meters away behind the jeep, he again saw the accused-appellant, together with Brenda Sabado, bringing out five sacks of beans from her stall and likewise loaded them in a vehicle with the assistance of a male driver. Thereafter, the accused-appellant and Sabado boarded the jeep and left, but before leaving, Sabado gave him P15.00 for his coffee. On October 15, 1992 at about 8:30-9:00 in the evening, he again met the accused-appellant in front of the Dimalanta Grocery, which is located at the right side of the rice section of the city market. The accused-appellant asked him if he saw a jeepney, to which he answered "no." He then went and stayed at the side of the Dimalanta Grocery and took a cup of coffee, while the accused-appellant walked towards the direction of Tiong San Bazaar. After he finished his coffee and while walking towards the rice section opposite the bakery, he saw a jeep leaving loaded with sacks of beans. Inside the said jeep he saw the accused-appellant seated at the back thereof and another female companion seated in front with the driver. He knew that the sacks loaded in the jeep were sacks of beans because he was just thirty (30) meters away and the place was heavily lighted. He knew the size of the beans sacks.[3]

For the defense, petitioner and witness Imelda Bautista presented their evidence, as follows:

[Rose Aoas] testified that she is a businesswoman engaged in the buy and sell of gold and broken jewelry. She was occupying stall No. 9 at the muslim section of the city market of Baguio adjacent to the stalls of Anita Fermin and Janet Gavino. The second floor of her stall was being used as storage for empty bottles by her friend Imelda Bautista who was engaged in selling mongo beans and peanut butter. While the ground floor thereof was sometimes used by said Imelda Bautista in the afternoon for storing her goods, she removes the same in the morning and sells them at her own stall. She admitted that the private complainant Naty Madon-ep has a stall adjacent to her own stall and that she removed the partition wall dividing their mezzanines thereof but with the consent of the private complainant. She removed the said partition because she intended to convert her mezzanine/second floor to a canteen but the same did not materialize. She admitted to have seen prosecution witness Gregorio Garcia thrice. First was on October 2, 1992, when she and her son dropped by the city market to check on her stall. Second, on October 12, 1992, while she was at the city market because she helped her friends Ronda Sabado and Noli Chamos transport the sacks of mongo and peanuts which the latter bought from Imelda Bautista. The third time she saw witness Gregorio Garcia was on October 15, 1992 at around 8:00 in the evening along Dimalanta, Magsaysay Avenue, while she was on her way to Helen's Restaurant located at Abanao Street to meet some of her friends.

Defense witness Imelda Bautista narrated that she was engaged in the business of selling mongo beans and peanut butter. Every afternoon she kept her goods at the ground floor of the stall of the accused-appellant located at the muslim section of the city market of Baguio. She was the one occupying the second floor/mezzanine of the stall of the accused-appellant and uses the same as her storage/storeroom for empty bottles of peanut butter. On October 12, 1992, she (witness) sold beans to Ronda Sabado, covered by an ordinary handwritten receipt.[4]

On November 10, 1997, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered convicting accused Aoas of theft and hereby sentences her, after applying the Indeterminate Sentence Law, to suffer imprisonment from 4 years, 9 months and 10 days of prision correctional medium, as minimum, to 8 years, 8 months and 1 day of prision mayor, medium, as maximum, and to return to the complainant Madon-ep the 18 sacks of beans stolen, or to pay the value of said sacks of beans in the amount of P24,720.00 if the same can no longer be returned.

Costs against the accused.[5]

On appeal, the Court of Appeals affirmed the RTC decision in toto.

Hence, this petition for review raising the following assignment of errors:

- THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT SOLELY ON THE BASIS OF CIRCUMSTANTIAL EVIDENCE AND THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE SAID DECISION OF CONVICTION BY THE TRIAL COURT;
- THE TRIAL COURT AND THE HONORABLE COURT OF APPEALS ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE WITNESS FOR THE PROSECUTION THAN THE TESTIMONY OF THE ACCUSED AND HER WITNESS.[6]

Under Article 308 of the Revised Penal Code, the essential elements of the crime of theft are the following: (1) that there be a taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence or intimidation against persons or force upon things.[7] Petitioner contends that these elements of the crime of theft were not proven and, therefore, she deserves to be acquitted.

We agree.

Considering that there is no direct evidence pointing to petitioner as the perpetrator of the crime, the trial court relied solely on circumstantial evidence. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. It is founded on experience, observed facts and coincidences establishing a connection between the known and proven facts and the facts sought to be proved. In order that conviction be had, the following must concur:

- There is more than one circumstance;
- The facts from which the inferences are derived are proven;
- The combination of the circumstances is such as to produce a conviction beyond reasonable doubt.

To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proved must be consistent with one other and that each and every circumstance must be consistent with accused's guilt and inconsistent with his innocence.[8] The circumstances must be proved, and not themselves presumed.[9] The circumstantial evidence must exclude the possibility that some other person has committed the offense.

To the appellate court, the following make up the web of circumstantial evidence against petitioner:

First, it was established that at around 8:30-9:00 in the evening of October 15, 1992, the accused-appellant was seen within the vicinity or in front of the Dimalanta Grocery located at the right side of the rice section of the city market. The stall of the accused-appellant, as well as that of the private complainant, are within the vicinity of the city market and near the rice section. Second, the accused-appellant asked the prosecution witness Garcia regarding the whereabouts of a certain jeepney. Thereafter, the accused-appellant was seen seated inside the back portion of a jeepney which was loaded with sacks of beans leaving the said city market. Third, at about 5:00 in the morning of October 16, 1992, it was found that beans were scattered not only in front of the stall of the accused-appellant but likewise inside its ground floor and mezzanine. Scattered beans which were similar to the beans owned and stolen from the private complainant were likewise discovered at the parking space of the city market. Fourth, on two previous occasions the accused-appellant was seen within the vicinity of the city market at around 8:00-9:00 in the evening taking out sacks of beans. Finally, the

prosecution witness positively identified accused-appellant during the trial as the person bringing out, with the assistance of somebody, sacks of beans on three (3) evenings, and while seated at the back portion of the jeepney loaded with sacks of beans. It need not be stressed that the presence of prosecution witness Garcia in the vicinity and her having seen him were admitted by the accused-appellant. She also admitted having removed the partition between her stall and that of the private complainant at the mezzanine floor.[10]

After a careful review, we find that the aforesaid circumstantial evidence does not pass this test of moral certainty as to warrant petitioner's conviction. Complainant testified that 18 sacks of beans which she stored in the mezzanine of her stall were missing. She discovered the loss in the morning of October 16, 1992 when she saw red and white beans scattered on the floor in front of her stall and that of petitioner.[11] She accused herein petitioner as the culprit after being informed by barangay tanod Gregorio Garcia that he saw petitioner in the evening of October 15 riding in a jeepney loaded with sacks of beans.[12] Garcia alleged that he was only 30 meters away from the jeepney and the place was sufficiently lighted, enough for him to recognize that the sacks loaded in the jeepney contained beans.[13]

It behooves the Court to see how petitioner's guilt was logically inferred from Garcia's testimony which was not corroborated. Whether the sacks loaded in the jeepney contained beans, and if so, whether these beans belonged to private complainant were not proven. Where the sacks of beans came from was not explained since Garcia admitted that he did not actually see petitioner load the sacks of beans into the jeepney.[14] He stated that he merely met petitioner in the evening of October 15 in front of the Dimalanta Grocery, when petitioner asked him for the whereabouts of the jeepney. Thereafter, he saw petitioner seated inside the jeepney as it was leaving the market vicinity. In pointing to petitioner, Garcia cited the two previous occasions, October 2 and 12, 1992, when he encountered petitioner loading sacks of beans in the jeepney. We do not agree with the appellate court that this circumstance should form part of the "unbroken chain" and incriminate petitioner of the crime. Complainant testified that she bought her 18 sacks of beans from a provincemate from Bontoc. The goods arrived on October 14 and were stored in the mezzanine, and complainant noticed the loss 2 days thereafter or on October 16.[15] Obviously, the sacks of beans brought out by petitioner on October 2 and 12 were not the objects of the alleged crime.

The defense proffered an explanation which, unfortunately, was not given credence. Defense witness Imelda Bautista testified that she was also engaged in the buying and selling of beans. Her goods were also kept at the second floor/mezzanine of petitioner's stall. Petitioner testified that she brought out sacks of beans from her stall because one Ronda Sabado bought them from Imelda Bautista.[16] There being no direct evidence of petitioner's culpability, this explanation could have sufficiently created reasonable doubt about petitioner's guilt.

The fact that beans were scattered on the floor inside and in front of the stall of petitioner and in the parking lot does not necessarily lead to the conclusion that petitioner is the perpetrator of the crime. This cannot be equated with the principle of law that a person in possession or control of stolen goods is presumed to be the author of the larceny.[17] Absent proof of any stolen property in the possession of a person, as in the case at bar, no presumption of guilt can arise. Instead, the constitutional presumption of innocence should prevail in petitioner's favor.[18] As to who caused those beans to be scattered inside and in front of the stall of petitioner was not proven. Furthermore, it is not farfetched that those scattered beans could have belonged to Imelda Bautista who also stored beans in the stall of petitioner. It must be noted that the place is a market, a public place where people come and go. Presumably, the complainant is not the only vendor in the market selling beans.

The removal of the partition wall in the mezzanine is also of no moment. Petitioner admitted that she removed the partition wall in September 1992 because she intended to use the space to sell coffee.[19] Notably, the partition was removed much earlier than the date of the alleged commission of the crime in October 1992, and it would

simply be conjectural to suppose that this was part of petitioner's alleged scheme to stash away the sacks of beans. There should be more proof presented to show petitioner's alleged complicity in the crime. Conviction must rest on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense.[20]

The prosecution has failed to show that the circumstances invoked completely discount the possibility that persons other than petitioner could have perpetrated the crime. Thus, where the proven facts and circumstances are capable of two or more explanations, one of which is consistent with innocence and the other with guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to convict the accused.[21]

We find that the conviction of petitioner does not pass the test of moral certainty. When inadequate and uncorroborated, circumstantial evidence cannot sustain a conviction.[22]

WHEREFORE, the petition is GRANTED. The assailed decision of the Court of Appeals, affirming that of the Regional Trial Court of Baguio City, Branch 7, is REVERSED and SET ASIDE. Petitioner is hereby ACQUITTED of the crime of theft.

No costs.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Candido V. Rivera and Juan Q. Enriquez, Jr., concurring; rollo, pp. 39-46.

[2] Rollo, p. 47.

[3] Id. at 40-41.

[4] Id. at 41-42.

[5] Id. at 37-38.

[6] Id. at 15.

[7] *People v. Avecilla*, G.R. No. 46370, June 2, 1992, 209 SCRA 466, 472.

[8] *People v. Canlas*, 423 Phil. 665, 678 (2001).

[9] Francisco, *Evidence*, p. 605

[10] Rollo, p. 44.

[11] TSN, May 10, 1994, pp. 4-6. (Naty Madon-ep)

[12] Id. at 7.

[13] TSN, July 20, 1994, pp. 11-12. (Gregorio Garcia)

[14] Rollo, p. 32.

[15] TSN, May 10, 1994, p. 15.

[16] TSN, February 1, 1995, pp. 10-13.

[17] *People v. Delos Reyes*, G.R. No. 85771, November 19, 1991, 203 SCRA 707, 717.

[18] *Melayo v. People*, 440 Phil. 806, 818 (2002).

[19] TSN, February 1, 1995, p. 8; records, p. 75.

[20] *People v. Muleta*, 368 Phil. 451, 476 (1999).

[21] *Gan v. People*, G.R. No. 165884, April 23, 2007, 521 SCRA 550, 571.

[22] *People v. Ferras*, 351 Phil. 1020, 1034 (1998); *People v. Ilaoa*, G.R. No. 94308, June 16, 1994, 233 SCRA 231, 235.

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