

BENJAMIN BELTRAN, JR. AND VIRGILIO BELTRAN, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 181355. March 30, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

Assailed in this Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure is the Decision[1] dated 23 March 2007 of the Court of Appeals In CA-G.R. CR No. 24212, affirming with modification the Decision[2] dated 23 February 2000 of the Regional Trial Court (RTC) of Camarines Sur, 5[th] Judicial Region, Branch 31, in Criminal Case No. P-2681, rinding herein petitioners Benjamin Beltran, Jr. and Virgilio Beltran, guilty beyond reasonable doubt of the crime of theft. Petitioners likewise questioned the Court of Appeals Resolution[3] dated 16 January 2008 denying for lack of merit their Motion for Reconsideration of the assailed Decision.

Petitioners Benjamin Beltran, Jr. and Virgilio Beltran, together with a certain Francisco Bravo, were charged with the crime of theft in an Information[4] that reads:

That on or about the 20[th] day of January 1998 at Barangay Sta. Elena, Municipality of Bula, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, therein petitioners and a certain Francisco Bravo], with intent to gain, but without violence against or intimidation of persons nor force upon things, did, then and there willfully, unlawfully and feloniously take, steal and carry away the hand tractor belonging to one Vicente Ollanes, valued at P29,000.00 Pesos, Philippine Currency, to the damage and prejudice of the said owner in the aforesaid amount;"[5] [Emphasis supplied].

Petitioners were arrested but their co-accused Francisco Bravo remains at large. Upon arraignment, petitioners, assisted by counsel de oficio, pleaded NOT GUILTY[6] to the charge.

During pre-trial, the following stipulation of facts were offered and admitted by the parties: (1) the identity of the private complainant, Vicente Ollanes, and the petitioners; and (2) that on 11 February 1998 a one unit hand tractor was found by Barangay Captain Leon Alcala, Jr.[7]

Thereafter, trial on the merits ensued.

The prosecution presented the following witnesses: Vicente Ollanes (Vicente), private complainant; Rafael Ramos y Cabilen (Rafael), farm helper of Vicente; and Remberto Naido (Remberto), one of the barangay tanods in Sta. Elena, Bula, Camarines Sur at the time the incident happened.

Vicente narrated that he has a farm in Sta. Elena, Bula, Camarines Sur. He knew petitioners for about three years already as the farm that they were plowing is merely adjacent to his farm. Vicente has two farmhouses on his farm, one of which is just near the farm of petitioners' father, Benjamin Beltran, Sr., while the other is located at the upper portion of his farm. In 1996, Vicente purchased a five horsepower Yanmar engine from Yanmar

Marketing in Pili, Camarines Sur.[8] The said engine was later on installed on his F-5 hand tractor that he acquired on 24 October 1997 from Reforsado Metal Works in Bagumbayan, Bula, Camarines Sur, for P17,000.00.[9] The F-5 hand tractor powered by five horsepower Yanmar engine (hand tractor) valued at P29,000.00 is being used in Vicente's farm in Sta. Elena, Bula, Camarines Sur. The same was stored outside Vicente's farmhouse near petitioners' father's farm.[10]

On 20 January 1998 at about 6:30 p.m., more or less, Vicente arrived in Sta. Elena, Bula, Camarines Sur, from his house in La Paz, Pili, Camarines Sur. Upon seeing him, his cousin, Lorencita Nacario, immediately informed him that his hand tractor was stolen by three persons, namely: petitioners Benjamin Beltran, Jr. and Virgilio Beltran, together with a certain Francisco Bravo. The said incident happened at around 6:00 p.m. while Vicente was still in his house in La Paz, Pili, Camarines Sur. To verify such information, Vicente directly went to his farmhouse, together with a certain Kagawad Gomer Sierte, his farm helper Rafael and a certain Policarpio Tagle, Jr. Upon reaching his farmhouse, Vicente confirmed that his hand tractor was, indeed, missing. As a result, Vicente reported the same to the barangay and police authorities of Sta. Elena, Bula, Camarines Sur.[11]

Rafael, Vicente's farm helper who operates the aforesaid hand tractor, verified that on 20 January 1998 at around 6:00 p.m., while he was inside the farm hut of Vicente in Sta. Elena, Bula, Camarines Sur, he suddenly saw that Vicente's hand tractor stored outside the latter's farm hut were being pulled by petitioners and another person, whose name he heard to be "Paquito." Petitioners and "Paquito" successfully brought the same to the farm hut of petitioners' father that is 50 meters away from the farm hut of Vicente. Rafael failed to approach and prevent them from doing so because petitioners were armed with bolos. Rafael, thereafter, proceeded to inform Vicente that his hand tractor was no longer in his farm hut. He then accompanied Vicente in going to the farm hut where the hand tractor was lost.

Rafael further stated that the five horsepower, Yanmar engine installed on Vicente's F-5 hand tractor has a value of P12,000.00.[14]

Remberto corroborated Rafael's testimony and revealed that at about the same date and time, he, together with his brothers, was at the nearby nipa house of a certain Silvestre Bigay, Jr. (Silvestre) in Sta. Elena, Bula, Camarines Sur, which is about 30 meters away from the farmhouse of Vicente and 60 meters away from the farmhouse of petitioners' father, for the repair of Silvestre's irrigation pump. After the repair thereof, Remberto's brothers went home but Remberto stayed to test and observe the irrigation pump. At this juncture, Remberto saw petitioners and "Paquito," whose full name was later known to be Francisco Bravo (Francisco), in the nipa house of Vicente pulling the latter's hand tractor towards the nipa hut of petitioners' father. Thereafter, petitioners and Francisco removed the hand tractor's engine and left the body outside the nipa hut of their father. Remberto was certain that the hand tractor taken by petitioners and Francisco belongs to Vicente as he used the same when he installed the former's irrigation pump.[15]

The defense, on the other hand, presented the following witnesses: petitioners Benjamin Beltran, Jr. (Benjamin, Jr.) and Virgilio Beltran (Virgilio); Lolita Morada Beltran (Lolita), mother of petitioners; and Barangay Captain Leon Alcala, Jr. (Barangay Captain Alcala) of Sta. Elena, Bula, Camarines Sur.

Petitioner Benjamin, Jr. denied the accusation against him. He also denied having known a certain Francisco Bravo, their co-accused in this case. He claimed that on 20 January 1998, he was in Angustia, Nabua, Camarines Sur, working as a construction worker at the house of Ignacio Baldago from 7:00 a.m. until 4:00 p.m. or 5:00 p.m. in the afternoon. Moreover, on the said date, he never went to Sta. Elena, Bula, Camarines Sur, where his parents have farm lots and a nipa hut constructed by his brother-in-law. He also stated that the distance between Angustia,

Nabua, Camarines Sur and Sta. Elena, Bula, Camarines Sur, is quite far and he needs to take three rides from Angustia to Sta. Elena.[16]

Petitioner Benjamin, Jr. admitted, however, that he personally knew Vicente since 1990 because the latter previously requested his parents to allow him to cultivate his parents' farm lot in Sta. Elena, Bula, Camarines Sur, but his parents denied such request. He also affirmed that he and Vicente had no misunderstanding whatsoever but his parents and Vicente had.[17]

Like his brother, petitioner Virgilio denied the accusation against him and claimed that on 20 January 1998, he was at Garchitorea, Camarines Sur, as he was one of the laborers hired by a certain Manoy Rudy Bona to cement the floor of the basketball court near the municipal building of Garchitorea, Camarines Sur. He maintained that he went there in November 1997 and returned home only in February 1998. It took him half a day to go back to Sta. Elena, Bula, Camarines Sur, from Garchitorea, Camarines Sur. Petitioner Virgilio also admitted that he knew Vicente way back in 1997. He also stated that the possible reason why he was implicated in the crime of theft was the misunderstanding that happened between his father and Vicente regarding the land in Sta. Elena, Bula, Camarines Sur, wherein his father stopped Vicente from working thereat.[18]

In support of petitioners, their mother, Lolita, testified that on 20 January 1998, she was in their farm hut in Sta. Elena, Bula, Camarines Sur. She maintained that on the said date, her two sons, petitioners Benjamin, Jr. and Virgilio, never went to their farm hut because they have their own work. Petitioner Benjamin, Jr. was working in Angustia, Nabua, Camarines Sur, while Petitioner Virgilio was working in Pili, Camarines Sur. She, thus, vehemently denied the allegations against her sons.[19]

Lolita further declared that she came to know Vicente in 1990 when the latter came over to their hut to ask permission that he be allowed to work in their farm which her husband refused. On 29 December 1997, however, when she and her husband arrived in their farm in Sta. Elena, Bula, Camarines Sur, they found somebody, together with Vicente, plowing their farm. Her husband, thus, stopped them from doing so to which they acceded. Allegedly, in retaliation thereof, Vicente reported to the police authorities in Bula, Camarines Sur, that she and her family are members of the New People's Army and that they were armed. Accordingly, the Philippine National Police (PNP) of Baao, Camarines Sur, conducted a raid against them while they were at the house of a certain Kagawad Julian Botor of Sta. Elena, Bula, Camarines Sur. Lolita and her husband caused the said incident to be blottered at PNP Bula, Camarines Sur.[20]

Lolita further claimed that she has no idea that the hand tractor of Vicente was missing until his two sons were arrested linking them to the lost thereof. She also confirmed that there was no property dispute between them and Vicente even prior to or after 20 January 1998.[21]

Barangay Captain Alcala testified that he, indeed, issued a Certification[22] to Lolita dated 11 February 1998 and he stated therein that Lolita and company left their camalig on 4 February 1998 and brought with them personal belongings. He testified further that on 4 February 1998, Lolita personally requested him to look after their belongings left in Sta. Elena, Bula, Camarines Sur, as they were about to go home in Angustia, Nabua, Camarines Sur. Thereafter, Barangay Captain Alcala and a certain Barangay Tanod Tranquelo instantly proceeded to the nipa house of Lolita and his family. They found thereat a landmaster hand tractor without engine, which according to Lolita, is owned by Vicente. Allegedly, Barangay Captain Alcala was requested by Lolita to inform Vicente to just get the said hand tractor in their nipa house. Barangay Captain Alcala likewise found in the nearby nipa hut of Vicente a Yanmar engine installed on the latter's irrigation pump.[23]

Once again, on 11 February 1998, Barangay Captain Alcala, together with Lolita, visited the area and purportedly found out that the Yanmar engine of Vicente was already missing.[24]

On rebuttal, the prosecution presented Ernesto Barcinas (Ernesto), relative of the petitioners. Vicente, the private complainant, was also presented as rebuttal witness.

Ernesto testified that on the whole day of 20 January 1998, he was by the side of Lake Bula, Camarines Sur, farming his land when he saw the petitioners at the farm of Vicente planting watermelon. At that time, he was just 10 meters away from the petitioners that is why he identified them clearly. Moreover, the petitioners are first cousins of his wife, Lydia Beltran. Ernesto maintained that on the same date, petitioners slept at their father's nipa hut in Sta. Elena, Bula, Camarines Sur.[25]

Vicente, on rebuttal, admitted that he knew Barangay Captain Alcala. He also emphasized that he has three Yanmar engines and the engine that was stolen, together with his hand tractor, was his five horsepower Yanmar engine mounted thereon. It was different from the Yanmar engine fixed on his irrigation pump found by Barangay Captain Alcala. And, contrary to Barangay Captain Alcala's testimony, such Yanmar engine installed on his irrigation pump is not missing. Vicente also confirmed that he and the Beltran's have no misunderstanding. There was also no truth to the allegation of Lolita that he requested them to allow him to till a portion of their farm, for in reality, he has a bigger land to cultivate than them. Vicente similarly claimed that there was an error in the entry in the barangay blotter as the engine stated therein that was lost was his NT-65 Yanmar engine but what was actually lost was his F-5 hand tractor with five horsepower Yanmar engine installed thereon.[26]

On sur-rebuttal, the defense presented Benjamin Bettran, Sr. (Benjamin, Sr.), father of petitioners, who testified that his family had a conflict with the family of Ernesto as the latter, together with Vicente, had caused them to be raided by the police authorities while they were at the house of a certain Kagawad Julian Botor in Sta. Elena, Bula, Camarines Sur. He also disclosed that he has a land dispute with Vicente and it started when he caught the former clearing his farm in Sta. Elena, Bula, Camarines Sur. But he admitted that no case was filed in relation thereto. He also denied the accusation against his sons.[27]

Finding petitioners' defense of denial and alibi unmeritorious vis-a-vis the testimonies of witnesses for the prosecution, particularly their positive identification of the petitioners as the perpetrators of the crime, the court a quo rendered a Decision dated 23 February 2000, disposing as follows:

WHEREFORE, in view of all the forgoing, judgment is hereby rendered finding the herein [petitioners] BENJAMIN BELTRAN, JR. and VIRGIUO BELTRAN, guilty beyond reasonable doubt of the offense of THEFT and imposing upon them an indeterminate penalty of imprisonment of arresto mayor in its maximum period or four months and one day as the minimum penalty to prision correctional in its minimum period as the maximum penalty or two years and four months and to pay the costs hereof.

As civil liability, said [petitioners] are ordered to pay the private complainant jointly and severally, the sum of TWELVE THOUSAND (P12,000.00) PESOS, the value of the engine lost, without however subsidiary imprisonment in case of insolvency.

Finally, let the records hereof be consigned to the archives until the third accused Francisco Bravo is arrested. Let alias warrant of arrest be issued for his arrest.[28] [Emphasis supplied].

Disgruntled, petitioners appealed the aforesaid trial court's Decision to the Court of Appeals via Notice of Appeal.[29]

Petitioners argued before the appellate court that the trial court erred in: (1) convicting them of the crime charged; (2) finding that the prosecution was able to establish their guilt beyond reasonable doubt; and (3) finding them civilly liable.

On 23 March 2007, the Court of Appeals rendered a Decision affirming petitioners' conviction but modifying the

penalty imposed by the trial court, the decretal portion of which states:

WHEREFORE, the appealed [Decision of the Regional Trial Court of Camarines Sur (Branch 51) is AFFIRMED with MODIFICATION on the penalty imposed on [petitioners] in that they are sentenced to suffer the indeterminate penalty of three (3) years of prision correctional, as minimum, to eleven (11) yearfs] of prision mayor, as maximum.[30] [Emphasis supplied].

In its Decision, the appellate court found Vicente's testimony credible as he was able to prove that his hand tractor was, indeed, stolen by petitioners, which testimony was not successfully refuted by the latter. Moreover, the defense of denial and alibi offered by petitioners necessarily failed in light of their positive identification as the real culprits. The appellate court similarly found the award of civil liability in favor of Vicente proper since the prosecution was able to prove that he truly sustained actual damages and that the same was caused by the felonious acts of petitioners.

Petitioners filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution[31] dated 16 January 2008.

Petitioners now seek relief from this Court via this Petition for Review on Certiorari, contending that the appellate court erred as follows:

I.

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT AFFIRMED THE DECISION OF THE REGIONAL TRIAL COURT CONVICTING THE PETITIONER^] OF THE CRIME CHARGED DESPITE MATERIAL INCONSISTENCIES IN THE TESTIMONY OF PROSECUTION WITNESSES AND FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE [PETITIONERS] BEYOND REASONABLE DOUBT.

II.

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT FINDING THE PETITIONER^] CIVILLY LIABLE SINCE THERE IS NO COMPETENT PROOF OR BEST EVIDENCE TO SHOW THE VALUE OF THE ENGINE LOST.

III.

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT IMPOSED A HIGHER PENALTY UPON THE PETITIONERS.[32]

Petitioners argue that the evidence of the prosecution miserably failed to establish the first element of the crime of theft, i.e., taking of personal property. The private complainant himself was not certain as to what personal property was stolen from him as there was disparity between what was entered in the barangay blotter and in his testimony in open court. In the barangay blotter, it was stated that his two engines, one F-6 Yanmar hand tractor and NT-65 attached to the irrigation pump were stolen. However, in his testimony before the trial court, private complainant declared that what was stolen was his F-5 hand tractor not an F-6 hand tractor. Petitioners believe that such inconsistencies are material and substantial for the determination of whether the crime of theft was, indeed, perpetuated by them as it involved the very element of the crime itself. As such, petitioners assert that the appellate court committed a palpable mistake in affirming their conviction despite prosecution's failure to prove their guilt beyond reasonable doubt and to overcome their constitutionally enshrined right to be presumed innocent.

In the same way, petitioners maintain that the appellate court erred in finding them civilly liable for the value of the stolen engine since the prosecution failed to produce the receipt therefor. Such failure is fatal because the

competent proof or the best evidence to show the value of the stolen engine is the receipt itself. Thus, the award of actual damages in favor of the private complainant has no basis.

As a final argument, petitioners faulted the appellate court in imposing upon them a higher penalty considering that the prosecution did not satisfactorily establish the value of the stolen property that would be the basis of the penalty to be imposed.

This Court affirms petitioners' conviction for theft.

Article 308 of the Revised Penal Code provides:

ART. 308. Who are liable for theft. - Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

From the afore-quoted provision, it is clear that the elements of the crime of theft are: (1) that there be 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 against or intimidation of persons or force upon things.[33]

In this case, petitioners assailed that the first element of the crime of theft, i.e., that there be taking of personal property, was not substantially proven by the prosecution because of the inconsistencies in the private complainant's testimony and the contents of the barangay blotter as to what personal property was actually taken. This Court holds otherwise.

Primarily, it is worth noting that petitioners merely questioned what particular personal property was taken but not the fact of taking itself.

It is well-entrenched that entries in a police or barangay blotter, although regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries, for these are often incomplete and inaccurate. These, therefore, should not be given undue significance or probative value as to the facts stated therein.[34]

In the barangay blotter,[35] if it is true that the stolen properties stated therein were an F-6 hand tractor and NT-65 Yanmar engine while in private complainant's open court testimony, the stolen property testified to was an F-5 hand tractor valued at P29,000.00. Nevertheless, such inconsistency has been satisfactorily explained by the private complainant during his testimony before the court *a quo*. He clarified that an error was committed by the barangay secretary in the entry made in the barangay blotter. Instead of an F-5 hand tractor, the barangay secretary entered therein an F-6 hand tractor and NT-65 Yanmar engine as the properties stolen by petitioners and Francisco Bravo. He called the attention of the barangay secretary and told the latter that it was his F-5 hand tractor that has been stolen by the petitioners and Francisco Bravo. But the barangay secretary merely assured him that the error will be rectified. As such, he immediately proceeded to the police station to also report the incident.[36]

Moreover, as the Court of Appeals stated in its Decision, the petitioners never refuted the explanation given by the private complainant regarding the error in the entry in the barangay blotter.[37]

Similarly, a perusal of the Certification[38] issued by the PNP-Bula, Camarines Sur, as regards Police Blotter Entry No. 3023 dated 20 January 1998, as well as the affidavit of the private complainant and his testimony during preliminary investigation, readily reveals that the entry in the barangay blotter was, indeed, erroneous. All the entries in the aforementioned documents were consistent that the property stolen by petitioners and Francisco

Bravo was private complainant's F-5 hand tractor valued at P29,000.00, not an F-6 hand tractor or NT-65 Yanmar engine.

Emphasis must also be given to the fact that during private complainant's entire testimony before the trial court, he remained consistent that what has been stolen by the petitioners and Francisco Bravo was his F-5 hand tractor valued at P29,000.00. More so, even the other prosecution witnesses never wavered in their testimony that it was private complainant's F-5 hand tractor that has been stolen by the petitioners and Francisco Bravo.

Further, prosecution witness Rafael positively identified petitioners as the persons who took the hand tractor of private complainant while it was parked outside the latter's farmhouse, which is just near petitioners' father's farm. He also identified with certainty the hand tractor being pulled by petitioners. As discussed by the trial court in its Decision, thus:

xxx [Rafael's] location therefore gave him a close view of the events that transpired near the hut. From his vantage point, he could easily identify the persons pulling the hand tractor. During his testimony, he positively identified [petitioners] recognizing them immediately as they were his neighbors, xxx.

Equally important, [Rafael] also positively identified the hand tractor being pulled by [petitioners and a certain Paquito, whose full name was later on revealed to be Francisco Bravo] as the one owned by [private complainant]. Being the one who operated the machine, he is the most competent person to identify it, more so at a short distance. xxx.[39] [Emphasis supplied].

Another prosecution witness, Remberto, corroborated Rafael's testimony that he similarly saw petitioners and "Paquito," whose full name was later known to be Francisco Bravo, in the farmhouse of the private complainant, which is just 30 meters away from where he was and no trees whatsoever blocking his view, pulling private complainant's hand tractor towards the nipa hut of petitioners' father, which is just 60 meters away from where he was. Remberto, thereafter, observed petitioners and Francisco Bravo removed the hand tractor's engine and left the body outside the nipa hut of their father. Remberto was likewise certain that the hand tractor taken by petitioners and Francisco Bravo belongs to private complainant as he used the same when he installed the former's irrigation pump.[40]

Given the foregoing, there can be no doubt that the prosecution was able to prove the first element of the crime of theft. The same is true with the second element of theft, i.e., that said property belongs to another. The prosecution witnesses have proven that the hand tractor belongs to private complainant, which petitioners never refuted.

As regards the third element, of theft, i.e., that the taking is done with intent to gain, this Court held that *animus lucrandi*, or intent to gain, is an internal act which can be established through the overt acts of the offender. Although proof as to motive for the crime is essential when the evidence of the theft is circumstantial, the intent to gain or *animus lucrandi* is the usual motive to be presumed from all furtive taking of useful property appertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator. The intent to gain may be presumed from the proven unlawful taking.[41] In this case, it cannot be doubted that a hand tractor is a useful farming equipment and has monetary value. From the petitioners' act of taking the same unlawfully, their intent to gain can be reasonably presumed therefrom.

As to the fourth and fifth elements of theft, i.e., that the taking be done without the consent of the owner and that the taking be accomplished without the use of violence against or intimidation of persons or force upon things, respectively, the same were also clearly established in this case. That the hand tractor of the private complainant was taken by the petitioners without the former's consent was clearly shown by the fact that the petitioners took the same when the private complainant was not in his farmhouse. The taking of the hand tractor was also

accomplished without the use of violence against or intimidation of persons or force upon things as the petitioners did not destroy anything or threatened anyone in taking the hand tractor of the private complainant. Petitioners simply pulled the hand tractor until they reached their father's farmhouse and subjected the same to their complete control.

Thus, all the elements of theft were duly proven by the prosecution. As such, it is beyond any cavil of doubt that petitioners' guilt for the said crime has been proven beyond reasonable doubt.

Although the body of the hand tractor was subsequently recovered as stated in the Pre-Trial Order and only the engine was taken by the petitioners and Francisco Bravo, it does not necessarily follow that it was only theft of the engine of the hand tractor.

In *People v. Obillo*,^[42] this Court held that:

xxx That only the wheel was found in possession of the accused and was intended to be appropriated by the latter is of no moment. The unlawful taking of the tricycle from the owner was already completed. Besides, the accused may be held liable for the unlawful taking of the whole vehicle even if only a part thereof is ultimately taken and/or appropriated while the rest of it is abandoned.^[43] [Emphasis supplied].

Also, in *People v. Carpio*,^[44] cited in *People v. Obillo*,^[45] this Court convicted the accused Carpio of theft of a car which was found abandoned one day after it was stolen but without three (3) of its tires, holding thus:

xxx The act of asportation in this case was undoubtedly committed with intent on the part of the thief to profit by the act, and since he effectively deprived the true owner of the possession of the entire automobile, the offense of larceny comprised the whole car. The fact that the accused stripped the car of its tires and abandoned the machine in a distant part of the city did not make the appellant any less liable for the larceny of that automobile. The deprivation of the owner and the trespass upon his right of possession were complete as to the entire car; and the fact that the thieves thought it wise promptly to abandon the machine in no wise limits their criminal responsibility to the particular parts of the car that were appropriated and subsequently used by the appellant upon his own car. [Emphasis supplied].

In the same way, though only the engine of the hand tractor was taken by petitioners while the body thereof was abandoned, it does not in any way limit their criminal responsibility to that part of the hand tractor. It bears stressing that the unlawful taking of the whole hand tractor was already completed or consummated the moment the petitioners took it from the farmhouse of the private complainant and brought it to the farmhouse of petitioners' father and subjected the same to their control. Thus, petitioners may be held liable for the theft of the entire hand tractor and not just of the engine thereof.

In contrast to the prosecution's evidence, all that the defense can offer is the denial and alibi of the petitioners. As the Court has oft pronounced, both denial and alibi are inherently weak defenses, which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime.^[47] For the defense of alibi to prosper at all, it must be proven by the accused that it was physically impossible for him to be at the scene of the crime or its vicinity at the time of its commission.^[48] Unfortunately, petitioners failed to discharge this burden. As aptly elucidated by the court a quo:

Even assuming that [petitioner Benjamin, Jr.], indeed worked in the house of Ignacio Baldago in Angustia, Nabua, Camarines Sur on [20 January 1998], his admission that he left work at around 4 p.m. of that day and went home thereafter, opens his alibi to question. Without the benefit of any corroborating witness who could prove he did went home after work and never left his house thereafter leaves one wondering what he did during the two hours from 4 p.m. to 6 p.m. This two-hour period is more than enough for [petitioner Benjamin, Jr.] to go to Sta. Elena, Bula, Camarines Sur. Buia and Nahua arc adjacent towns which can even be negotiated for less than 2 hours, and which therefore raises the possibility that [petitioner Benjamin] could have been in

Sta. Elena, Bula, at around 6 p.m. of that day even if he indeed worked in the house of Ignacio Baldago.

x x x x

The alibi of [petitioner Virgilio] that he was in Garchitorena, Camarines Sur on [20 January 1998], suffers from the same weakness as the alibi of his brother [petitioner Benjamin]. [Petitioner Virgilio] presented as proof a certification that he was employed by Jarbon Builders from [15 March 1997] to [5 March 1998] ostensibly in a project in Garchitorena, Camarines Sur. But the certification can be relied upon only in proving his employment during the stated period but never his continued and uninterrupted presence in Garchitorena, Camarines Sur. One could be employed in one place, but from time to time, be in another place, such as his home or the head office of his employer, in the course of his employment, x x x The certification aside from its hearsay character is therefore worthless to prove where he was at any given time. [49] [Emphasis supplied].

On the other hand, this Court finds merit in petitioners' contention that the appellate court erred in affirming the award of actual damages, representing the value of the stolen engine, in favor of the private complainant as the same has no legal basis.

Article 2199 of the Civil Code provides:

Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

The law does not require a definite degree of certainty when proving the amount of damages claimed. It is necessary, however, to establish evidence to substantiate the claim. To justify an award for actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.[50]

While petitioners did not rebut the amount of P12,000.00 as the value of the engine lost, no receipt to prove such claim has been adduced in evidence by the prosecution. In the testimony of the private complainant, he merely stated when and where he bought the said engine but as regards its amount he did not mention anything about it as the receipt therefor could no longer be located. Instead, the private complainant merely stated that the whole hand tractor has a total amount of P29,000.00. He then presented the receipt for the body of the hand tractor with a stated amount of PI 7,000.00. Similarly, the testimony of Rafael, farm helper of the private complainant, that the engine was bought for PI 2,000.00 could not be given any considerable weight as it was not proven that he was with the private complainant when the latter bought the same. Rafael himself could not also produce any documentary evidence to support such claim. Even the lower courts failed to state any basis for granting the amount of P12,000.00 as actual damages in favor of the private complainant other than the bare testimonies of the latter and Rafael. Thus, the award of P12,000.00 as actual damages in favor of the private complainant is improper for lack of any legal basis.

As regards the amount of the body of the hand tractor, though it was properly supported by receipt, no actual damages can be awarded covering the value of the same since it was duly recovered as stipulated by the parties during pre-trial, which was clearly stated in the Pre-Trial Order.

There is also merit on the final argument of the petitioners that the appellate court erred in imposing upon them a higher penalty.

For the crime of theft, the penalty shall be based on the value of the thing stolen.[51] In *People v. Concepcion*,[52] this Court held that:

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

stolen should be used as basis for the imposable penalty although the electric guitar, wall clock, traveling bag and CD component were recovered. The recovery of the stolen property does not mean that the crime of theft was not consummated. Per testimony of the victim's daughter Marilou dela Cruz, and as found by the trial court the total value of the articles stolen by the appellant is P40,500.00 broken down as follows: 1.) electric guitar -P8,000.00; 2.) travelling bag - P500.00; 3.) CD component with speaker P30,000.00; 4.) wall clock - P500.00; and 5.) jewelry items and cash -approximately P1,500.00. However, upon cross-examination, she testified that she cannot recall the cost of the wall clock that was reported lost. It was her brother who bought the electric guitar, the cost of which she is not certain. The speakers and the Sony component is worth P30,000.00, more or less. She cannot recall how much cash was lost. She also cannot recall how much jewelry was lost.

In view of this, the only evidence that the prosecution was able to present with regard to the value of the things stolen, is that of the CD component which should be valued at P500.00, the amount for which appellant admittedly pawned the CD component to Analyn Balmes.[53]

This Court has previously discussed that petitioners are liable for the theft of the entire hand tractor, though its body was subsequently recovered and only the engine was taken or carried away, because the unlawful taking of the whole hand tractor was already completed or consummated the moment the petitioners took it from the farmhouse of the private complainant and brought it to the farmhouse of their father and subjected the same to their control. However, since the value of the lost engine was not properly proven by the prosecution, its value therefor cannot be considered in determining the penalty to be imposed upon the petitioners. Only the value of the body of the hand tractor, which is P17,000.00, as evidenced by Official Receipt No. 313,[54] can be considered in determining the imposable penalty upon petitioners.

Under Article 309 of the Revised Penal Code, the penalty for theft when the value of the stolen property is more than P12,000.00 but does not exceed P22,000.00 is as follows:

Art. 309. Penalties, -Any person guilty of theft shall be punished

by:

1. The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceed the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

x x x x [Emphasis supplied].

Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be anywhere within the range of the penalty next lower in degree to that prescribed for the offense, without first considering any modifying circumstance attendant to the commission of the crime.[55] Since the penalty prescribed by law is prision mayor in its minimum and medium periods, the penalty next lower would be prision correctional in its medium and maximum periods. Thus, the minimum of the indeterminate sentence shall be anywhere within 2 years, 4 months and 1 day to 6 years.

The maximum of the indeterminate penalty is that which, taking into consideration the attending circumstances, could be properly imposed under the Revised Penal Code.[56] There being no mitigating or aggravating circumstance and the value of the thing stolen does not exceed P22,000.00, the maximum term of the indeterminate penalty, which is prision mayor in its minimum and medium periods, should be imposed in the

medium period or 7 years, 4 months and 1 day to 8 years and 8 months.

Accordingly, petitioners should be meted out an indeterminate penalty of 3 years, 6 months and 20 days of prison correctional as minimum, to 8 years and 8 months of prison mayor as maximum.

WHEREFORE, premises considered, the Decision and Resolution of the Court of Appeals dated 23 March 2007 and dated 16 January 2008, respectively, in CA-G.R. CR No. 24212 convicting petitioners for the crime of theft is hereby AFFIRMED with the following MODIFICATIONS: (1) the award of actual damages in the amount of P12,000.00 in favor of the private complainant is DELETED for want of legal basis; and (2) petitioners are sentenced to an indeterminate penalty of 3 years, 6 months and 20 days of prison correctional, as minimum, to 8 years and 8 months of prison mayor, as maximum. No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Del Castillo, JJ., concur.

[1] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro, concurring. Rollo, pp. 29-40.

[2] Penned by Presiding Judge Martin P. Badong, Jr. CA rollo, pp. 31-38.

[3] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro, concurring. Rollo, p. 27.

[4] CA rollo. p. 30.

[5] Id.

[6] Per RTC Order dated 5 August 1998. Records, p. 56.

[7] As evidenced by Pre-Trial Order dated 7 October 1998. Id. at 62.

[8] Testimony of Vicente Ollanes. TSN, 26 October 1998, pp. 5-9.

[9] As evidenced by Official Receipt No. 313. Records, p. 110.

[10] Testimony of Vicente Ollanes. TSN, 26 October 1998. pp. 9 and 12.

[11] Id. at 9-12.

[12] Its walls were made of bamboo slats, it sometimes referred to in this case as farmhouse, nipa house or nipa hut. (Testimony of Rafael Ramos v Cabilen. TSN, 25 November 1998, p. 17).

[13] Id. at 3-10.

[14] Id. at 14.

[15] Testimony of Remberto Naldo. TSN, 20 January 1999, pp. 7-16.

[16] Testimony of Benjamin Beltran, Jr. TSN, 17 March 1999, pp. 4-10, 13, 15, 26 and 36.

[17] Id. at 12-13 and 32-33.

[18] Testimony of Virgilio Beltran. TSN, 14 June i 999, pp. 4-9.

[19] Testimony of Lolita Morada Beta. TSN, 6 April 1999, pp. 7-8.

- [20] Id. at 7-12.
- [21] Id. at 14, 26 and 30.
- [22] Records, p. 34.
- [23] Testimony of Barangay Captain Leon Alcaia, Jr. TSN, 21 June 1999, pp. 2-8.
- [24] Id. at 9.
- [25] Testimony of Ernesto Barcinas. TSN. 1 October 1999, pp. 4-8 and 10.
- [26] Testimony of Vicente Ollanes. TSN, 21 October 1999, pp. 4-16.
- [27] Testimony Of Benjamin Beltran, Sr. TSN. 11 November 1999, pp. 4-9 and 24-25.
- [28] Records, p. 219.
- [29] CA rollo, p. 39.
- [30] Rollo, pp. 39-40.
- [31] Id. at 27.
- [32] Id. at 14.
- [33] *People v. Sison*, 379 Phil. 363, 384 (2000).
- [34] *People v. Sandig*, 454 Phil. 801, 8 f 2 813 (2003).
- [35] Records, p. 171.
- [36] Testimony of Vicente OUanes. TSN, 21 October 1999, pp. 12-15. 37
- [37] Rollo, p. 36.
- [38] Records, p. 112.
- [39] Id. at 216.
- [40] Testimony of Remberto Naldo. TSN, 20 January 1999, pp. 7-16.
- [41] *People v. Del Rosario*, 411 Phil. 676, 686 (2001).
- [42] 411 Phil. 139 (2001).
- [43] Id. at 151-152.
- [44] 54 Phil. 48 (1929).
- [45] *Supra* note 42.
- [46] Id. at 152.
- [47] *People v. Veloso*, 386 Phil. 815, 825 (2000).
- [50] *Gamboa, Rodriguez, River & Co., Inc. v. Court of Appeals*, G.R. No. 117456, 6 May 2005, 458 SCRA 68. 74.
- [48] *People v. Francisco*, 373 Phil. 733, 744 (1999).

[49] Records, pp. 217-218.

[51] *People v. Moreno*, 425 Phil. 526, 543 (2002).

[52] 409 Phil. 173(2001).

[53] *Id.* at 190.

[54] Records, p. 110.

[55] *People v. Dela Cruz*, 383 Phil. 213, 227 (2000).

[56] *Id.*

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