

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GUILLERMO OLIVERIO Y LATORENO AND NAPOLEON BAYONAS Y
OMEGA, ACCUSED, GUILLERMO OLIVERIO Y LATORENO,
ACCUSED-APPELLANT.**

G.R. No. 56751. January 17, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the Court of First Instance of Manila, an information was filed against GUILLERMO OLIVERIO and NAPOLEON BAYONAS for qualified theft. Docketed as Criminal Case No. 54995, the information reads:

"That on or about May 16, 1980, in the City of Manila, Philippines, the said accused, conspiring and confederating together and with others whose true names, real identities and present whereabouts are still unknown and helping one another, with intent of gain and without the knowledge and consent of the owner thereof, did then and there wilfully, unlawfully and feloniously take, steal and carry away 500 bags or 25,000 kilos of paraffin wax all valued at P250,000.00 belonging to the M.S.C. Trans Services and Shemberg Marketing Corporation, represented by Rudy Media y Salteras, with principal office at 317 Yuchengco Bldg., Quintin Paredes St., Binondo, this City, to the damage and prejudice of said owners in the aforesaid amount of P250,000.00, Philippine Currency.

"That accused Guillermo Oliverio y Latoreno and Napoleon Bayonas y Omega acted with grave abuse of confidence they being then the driver and truck helper of said M.S.C. Trans Services, respectively, and as such had a free access to the pro-pertry stolen at the time of the commission of the said offense."

In a decision handed by then Judge Jose C. Colayco, both accused were found guilty as charged. Oliverio who appealed the decision was sentenced as follows:

"WHEREFORE, judgment is hereby rendered finding the accused Guillermo Oliverio guilty beyond reasonable doubt of qualified theft of the articles described in the information valued at P250,000.00, and sentencing him to the penalty of reclusion perpetua, to return the goods, or their value, and to pay the costs. The period of his detention shall be deducted from his sentence."

The people's version of the crime is as follows:

"The Shemberg Marketing Corporation in Manila imported 2,000 bags of paraffin wax through its licensed customs broker, Mr. Rudy Mejia, which arrived in Manila sometime in the first week of May, 1980. As its licensed broker, this importation was in the name of Mr. Mejia who paid its customs duties and taxes in the total amount of P78,176.00. As shown by its import invoice dated May 12, 1980, issued by the Fong Enterprises Ltd. of Hongkong, the total value of the 2,000 bags of paraffin wax is \$26,000.00 (pp. 31-38, tsn, Nov. 7, 1980; pp. 5-6, tsn, Sept. 1, 1980; Exhibits "I" and "H"). The cost per bag of paraffin wax, at the time of the hijacking incident, was therefore, P500.00 (pp. 34-37, tsn, Nov. 7, 1980; Exhibit "H").

"This importation of paraffin wax was discharged from the vessel upon its arrival in Manila to the custody of

E. Razon, Inc. On May 13, 1980, the vans, containing the paraffin wax, were opened and examined by the customs examiner, in the presence of Mr. E. Razon. They counted each van as containing 500 bags of paraffin wax, arranged in five rows, at 100 bags per row. The vans were then closed and sealed with aluminum seal, with the contents inside and complete. Mr. Mejia secured the corresponding Permit to Deliver from the Bureau of Customs, with certification papers for having paid the customs duties and taxes of said shipment, which he later presented to E. Razon, Inc. which, in turn, issued the corresponding gate passes which would allow the trucks, loaded with said cargo of paraffin wax, to pass through the customs gate at Pier 3, South Harbor, Manila (pp. 7, 15-16, 19-20, 34-40, tsn, Sept. 1, 1980, pp. 11-14, tsn, Oct. 6, 1980; Exhibits "A" and "A-1").

"At around 9:00 o'clock in the morning of May 16, 1980, Mr. Mejia was at Pier 3, South Harbor, Manila, supervising the loading of four 40-footer vans, containing the imported paraffin wax, on four trucks which he had earlier hired from M.S.C. Trans. Services, owned by Mr. Ernesto Eugenio. One of the four trucks which Mr. Eugenio sent to the pier that morning for said purpose was a 150 wheeler prime mover truck, with plate number 6U604, driven by accused Guillermo Oliverio, with co-accused Napoleon Bayonas as the truck helper (pahinante). All these vans, containing the cargo of paraffin wax, were to be delivered at the bodega or warehouse of Mr. Rudy Mejia at Beata, Pandacan, Manila, before actual delivery to their direct importer, the Shemberg Marketing Corporation (pp. 5-7, tsn, Sept. 1, 1980; pp. 4-10, tsn, Nov. 7, 1980; pp. 6-9, 17, tsn, Oct. 6, 1980).

"The loading of the van, containing 500 bags of paraffin wax, on the truck driven by accused Oliverio, started from 9:00 o'clock in the morning and was completed at around 11:30 that same morning of May 16, 1980. This particular truck, driven by accused Oliverio, was able to leave the pier at around 1:25 o'clock in the afternoon of that same day, and the expected arrival of the said truck at the bodega of Mr. Mejia at Beata, Pandacan, Manila, was between 2:15 to 2:30 o'clock that same afternoon. Mr. Mejia waited for the trucks to arrive at his bodega, but only three trucks with said cargo arrived, while the truck driven by accused Oliverio did not arrive. He waited up to 3:00 o'clock that same afternoon, still it did not arrive. Hence, he went to the Office of Mr. Eugenio located at Pier 3, and informed the latter of the delay of the truck driven by accused Oliverio did not arrive. He and Mr. Eugenio rode in a car and retraced the route taken by the said truck, but upon arrival at Pandacan, still the truck was not there. Both returned to Pier 3, but the truck could not also be found there (pp. 20-23, tsn, Sept. 1, 1980; p. 18, tsn, Nov. 7, 1980; pp. 7-10, 29-30, tsn, Oct. 6, 1980; Exhibit "B").

"At around 3:30 o'clock in the afternoon of the same day, May 16, 1980, Mr. Eugenio was informed by a friend from the Bell Brokerage that the missing truck was seen cruising along South Superhighway that afternoon. He and Mr. Mejia pursued the truck to Muntinlupa. They scoured the area in Muntinlupa, where, at around 7:30 o'clock that same evening, they saw the missing truck parked not far from the municipal building of Muntinlupa. They first sought the assistance of the Muntinlupa policemen, and together, they went to the parked truck. The Muntinlupa policemen opened the van loaded on the parked truck and found it empty. Both driver Oliverio and truck helper Bayonas were nowhere to be found. Scouring the vicinity, the policemen found some ten bags of paraffin wax, belonging to the same importation, which the policemen took custody of. Mr. Mejia later informed Mr. Raymundo Puno, branch manager of the Shemberg Marketing Corporation, that three vans, containing the imported paraffin wax, arrived at his bodega at Beata, Pandacan, Manila, but that the fourth van, with 500 bags of paraffin wax, never got there with its contents (pp. 24-28, tsn, Sept. 1, 1980; pp. 18-21, 33-34, tsn, Nov. 7, 1980).

"Pfc. Segundino Bautista of the Western Police District (Muntinlupa Police Force) conducted the investigation of a qualified theft as reported by Mr. Rudy Mejia whose statement was taken. Pat. Jose Filoteo, Jr. of the same police district, picked up Guillermo Oliverio at his place on July 25, 1980. On the same day, July 25, 1980, they also picked up Napoleon Bayonas at his residence at Bagong Lipunan, Tondo, Manila. Both suspects were investigated by Pfc. Bautista. Bayonas executed a written waiver, Pagpaubaya, which his parents also signed. Pfc. Bautista duly informed both accused of their constitutional rights before he took their statements. Both suspects manifested to him that they were waiving their rights, such as right to counsel, and they gave their

respective statements voluntarily. Thereafter, Pfc. Bautista rendered his official report, Exhibit "F", and prepared the arrest report, although at that time, the two accused were already under custody by the police. After their statements were taken, Pfc. Bautista brought them to the inquest fiscal that same evening of July 25, 1980, where they had their respective statements verified and subscribed to before the said fiscal (pp. 41-62, 68-70, tsn, Sept. 1, 1980; pp. 5-6, 19, 22-23, tsn, Nov. 13, 1980; pp. 21-22, tsn, Nov. 7, 1980; Exhibits "G", "D", "E", and "F").

"Pat. Filoteo also picked up another suspect by the name of Domingo Putol at Balut, Tondo, Manila. According to his investigation, Putol acted as a middle man, and he was at the premises when the truck in question was unloaded of its cargo, and he was seen talking to some other persons. However, Domingo Putol disclaimed any participation in the hijacking of said truck, and he was released (pp. 12-15, 19, tsn, Nov. 13, 1980; Exhibit "F").

"In his written statement given to the police, accused Oliverio narrated the circumstances of the hijacking of the truck then driven by him, which was loaded with the cargo of paraffin wax, on May 16, 1980, by persons whom he mentioned as Junior Mateo, Jacky Mateo, Charlie, and Fernando Sakay, and others; his participation therein for which he received P10,000.00 as his share of the proceeds of the loot; and the places and period of time they went into hiding until they decided to go home (Exhibit "D"). Co-accused Napoleon Bayonas, in his written statement, gave a similar account, and admitted that he received P3,000.00 as his share (Exhibit "E")." (Rollo, pp. 61-67)

Upon the other hand, the appellant, through his counsel, gives the following version:

"Transcript of Testimony, Nov. 13, 1980, of Guillermo Oliverio: By virtue of a contract with offended party to haul a cargo of paraffin wax from Gate 4, South Harbor, Manila, to Pandacan, he took delivery of at that point, with co-accused as his pahinante, leaving at 1:30 in the afternoon, May 16, 1980 (Pp. 37-38). Near the Veterans Bank, Port Area, he was intercepted by a group of men borne in cars, one a taxi, one a red car, one in front, one behind him, PC officers as vanguard. Out of one car emerged a man who got on his truck with message from offended party as to change of destination (p. 40). They were eleven in all, four in taxi, four in red car, three on truck. With them was one whom he knew as checker of the Bureau of Customs (p. 45). Because he knew the man as such and had trust in him, he did as he was told, and following the motor vehicle in front of him as guide, drove towards Las Piñas, and upon their indication, stopped by a vacant lot near the BF Homes subdivision office, and on said lot the cargo was unloaded, or rather transferred to a trailer. Among the men composing the group were Junior Mateo, Jacky Mateo, Charlie, Doming Putol, whose names he came to know on said vacant lot when these men addressed each other by name. The two co-accused were not free to go, they were being watched (p. 50). Accused, on their order, abandoned the truck in San Pedro, Laguna, and came back to rejoin his pahinante. They were taken to Pitong-Gatang, Tondo, where they stayed for a number of days, later to a barrio of Malolos, where they stayed in a house of the Mateos. To Guillermo was given P10,000.00, to Bayonas P3,000.00, but almost nothing remained out of these big sums because every day of their stay the guard get from them money to meet their expenses (p. 54). Then they left for home. Sometime in July 1980 they were arrested or invited for investigation. Before their statements were taken Oliverio was electrically shocked and mauled (p. 70), receiving blows on his chest. Among transcripts of testimony before this Honorable Court that of Bayonas was not included, he having testified to have seen bruises on Olivario's body during the investigation." (Rollo, p. 37.)

The appellant makes seven (7) assignments of error, to wit:

"1st ASSIGNMENT OF ERROR: The Honorable Trial Court erred in seeing in total configuration of facts a unified plan and concert of effort to carry out the criminal design not simply among the active and real culprits, but also with the two whom by pressure of number and appearance of power they drew into the whirlpool of their criminal activities.

"2nd ASSIGNMENT OF ERROR: That the Honorable Trial Court erred in failing to see what

accused-appellant saw in such a configuration of facts, from the instant of delivery at the Pier of the cargo to be hauled to the instant of delivery of message as to change of goal or destination in the vicinity of the Veterans Bank, Port Area, through a group borne in motor vehicles with PC officers as vanguard, impressions of legitimacy as to the announced change of goal or destination.

"3rd ASSIGNMENT OF ERROR: That the Honorable Trial Court erred in holding accused-appellant's going to Pitong-Bato, Tondo, and later to a barrio of Malolos, and stay there as flight and concealment evidencing guilt.

"4th ASSIGNMENT OF ERROR: That the Honorable Trial Court erred in not taking into account in passing upon the guilt of accused-appellant that he had gone to Port Area for work and search of livelihood by a virtue of a contract to haul said cargo of paraffin wax, had begun hauling the load in pursuance thereof, and between construing receipt of P10,000.00 after the work had been accomplished as loot and construing it as wages for services performed, the legal presumption of innocence inclines us to the latter construction.

"5th ASSIGNMENT OF ERROR: That the Honorable Trial Court erred in not seeing in the supposed confession Exh. D effects of duress under which it was taken and signs of falsity in the process of taking it.

"6th ASSIGNMENT OF ERROR: That the Honorable Trial Court erred in finding accused-appellant guilty beyond reasonable doubt of the crime of qualified theft charged in the indictment.

"7th ASSIGNMENT OF ERROR: That the Honorable Trial Court erred in convicting accused-appellant of the crime of qualified theft and in sentencing him to the penalty of reclusion perpetua and in ordering him to indemnify offended party in the sum of P250,000.00, with costs." (Rollo, pp 34-36.)

Cutting through the verbosity and convoluted language of the assigned errors, the pivotal issue in this appeal is whether or not the trial court committed a reversible error in convicting the appellant. Stated differently, is the decision of the trial court in accordance with the evidence and the law?

The answer is a categorical, yes.

In respect of the facts, the issue is the credibility of witnesses. Relevant thereto is the cardinal rule that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence as well as to observe the demeanor of the witnesses while testifying in the case. (People vs. Balili, No. L-38250, August 6, 1979, 92 SCRA 552)

In the instant case, the record is devoid of any material which will justify a rejection of the trial court's conclusions and findings of facts. On the contrary, the appellant's version has nothing to command belief; it is utterly incredible.

On the basis of the appellant's sworn statement given on July 22, 1980 (Exhibit D) and his testimony during the trial on November 13 and December 9, 1980, his version of the incident is unbelievable on the following counts:

Item: He said that in front of the Veterans Bank, his truck was stopped by somebody who then got on the truck. It was the first time he saw the "somebody" who "According to him was the companion of the checker." "Somebody" instructed him to proceed to Las Piñas and he obeyed because "I trusted this man because I did not know what place to deliver the cargo."

The above can be believed only by a pin head. For why should he trust and obey "somebody" who claimed to be a companion of the checker and who he had not met before? He said that he did not know where to deliver the cargo. Nonsense. Mr. Rudy Mejia the customs broker who hired the truck driven by the appellant and who supervised the loading of the cargo specifically told him to deliver the same to the Mejia warehouse in Pandacan.

Item: He said that he was intercepted in front of the Veterans Bank by a group of men who rode a red car and a taxi.

We take judicial notice that the Veterans Bank is located on Bonifacio Drive which is heavily travelled especially during the day. Such a site is not a likely place to stage a hijack.

Item: He said that after delivering the cargo to a vacant lot in Las Piñas, in front of BF Homes, he was ordered to abandon the truck in San Pedro, Laguna. He could not go home because, "two persons (who went with him) were holding me" and who took him to a house in Pitong Gatang, Tondo.

Upon the other hand, the evidence for the prosecution is to the effect that the truck was abandoned in front of the "municipio" of Muntinlupa, not in San Pedro, Laguna.

Item: He was given P10,000 by the hijackers but he did not actually count the amount.

The fact that he was given a big amount of money indicates that he was in fact in cahoots with the thieves.

Item: When he was given the money (P10,000) he was told, "bahala kana." Asked to explain, he said, "Tinakot ako." Still further he said, "Papatayin daw ako."

The comment of the trial court on this matter is revealing:

"At long last you got the right answer after five minutes trying. Make it of record that the counsel for the record asked him several times what were the threatened words allegedly uttered by the person who gave him the money. It was only after he gave an answer no one could answer but he finally said that if he was caught he would be killed." (TSN, Nov. 13, 1980, pp. 52-53.)

Item: He said that for driving the truck, he was to be compensated, "Twelve per cent from the owner."

The appellant, whose testimony was at best sketchy, did not explain where the 12% was to be taken. If he meant 12% of the value of the cargo, then 12% of P250,000 would be P30,000 - a fantastic amount for driving a truck from the South Harbor to Pandacan or even to Las Piñas. At any rate it is not usual to pay truck drivers on a percentage basis. The appellant who had made many, many trips for Mr. Ernesto Eugenio's M.S.C. Trans. Services would have been a very rich man if he had indeed been paid on a percentage basis but the expediente shows as he was originally assisted by counsel de oficio and he could not post bail in the amount of P20,000.

Item: He said that when his truck was stopped in front of the Veterans Bank, there were five persons in the red car and four in the taxi. He did not know their names and "I came to know their names while they were addressing each other at Las Piñas." But on cross-examination, he said that he came to know Doming Putol, Jacky Mateo, Junior Mateo, Charlie and Fernando for the first time only in Las Piñas.

The contradiction between his testimony during the direct and cross examinations is at once apparent. The contradiction shows that he was uttering bare-faced lies. For in fact he had known his co-conspirators as revealed in his statement, Exhibit D, as follows:

"T: Maari bang isalaysay mo sa akin kung paano nangyari itong sinasabi mong nakawan ito?

"S: Bandang alas 10:00 ng umaga, noong ika-16 ng Mayo, ng kargahan ang trak ko doon sa Piyer 3, South Harbor. Noong makargahan na ay may lumapit sa akin na dalawang lalake. Sila si Junior Mateo at si Jacky Mateo, at ang sabi sa akin ay kung pwede raw tirahin yong kargamento ko. Tumanggi po ako kaya umalis na sila. Paglabas ko sa gate 4 ng South Harbor, ay sumakay sa akin si Charlie, isang tauhan nina Junior Mateo at napansin ko rin ang isang taxing puno na kabuntot noong trak ko sa likod at sakay sila Junior Mateo, Jacky Mateo at dalawa pang kilala ko lang sa mukha. Ang sabi sa akin ni Charlie ay ituloy ko na at malaki ang

mapaparte ko. Dahil natatakot ho ako dahil marami sila kaya napilitan na rin akong ituloy ang trak sa Las Piñas, Metro Manila. Pinatigil ako sa tapat ng BF Homes sa Las Piñas. Dumating din ang pangkat ni Fernando sakay sa isang RP na kulay pula at isa pang taxi ang dumating yong nga hong sakay sila Junior Mateo. Kaya bale labing-isa ho kaming lahat; apat ang sakay ng taxi, apat din ang sakay ng kotseng pula, at tatlo kami sa trak, kasama na ho roon yon patong na PC. Mga pagkatapos ng dalawang oras ay may dumating na isang K-11 na trailer ng Champion Truckings at inilipat yong sakay ng aking trak sa nasabing Trailer. Bandang alas 9:00 na ho ng gabi ng sila ay matapos."

There is more in the record to show that the true version is that of the prosecution but it is unnecessary to mention them.

WHEREFORE, finding the appealed decision to be in accordance with the evidence and the law, the same is hereby affirmed in toto. Costs against the appellant.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, De Castro, and Escolin, JJ., concur.

CONCURRING OPINION

AQUINO, J.:

I concur. The penalty is reclusion perpetua because the penalty for simple theft of personal property with a value exceeding P22,000 shall not exceed reclusion temporal, and since the theft is qualified theft, because there was grave abuse of confidence, the imposable penalty is two degrees higher than reclusion temporal. That higher penalty would be death.

But the death penalty cannot be imposed because the law does not specifically prescribe it in this case. Article 74 of the Revised Penal Code provides that "in cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, if such higher penalty should be that of death, the same penalty and the accessory penalties of Article 40, shall be considered as the next higher penalty." That next higher penalty is reclusion perpetua.

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