

LUIS CHITO BUENSOCESO LOZANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 165582. July 09, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking a reversal of the October 8, 2004 Decision of the Court of Appeals,[1] in CA-G.R. CR No. 27684, entitled *People v. Luis Chito Buensoceso Lozano, Lorenzo Remeses Tubis, Willie Reyes Callanga, and Meliton Arambulo Balderas*. The CA decision affirmed with modification the May 23, 2002 Decision[2] of the Regional Trial Court, Branch 257, Parañaque City, in Criminal Case No. 97-555, which convicted accused Lozano, Tubis and Callanga for the crime of theft. In the same decision, accused Meliton Balderas was acquitted. Pertinent portions of the subject CA decision, including the dispositive portion, read:

Accordingly, the accused-appellant is sentenced to a prison term ranging from five (5) years, four (4) months and twenty (20) days of prision correccional in its maximum period, as minimum, to eight (8) years, eight (8) months and one (1) day of prision mayor in its medium period, as maximum. The accused-appellant should also be ordered to pay Paz Gonzales the amount of P10,000.00 corresponding to the value of the still unrecovered items (the car stereo and speakers, Ray Ban, police sunglasses and calculator). It is to be noted that the two tires worth P17,000.00 were already recovered by the complaining witnesses.

WHEREFORE, modified as thus indicated, the judgment appealed from must be, as it hereby is **AFFIRMED** in all other respects, with the costs of this instance to be assessed against the accused-appellant.

SO ORDERED.

It appears from the records that accused Luis Lozano and his co-accused Lorenzo Remeses Tubis, Willie Reyes Callanga, and Melito Arambulo Balderas, were indicted for theft by the Office of the Provincial Prosecutor of Rizal. The Information[3] charging them with the said crime reads:

That on or about the 24[th] day of July 1997 in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring and confederating with '@Larry' and '@Marlon,' whose true names and present whereabouts are still unknown, and all of them mutually helping one another, with intent to gain and without knowledge and consent of the owner Paz Gonzales, did then and there willfully, unlawfully and feloniously take, steal, and carry away two (2) magwheels (R14 goodyear tires), valued at P17,000.00, car stereo and 2 speakers, Ray Ban valued at P500.00, police sunglass valued at P5,000.00, calculator valued at P200.00, all in the total amount of P27,700.00, belonging to said complainant, to the damage and prejudice of the owner thereof, in the aforesaid amount of P27,700.00.

CONTRARY TO LAW."

During the trial, the prosecution presented, as its witnesses, the private complainant Paz Gonzales and Brgy.

Tanod Jose Lazaro, Jr.

Paz Gonzales testified that at around 8:00 o'clock in the morning of July 25, 1997, when she was about to board her car (a 1996 Nissan Sentra with Plate No. UGJ 952), she discovered that it had been forcibly opened while it was parked along Cuenco Street, Airport View, Parañaque City. She found out that her tires, car stereo, speakers, sunglasses, tapes, and calculator were stolen, all amounting to more or less P27,000.00. She immediately reported the incident to the authorities in Barangay Moonwalk, Parañaque City.[4]

The barangay tanod, Jose Lazaro, Jr., testified that on July 26, 1997, he received information that two male persons on board a Toyota Cressida would be getting two stolen tires from the house of Willie Callanga on the same day. He immediately positioned himself on the second floor of the house overlooking the house of Callanga. From there, he saw Lozano and Lorenzo Tubis enter the said house. After a few minutes, he saw Lozano and Tubis come out of the house carrying two tires which they placed inside the baggage compartment of the Toyota Cressida. He called his fellow tanods and they intercepted the Cressida. The two tires were recovered and Lozano and Callanga were arrested. Tubis was able to escape. Thereafter, Paz Gonzales was summoned to the Barangay Office where she identified the two tires as the same tires which were stolen from her.[5]

Accused Lozano took the witness stand for his defense. His testimony was, however, stricken off the record for his repeated failure to appear in court for the continuation of his direct examination.[6]

After the case was submitted for decision, the trial court convicted all the accused except Meliton Balderas of the crime of theft. Thus:

"WHEREFORE, finding accused Luis Chito Buensoceso Lozano, Lorenzo Rameses Tubis and Willie Reyes Callanga guilty beyond reasonable doubt for the theft, applying the Indeterminate Sentence Law (Act. No. 4103, as amended), they are hereby sentenced to suffer 2 years, 4 months and 1 day of prision correccional as minimum to 6 years and 1 day prision mayor as maximum. For lack of evidence accused Meliton Balderas is acquitted.

SO ORDERED."[7]

The trial court explained its decision in this wise:

"It is duly established by evidence that the car of Paz Gonzales was forced open by thieves and two (2) of its tires, among others, were stolen. The stolen tires were recovered in the possession of accused Luis Chito Lozano, Willie Callanga and Lorenzo Tubis. There can be no other conclusion that they are the thieves. Besides, they are seen by Brgy. Tanod Lazaro, Jr. taking the tires from the house of Callanga and putting them inside their vehicle. The vivid details surrounding the discovery of the caper convinces the Court without any doubt of the commission of the crime by the three (3) malefactors.

There is, however, no evidence against Meliton Balderas. His name was not mentioned by Bgy. Tanod Lazaro, Jr. except on just one point - that Balderas was allegedly implicated by co-accused Willie Callanga. But Callanga, who did not show up in Court, did not testify against Balderas, not even for his own defense.

The tires allegedly valued at P17,000.00 were recovered. The other items and their value were not duly proven."[8]

Accused Lozano filed a Motion for Reconsideration and/or Modification of the Judgment[9] but the same was denied by the trial court.[10]

Petitioner elevated his conviction to the Court of Appeals presenting the following assignments of error:

"First Assignment of Error

THE TRIAL COURT SERIOUSLY ERRED IN FINDING THAT THE TWO MAGWHEELS TIRES WERE FOUND AND RECOVERED IN THE POSSESSION OF ACCUSED-APPELLANT.

Second Assignment of Error

THE TRIAL COURT ERRED IN CONCLUDING THAT THE ACCUSED-APPELLANT, WILLIE CALLANGA AND LORENZO TUBIS WERE THE PERPETRATORS OF THE CRIME.

Third Assignment of Error

THE TRIAL COURT SERIOUSLY ERRED IN FINDING ACCUSED-APPELLANT AND HIS CO-ACCUSED, LORENZO TUBIS AND WILLIE CALLANGA GUILTY OF THE CRIME CHARGED.

Fourth Assignment of Error

THE TRIAL COURT ERRED IN IMPOSING THE PENALTY OF 2 YEARS, 4 MONTHS AND 1 DAY OF PRISION CORRECCIONAL AS MINIMUM TO 6 YEARS AND 1 DAY OF PRISION MAYOR AS MAXIMUM."[11]

Accused Lozano posits the view that "(s)ince both witnesses had no personal knowledge that the said tires were recovered in the possession of the accused, their testimonies are purely hearsay, hence without any probative value." [12] Petitioner added that "the testimonies of the prosecution witnesses on this matter, which are both hearsay, are even conflicting. While Paz Gonzales claims that the tires were recovered by the barangay tanod from the house of the accused Willie `Bong' Callanga, Jose Lazaro, Jr., however, declared that they were recovered from the baggage compartment of the Cressida car." [13]

Accused Lozano further averred that "since the penalty in the crime of theft is based on the value of the thing stolen, it is incumbent upon the prosecution to adduce proof of its value. In the case at bar, no proof was adduced as to the value of the alleged lost properties, save for the bare testimony of Paz Gonzales that it was more or less P27,000.00." [14]

In its Decision dated October 8, 2004, [15] the Court of Appeals AFFIRMED with MODIFICATION the RTC Decision, pertinent portions of which read:

The record showed that barangay tanod Jose Lazaro, Jr. personally saw appellant and his co-accused Lorenzo Remeses Tubis load the tires onto their vehicle. Few moments after his witness called his fellow barangay tanods to intercept the vehicle, he was informed that the appellant and his criminal associates had been arrested and the tires were recovered from their possession. Immediately thereafter, the recovered tires were confirmed by Ms. Gonzales herself as the very tires stolen from her car. In the words of Lazaro, Jr.'s Sinumpaang Salaysay:

"Na ilang sandali ay may tumawag sa akin na nakuha na ang naturang sasakyan at naroon nga ang dalawang gulong at ipinatawag ang complainant na si Paz Gonzales at Novo Gabriel (na biktima ng naturang kaso) at pagdating ay nakita ang kotse at ng ipakita ang gulong ay positibong nakilala ni Novo Gabriel at pinatibay ni Paz Gonzales na iyon ay nakakabit sa Nissan Sentra UGJ 952 nila."

The connection among these details is too close and too obvious: the stolen tires were found in the possession of appellant and his co-accused.

Moreover, the information conveyed to Lazaro, Jr. by one of his fellow tanods regarding the arrest of appellant and his cohorts and the recovery of the tires is admissible to prove that the stolen tires were actually found in the possession of appellant and his partners. While said information may have consisted of out-of-court statements by an out-of-court declarant (Lazaro, Jr.), this person could have testified thereon (as he in fact did), as a `present

sense impression.'

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, is not barred by the rule against hearsay. The rationale for the 'present sense impression' exception is that (1) There is no substantial danger that defects in the declarant's memory will affect the value of the statement; (2) the declarant would not have had much time to fabricate before making the statement; and (3) in many cases, the person to whom the statement was addressed would have been in a position to check its accuracy; hence, the declarant could speak with care.

In the present case, there is no doubt that the barangay tanod who reported the arrest and recovery to Lazaro, Jr. did not have the opportunity to fabricate his statement as he instantly transmitted the information to Lazaro, Jr. who verified the correctness and truthfulness of such account.

As correctly held by the trial court, since the stolen tires were found in the possession of appellant and his partners, the inescapable conclusion is that they were the perpetrators of the crime. A person found in possession of a stolen thing is presumed to be the taker thereof, and the author of the theft. This presumption was not overturned by appellant.

Now, the elements of the crime of theft are these: (1) personal property of another person must be taken without the latter's consent; (2) the act of taking the personal property of another must be done without the use of violence against or intimidation of persons nor force upon things; and (3) there must be an intention to gain (or *animus lucrandi*) in the taking of another person's property.

In this case, we hold that the testimonies of the complaining witness Ms. Paz Gonzales and barangay tanod Jose Lazaro, Jr. are sufficiently conclusive enough to convict appellant and his co-accused beyond a reasonable doubt for the felony charged. Based on the accounts of the prosecution witnesses, all the elements of the offense and the identity of the perpetrators were duly established.

But appellant insists that the trial court erred in believing the bare and self-serving testimony of the complaining witness in regard to the value of the allegedly stolen items. According to him, save for Ms. Gonzales's bare and self-serving testimony that the value of the stolen items was 'more or less P27,000.00,' the prosecution failed to establish the value of the stolen items upon which the imposable penalty for the crime of theft would be based.

We do not agree. Paz Gonzales's testimony in open court that the value of the stolen items was 'more or less P27,000.00' is admissible and sufficient to establish the value of the stolen properties. As held by the Supreme Court in *People v. Martinez*, 274 SCRA 259 (1997) –

"Again, even under the rule on opinions of ordinary witnesses, the value of the stolen items was established. It is a standing doctrine that the opinion of a witness is admissible in evidence on ordinary matters known to all men of common perception, such as the value of ordinary household articles.

"Also not to be overlooked is the fact that the trial court has the power to take judicial notice, in this case of the value of the stolen goods, because there are matters of public knowledge or are capable of unquestionable demonstration. The lower court may, as it obviously did, take such judicial notice *motu proprio*. Judicial cognizance, which is based on considerations of expediency and convenience, displaces evidence since, being equivalent to proof, it fulfills the object which the evidence is intended to achieve. Surely, matters like the value of the appliances, canned goods and perfume x x x are ordinarily within public knowledge and easily capable of unquestionable demonstration.' (Emphasis supplied)

It bears stressing that the testimony of Ms. Gonzales on the value of the stolen properties is not self-serving. Self-serving statements are those made by a party out of court advocating his own interest; they do not include a

party's testimony as a witness in court. Self-serving statements are inadmissible xxx. This cannot be said of a party's testimony in court made under oath, with full opportunity for cross-examination on the part of the opposing party. Here, Gonzales was subjected to a grueling cross-examination on her assertions in open court, including her testimony on the value of the stolen properties.

Nonetheless, the penalty imposed by the trial court can stand modification, having in view Art. 309 (1) of the Revised Penal Code which provides:

"Penalties - Any person guilty of theft shall be punished by:

`(1) The penalty of prision mayor in its minimum medium periods, if the value of the thing stolen is more than 12, 000 pesos but does not exceed 22,000.00 pesos, but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years."

Since the value of the items taken from the complaining witness, Ms. Paz Gonzales, amounted to `more or less P27,000.00,' the proper penalty to be meted out against the petitioner should be prision mayor in its minimum and medium period, to be imposed in its maximum period, conformably to said Art. 309 (1) of the Revised Penal Code, as amended. Applying the Indeterminate Sentence Law, there being no mitigating or aggravating circumstance in this case, the penalty that must thus be imposed upon the appellant must be anywhere between two (2) years, four (4) months and one (1) day of prision correccional minimum period, to six (6) years of prision correccional maximum period, as minimum, and eight (8) years, eight (8) months and one (1) day to ten years of prision mayor in its medium period as maximum.

Accordingly, the accused-appellant is sentenced to a prison term ranging from five (5) years, four (4) months and twenty (20) days of prision correccional in its maximum period, as minimum, to eight years, eight (8) months and one (1) day of prision mayor in its medium period, as maximum. The accused-appellant should also be ordered to pay Paz Gonzales the amount of P10,000.00, corresponding to the value of the still unrecovered items (the car stereo and speakers, Ray Ban police sunglasses, and calculator). It is to be noted that the two tires worth P17,000.00 were already recovered by the complaining witness.

WHEREFORE, modified as thus indicated, the judgment appealed from must be, as it hereby is, **AFFIRMED** in all other respects, with the costs of this instance to be assessed against the accused-appellant.

SO ORDERED.[16]

Aggrieved, accused Lozano sought relief from this Court via this petition alleging that the Court of Appeals has seriously erred:

"A

IN NOT HOLDING THAT THE TESTIMONIES OF THE TWO PROSECUTION WITNESSES, (JOSE LAZARO, JR. AND PAZ GONZALES) REGARDING THE ALLEGED RECOVERY OF THE MAGWHEELS TIRES FROM THE POSSESSION OF PETITIONER ARE NOT HEARSAY.

B

IN FINDING THAT THE PETITIONER, WILLIE CALLANGA AND LORENZO TUBIS WERE THE PERPETRATORS OF THE CRIME.

C

IN FINDING PETITIONER AND HIS CO-ACCUSED, LORENZO TUBIS AND WILLIE CALLANGA GUILTY OF THE CRIME CHARGED.

D

IN IMPOSING THE PENALTY RANGING FROM FIVE (5) YEARS, FOUR (4) MONTHS AND TWENTY (20) DAYS OF PRISION CORRECCIONAL IN ITS MAXIMUM PERIOD, AS MINIMUM, TO EIGHT (8) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY OF PRISION MAYOR IN ITS MEDIUM PERIOD, AS MAXIMUM, AND IN ORDERING PETITIONER TO PAY PAZ GONZALES THE AMOUNT OF P10,000.00 CORRESPONDING TO THE VALUE OF THE STILL UNRECOVERED ITEMS."[17]

We resolve.

The Court of Appeals did not err in convicting accused Lozano and his co-accused. They are guilty beyond reasonable doubt of the crime of theft.

As defined, theft is committed by any person who, with intent to gain, but without violence against, or intimidation of persons or force upon things, shall take the personal property of another without the latter's consent. If committed with grave abuse of confidence, the crime of theft becomes qualified.[18]

Theft is clearly established in this case and the prosecution has adequately identified accused Lozano and his co-accused as the perpetrators thereof, but, to Our mind, with respect to the two (2) tires only.

It may be that the car of private complainant had been forcibly opened and robbed.[19] The car stereo was said to be missing. Other items $\frac{3}{4}$ speakers, Ray Ban, police sunglasses and calculator were also allegedly nowhere to be found. The prosecution, however, failed to prove that accused Lozano and his companions were also the ones responsible for their loss. The Court is inclined to give accused Lozano and his co-accused the benefit of the doubt insofar as these other items are concerned.

There was no direct evidence pointing to accused Lozano and his co-accused in stealing the missing items, not even for the actual taking of the two tires. All that was established was that they were in possession of the two (2) tires. It appears, therefore, that the trial court and the Court of Appeals relied on circumstantial evidence with respect to the other items.

Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. In order that conviction be had, the following elements 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 sustain 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 circumstantial evidence must exclude the possibility that some other person has committed the crime.[20]

The following comprise the chain of circumstantial evidence against the accused with respect to the other missing items: First, Paz Gonzales discovered around 8:00 o'clock in the morning of July 25, 1997 that her car was forcibly opened with the two (2) tires missing. Second, she reported the incident to the authorities in Barangay Moonwalk, Parañaque City. Third, on the following day, the barangay tanod, Jose Lazaro, received an information that two male persons on board a Toyota Cressida would be getting two (2) stolen tires from the

house of Willie Callanga on the same day. Fourth, Lazaro immediately positioned himself on the second floor of the house overlooking the house of Callanga, from where he saw accused Lozano and Lorenzo Tubis go inside the house of Callanga, and come out carrying two (2) tires which they placed inside the baggage compartment of the Toyota Cressida. Fifth, he called his fellow tanods and they intercepted the Cressida. The two tires were recovered. Accused Lozano and Callanga were arrested. Tubis was able to escape. Thereafter, Paz Gonzales identified the recovered tires as the same tires stolen from her.

There was no trace or even mention of the other missing items. The fact that the accused were in possession of the stolen tires belonging to private respondent does not necessarily bring us to the conclusion that the accused are also the ones responsible for the loss of the other items. Absent proof of the stolen property, as in the case at bench, no presumption of guilt can arise. Instead, the constitutional presumption of innocence should prevail in favor of the accused.[21]

With respect to the two (2) tires, accused Lozano has consistently maintained that the evidence of the prosecution regarding the discovery of the two (2) tires in their possession is purely hearsay. He says so because the information regarding the alleged discovery of the said tires in their possession was only conveyed to witness Jose Lazaro, Jr. by one of his fellow barangay tanods.[22]

The Court finds said argument untenable. Although it may be true that Jose Lazaro, Jr. initially received information from another barangay tanod regarding the subject stolen tires, it bears stressing that he himself confirmed the report. Pertinent portions of his testimony are hereby quoted:

"Q:

Could you tell us if up to present you are a member of the Barangay Tanod?

A:

Yes, sir.

Q:

On July 26, 1997 at about 7:20 in the morning, could you still remember where were you?

A:

I was in my house, sir.

Q:

When you are in your house, could you still remember what happened?

A:

Somebody called me, a male person called me, sir.

Q:

Could you tell us the reason why he called you?

A:

He gave me the information, sir.

Q:

Could you tell us the information that he gave to you?

A:

With regards to the white Toyota Cressida, sir.

Q:

After receiving that information, what did you do?

A:

According to the person they entered the house of Willie `Bong' Callanga, sir.

Q:

What did you do?

A:

He told me that I might need some informations with regards to the two (2) tires which were stolen because the two (2) persons were acting suspectedly, sir.

COURT:

Who was that person given that information?

A:

Your Honor, I would not tell it to the Court anymore, because he does not want to be involved in this case.

COURT:

Proceed.

Q:

Did you give the information as requested?

A:

Because the place where the car was nearby my place.

COURT:

What did you do after you got the information given to you and you saw the white car?

A:

Your Honor, I went up to the second floor of my house, and in that place I was able to see the yard of Willie `Bong' Callanga, Your Honor.

COURT:

What did you see after you went up?

A:

I saw three (3) male persons talking, Your Honor.

COURT:

Who were these three (3) male persons?

A:

Willie `Bong' Callanga, Lorenzo Tubis, and Chito Lozano, Your Honor.

COURT:

What did you find after you saw them.

A:

After their conversation, Your Honor, the three (3) of them went inside the house, and after that went out the house, and two (2) of them were carrying the tires each.

COURT:

Who was carrying the tires?

A:

Luis `Chito' Lozano and Lorenzo Tubis, Your Honor.

COURT:

What kind of tires?

A:

Tires of the car, Your Honor.

COURT:

What did they do with the two (2) tires of the car? What happened at the Barangay Hall?

A:

We arrived there at the same time with the Toyota Cressida together with the two (2) persons who were arrested and it was then Pas Gonzales identified the two (2) tires, Your Honor, as she was the owner of the two (2) tires.

COURT:

Who were on boarded at Toyota Cressida?

A:

It was only Luis `Chito' Lozano who was boarded the car, Your Honor.

COURT:

Do you know what happened to Lorenzo Tubis and Willie `Bong' Callanga?

A:

According to my fellow barangay tanod, Lorenzo Tubis was able to escape, Your Honor.

COURT:

How about Willie `Bong' Callanga?

A:

After we conducted the investigation on Chito Lozano the Police officer arrested Willie `Bong' Callanga, Your Honor.

COURT:

Where was this house of Willie `Bong' Callanga located when you saw him at his yard together with Lozenzo Tubis and Chito Lozano conversing?

A:

My neighbor, Your Honor.

COURT:

What place?

A:

Airport View Subdivision, Barangay Moonwalk, Parañaque, your Honor."[23]

Clearly, the testimony of Jose Lazaro, Jr. was not merely hearsay. He personally witnessed the incident as reported by his fellow tanod. Immediately thereafter, Paz Gonzales confirmed that the tires recovered from accused Lozano and his co-accused were the same tires stolen from her car.[24]

In view of the foregoing, the penalty imposed on accused Lozano and his co-accused should be modified.

The penalty for theft is graduated according to the value of the thing/s stolen.

"Art. 309. Penalties. - Any person guilty of theft shall be punished by:

x x x x x x x x

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

Per testimony of the private complainant, the value of the items stolen was more or less P27,000.00. This was the finding of the trial court and the Court of Appeals. The amount, which includes not only the alleged value of the two (2) tires but also of the other items, became the basis of the penalty imposed on the accused. The Court cannot, however, sustain it.

The amount of "more or less P27,000.00" was a sweeping assessment uncorroborated by any other evidence. The Court cannot arbitrarily hold that the loss sustained indeed amounted to P27,000.00. As earlier resolved, the guilt of the accused was not proven insofar as the other items were concerned. There is simply no solid evidence from which an adverse inference can be made. Thus, the trial court wrote that the "other items and their value were not duly proven." [25] Accordingly, the Court agrees with the trial court that the supposed amount corresponding to these items, which is P10,000.00, should be excluded.

The basis of the penalty imposed, therefore, should have been the value of the magwheels only. Records bear out that only the two (2) magwheels (R14 Goodyear tires) were found in the possession of the accused, with their value pegged at P17,000.00. In arriving at this amount, the trial court and the Court of Appeals merely relied on the testimony of private respondent [26] who did not even claim that they were brand new. At the risk of being repetitious, no other evidence was presented to support the testimony of private complainant. It is an ancient principle that actual damages must be duly proved. [27] In this aspect, the prosecution failed.

Was the amount of P17,000.00 an accurate or at least a realistic estimate of the value of these items? The Court

does not believe so. Since there was no conclusive or definite proof relative to the value of these magwheels other than the testimony of private complainant, the Court fixes the value of the magwheels at P12,000.00. This is the reasonable allowable limit under the circumstances, following the guidelines in *Francisco v. People*.^[28] To the Court's view, the amount is a more realistic estimate of their value. Thus, the basis of the penalty that should be imposed on petitioner and his co-accused should only be P12,000.00.

All told, petitioner and his co-accused are found guilty beyond reasonable doubt of the crime of theft. Applying Article 309 (2) of the Revised Penal Code and the Indeterminate Sentence Law, petitioner and his co-accused, should suffer the indeterminate penalty ranging from six (6) months and one (1) day of prision correccional, as minimum, to four (4) years and two (2) months and one (1) day also of prision correccional, as maximum.^[29]

WHEREFORE, the petition is PARTLY GRANTED. The Decision of the Court of Appeals, in CA-G.R. CR No. 27684, is AFFIRMED with MODIFICATION. Accused Luis Chito Buensoceso Lozano, Lorenzo Rameses Tubis and Willie Reyes Callanga are guilty beyond reasonable doubt of the crime of Theft under Article 309 (2) of the Revised Penal Code. They are hereby sentenced to suffer the

indeterminate penalty of imprisonment ranging from Six (6) Months and One (1) day of Prision Correccional, as minimum, to Four (4) Years and Two (2) Months and One (1) Day also of Prision Correccional, as maximum.

SO ORDERED.

Carpio, J., (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justice Lucas P. Bersamin (now a member of this Court) and Associate Justice Celia C. Librea-Leagogo, concurring.

[2] Records, pp. 261-265.

[3] Id. at 1.

[4] Id. at 262, TSN, January 27, 1998, pp. 7-11, 13.

[5] Id. at 262-263, TSN, March 17, 1998, pp. 4-9.

[6] Id. at 256, 264.

[7] Id. at 265.

[8] Id. at 264-265.

[9] Id. at 274-277.

[10] Id. at 291.

[11] CA rollo, p. 30.

[12] Id. at 31.

[13] Id. at 32.

[14] Id. at 33.

[15] Id. at 73-84.

[16] Id. at 78-84.

- [17] Rollo, p. 11.
- [18] *Matrido v. People*, G.R. No. 179061, July 13, 2009, 592 SCRA 534.
- [19] *Records*, p. 151.
- [20] *Aoas v. People*, G.R. No. 155339, March 3, 2008, 547 SCRA 311.
- [21] *Id.*
- [22] Rollo, p. 12.
- [23] *TSN*, March 17, 1998, pp. 4-9 (emphases supplied).
- [24] *TSN*, January 27, 1998, p. 10.
- [25] *CA rollo*, p. 18.
- [26] Rollo, p. 32.
- [27] *Dueñas v. Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11.
- [28] *Francisco v. People*, 478 Phil. 167 (2004).
- [29] *People v. Salazar*, 342 Phil. 745 (1997).

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