

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO CIOBAL Y PABRUA, EUSEBIO EBREO Y RINGOR, ESTER
PAJIMOLA Y EBREO, RICARDO LIM, RICARDO MIRANDA AND EDDIE
PAJIMOLA...**

G.R. NO. 86220. April 20, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is the case of six (6) employees who were each sentenced to life imprisonment for allegedly pilfering gas in the gasoline station of their employer based on the sole uncorroborated testimony of the latter.

An information dated February 15, 1985 was filed in the Regional Trial Court of San Fernando, La Union charging the accused of the crime of qualified theft as follows:

"The undersigned Assistant Fiscal hereby accuses BONIFACIO CIOBAL y PABRUA, EUSEBIO EBREO y RINGOR, ESTER PAJIMOLA y EBREO, RICARDO LIM, RICARDO MIRANDA, FRANCISCO ESCALA, ZALDY CARINO and EDDIE PAJIMOLA, of the crime of QUALIFIED THEFT, committed as follows:

"That sometime in December 1980 and prior and subsequent thereto in the Municipality of San Fernando, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually, aiding one another, with the intent to gain and with grave abuse of confidence and breach of trust of the confidence reposed upon them by their employer, BENJAMIN M. GALVEZ, accused being employees and/or gasoline boys of the BEN'S PETRON Station Service Center owned and managed by said Benjamin M. Galvez, and without the consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away sales of gasoline in the total amount of ONE HUNDRED EIGHTEEN THOUSAND EIGHT HUNDRED FIFTY FIVE PESOS and TWENTY ONE CENTAVOS (P118,855.21) Philippine Currency by tampering and/or adjusting the registered meter of the gasoline pump installed at Ben's Petron Station Service Center, to the damage and prejudice of said Benjamin M. Galvez in the aforementioned sum of money.

CONTRARY TO LAW."[1]

"WHEREFORE, finding the accused Bonifacio Ciobal, Eusebio Ebreo, Ester Pajimola, Ricardo Lim, Ricardo Miranda and Eddie Pajimola guilty of the crime of qualified theft as charged in the information beyond reasonable doubt as principals,, they are hereby sentenced to suffer RECLUSION PERPETUA; to indemnify the offended party the amount of P118,855.21 jointly and severally; and to pay the costs. Considering the penalty imposed, let the record of this case be forwarded to the Supreme Court for review."[2]

On May 2, 1988, said accused filed a motion for reconsideration thereof questioning the imposition of the penalty alleging that it should only be 12 years and 1 day to 14 years, 5 months and 1 day of reclusion temporal. This was denied by the trial court.

On May 5, 1988, the accused filed a motion for new trial on the following grounds:

- "1. That errors of law or irregularities have been committed during the trial prejudicial to the substantial right of the defendant; and
2. That new and material evidence has been discovered which the defendants could not with reasonable diligence have discovered and produced at the trial and which, if introduced and admitted, could probably change the judgment."[3]

On May 10, 1988, the accused filed a motion to admit additional evidence. On August 22, 1988, the trial court denied the motion for new trial stating that by the demurrer to the evidence the accused is precluded from adducing evidence even after the new trial.

On August 24, 1988, the accused moved for reconsideration of the August 22, 1988 order, and on September 26, 1988 filed a motion to avail of the new amendment to Rule 119, Section 15 of the Rules On Criminal Procedure which read:

"Sec. 15. Demurrer to evidence.- After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence on his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution."

After the effectivity of the aforesaid amended new rules on criminal procedure on October 1, 1988, the trial court denied the motion on October 14, 1988 stating that the defense cannot be allowed to present its evidence after the decision was rendered as it would in effect be granting a motion for new trial that had already been denied. A motion for reconsideration of said order was denied on November 15, 1988. Hence, on November 17, 1988, the accused filed a notice of appeal.

Under the 1987 Constitution, the death penalty may no longer be imposed so there is no more automatic review of a judgment relating to capital offenses. Hence, this case is treated as an ordinary appeal.

The grounds relied upon in this appeal are -

"ASSIGNMENT OF ERRORS

- THE TRIAL COURT ERRED IN FINDING THE ACCUSED, GUILTY BEYOND REASONABLE DOUBT OF QUALIFIED THEFT.
- THE TRIAL COURT ERRED IN FINDING THAT CONSPIRACY ATTENDED THE COMMISSION OF THE CRIME.
- THE TRIAL COURT ERRED IN IMPOSING THE PENALTY OF RECLUSION PERPETUA.

- THE TRIAL COURT ERRED IN DENYING THE MOTION FOR NEW TRIAL.

- THE TRIAL COURT ERRED IN DENYING THE MOTION TO AVAIL OF THE NEW AMENDMENT TO RULE 119, SEC. 15 OF THE RULES OF COURT.
- THE TRIAL COURT ERRED IN DENYING THE MOTION FOR RECONSIDERATION OF THE ORDER OF OCTOBER 14, 1988 WHICH DENIED DEFENSE MOTION TO AVAIL OF THE NEW AMENDMENT."[4]

The appeal is impressed with merit.

The evidence for the prosecution must rise or fall on the sole testimony of the offended party Benjamin Galvez as found by the court a quo. It is not contradicted as the accused were not allowed to present their evidence. Nevertheless, it is uncorroborated. Moreover, coming as it is from an interested party his testimony should not be accepted hook, line and sinker. It should be assessed with extreme care.

As culled from the appealed decision, it appears that in 1973, he started the operation of the Ben's Petron Service Center in San Fernando, La Union as operator and manager. The appellants were his employees. Upon noticing that he was losing money in the business, on May 27, 1981, at 4:00 o'clock in the morning, he went to the station to ascertain why he was losing money. He ordered the cashier, appellant Eusebia Ebreo, to read the pump meter, count the money from the sales and submit it to him. He and Ebreo computed the sales and both of their computations showed that there was a shortage of 35.5 liters of regular gasoline. He asked Ebreo to explain the shortage but it was appellant Ricardo Lim who replied that he saw appellant Bonifacio Ciobal place that quantity of gasoline in two containers.

He ordered Ebreo to get the bag of Ciobal because he suspected that the payment of the missing gasoline might have been placed in the bag. Ebreo got the bag and put it on top of a mat and Galvez noticed that Ebreo took something from the bag and put it under the mat. Galvez took what Ebreo placed under the mat. It turned out to be a PCI bank book of Ciobal with a deposit of P800.00 entered on, May 28, and another amount of P500.00 entered therein thereafter. Galvez asked Ciobal where he got the money which he deposited in the bank. Instead of answering the question, Ciobal ran away.

The following day, Galvez again went to the station at 4:00 o'clock in the morning and he found Ciobal, Ebreo and appellant Ricardo Miranda inside the office so they were not able to run away. He investigated Ciobal and he admitted that all of them, referring to the appellants, have been receiving their respective shares from the money realized by them from the adjustments of the meter reading and that it was accused Francisco Escala who had been adjusting the meter.

Galvez called for Ester Pajimola and asked her about the truth of the statement of Ciobal and Pajimola answered that they were true. She further stated that the last adjustment of the meter was done on May 28, 1981 when accused Eddie Pajimola and accused Francisco Escala took 300 liters and that her share in the spoils was P150.00. She stated further that the first adjustment of the meter was done in March, 1980. She did not have any share from the money realized from the first adjustment but she had been sharing for the last several months, and that several adjustments of the meter reading have been done by the group.

Ebreo likewise admitted having received part of the money realized by the group from the adjustments of the meter reading.

Because of these admissions, Galvez brought all the accused to the police station for investigation, except Zaldy Carino who ran away and since then had not been reporting for work anymore.

Reynaldo Dyquiangco, auditor of the gas station hired by Galvez, found out that the station had incurred a loss totalling P118,855.21.

After the case was filed in court appellant Ester Pajimola approached Galvez and asked for forgiveness and told him that she is willing to work in the station without any compensation in order that she will pay for her share. Ebreo also approached Galvez and inquired why he (Galvez) was still proceeding with the case when he and the other accused have paid P3,000.00 each to Judge Collado, Galvez told Ebreo that he never received any amount from the amounts paid by them to Judge Collado for the settlement of the case.[5]

What is the legal effect of the above admissions of appellants Bonifacio Ciobal, Eusebio Ebreo and Ester

Pajimola?

The prosecution contends that under Section 22, Rule 130 of the Rules of Court, "the act," declaration or omission of a party as to a relevant fact may be given in evidence against him." However, the defense argues that said admission cannot be admissible in evidence against the other appellants considering the provisions of Section 25, Rule 130 of the Rules of Court, which provides -

"Admission by third party.- The rights of a party cannot be prejudiced by an act, declaration, or omission of another, and proceedings against one cannot affect another, except as hereinafter provided."

Thus, the maxim *res inter alios acta alteri nocere non debet* - A third party may not be prejudiced by the act, declaration or omission of another.

The prosecution countered that the said admissions are admissible against the other appellants as an admission by silence as an exception to the aforesaid Section 22 of the Rules under the next section which provides -

"Section 23. Admission by silence.- Any act or declaration made in the presence and within the observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, may be given in evidence against him."

To be admissible as an admission by silence the following requisites must concur as correctly stated by the prosecution -

- "(a) He must have heard or observed the act or declaration of the other person;
- (b) He must have had the opportunity to deny it (People v. Ranario, 49 Phil. 220);
- (c) He must have understood the statement;
- (d) He must have an interest to object as he would naturally have done if the statement was not true;
- (e) The facts are within his knowledge; and
- (f) The fact admitted or the inference to be drawn from his silence is material to the issue." [6]

Galvez had not established through his testimony that all these requisites are present. He did not state that the other appellants were present and heard the admissions against them; that they had the opportunity to deny the same; that they must have understood the statement; and that the facts are within their knowledge. Indeed, even appellant Ciobal who allegedly admitted his participation denied the alleged imputation of appellant Lim that he placed gasoline in 2 containers. [7] Absent such evidence an admission by silence cannot be attributed to the other appellants.

The prosecution then invokes Section 27, Rule 130 of the Rules of Court regarding admission by a co-conspirator, to wit -

"Admission by conspirator.- The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration."

The admission referred to in the above provision refers to that made relating to the conspiracy and during its existence. The aforesaid admissions of the appellants in this case appear to have been made after the existence of the conspiracy. Moreover, there is no independent proof of such conspiracy other than such admissions. Obviously, said admissions are not admissible in evidence against the other appellants. Conspiracy has not been established.

Thus, what the prosecution appears to have established are the admissions of appellants Ciobal, Ebreo and Ester Pajimola, and that Pajimola and Ebreo offered to amicably settle the case during its pendency which may be evidence of their guilt. Are these sufficient bases for their conviction?

There is no question that said appellants are trusted employees of Galvez in his gas station so the fiduciary relationship between them categorize the offense committed, if proved, to be qualified theft.[8]

However, the prosecution had not satisfactorily established the nature and value of the property allegedly stolen.

In the criminal complaint which was filed by the Commander of the San Fernando Police Station, the amount of the loss alleged was only P7,246.00 while in the information the figure is P118,855.21. Galvez testified that his investment in the business was P60,000 in 1973; and he added another P20,000 three years later, thus, an investment in the total amount of P80,000.00; and that the losses he suffered covered from 1973 to 1981.[9]

On the other hand, his auditor, Mr. Dyquiangco, estimated the loss of the inventory of the various petroleum products to be 118,855.21 based on his affidavit dated December 18, 1981 but its admission was rejected by the trial court as hearsay and not being the best evidence.[10] The documents, invoices and evidence of transactions analyzed by him during the period were not presented in court as they are missing.[11]

The Court reproduces with approval the observation in the appellants' briefs

"Moreover, the special audit of Mr. Dyquiangco covered the period from March 1980 up to March 31, 1981 (t.s.n. p. 15, hearing on Nov. 10, 1986) but from the testimony of Benjamin Galves, his losses covered the period 1973 to 1981, amounting to P80,000. (t.s.n., August 8, 1986, p. 48). Again, Mr. Galvez .claimed losses in sales of gasoline but the audit report of Mr. Dyquiangco included a combination loss of all diesel, kerosene, gasoline in the regular, super and special gas.' (t.s.n., p. 23, hearing on Nov. 10, 1986). How and how much were the losses attributable to evaporation which is .5% of the gasoline, according to Mr. Dyquiangco (t.s.n., p. 26, hearing on Nov. 10, 1986) has not also been accounted for in the audit report, which naturally would diminish, or lessen the actual loss.

"In the light of the discrepancies, inconsistencies, the inherent weaknesses and insufficiencies of the testimonies of complainant Benjamin Galvez and accountant Reynaldo Dyquiangco, more so the rejection by the Court of the basis of Mr. Dyquiangco's estimate of the loss (Exhibit D), we submit that the Court gravely erred in giving full credence to the , testimony of Benjamin Galvez. The Court erred in holding that the loss sustained by Benjamin Galvez was P118,855.21 and basing upon it the penalty of reclusion temporal imposed on all the accused." [12]

The prosecution has failed to establish the loss and its correct amount which is an essential element of the offense of qualified theft.

No doubt the prosecution was remiss in its duty to establish the guilt of the appellants beyond reasonable doubt. It attempted to present appellant Bonifacio Global as a state witness but it changed its mind.[13] The prosecution backed out from a signal Opportunity to fortify its case. As it is, the testimony of the offended party Benjamin Galvez standing alone cannot stand scrutiny. A conviction for such a serious offense on such slender evidence should be out of the question.

The trial court should have granted a new trial due to the irregularities in the proceedings before it, among others, the shocking discrepancy in the amount of the loss alleged in the criminal complaint and the information, and if only to get at the truth. He should have afforded the appellants the opportunity to present their defense despite their apparent waiver thereof upon filing the demurrer to the evidence under the old rules.[14] It should have applied the beneficent provisions of the new amendment under Rule 119, Section 15 that if the motion for dismissal is denied, and the accused filed the motion with express leave of court, then the accused may adduce

evidence in his defense. Procedural laws may be given retroactive effect when favorable to the accused.

The prosecution contends, however, that there was no express leave sought in this case. The records show that after the prosecution closed its evidence, the appellants informed the court through counsel that they shall file a demurrer to the evidence. The Court agreed to give them time to file the same. This is a substantial compliance with the aforesaid rules.

Even the Solicitor General faults the court a quo in the imposition of the penalty of reclusion perpetua when the term of the minimum appropriate penalty, applying the Indeterminate Sentence Law, should only be within the range of 16 years and 1 day to 14 years and 8 months of prision mayor maximum to reclusion temporal, minimum, and the maximum should be within the range of from 16 years, 5 months and 11 days to 20 years.[15]

One last word. Benjamin Balvez testified that appellant Ebreo told him he and the other accused paid P3,000.00 each to Judge Collado for settlement of the case but Balyes denied, receiving anything from the judge. This is a disturbing piece of information that the trial court should have looked into during the trial. The judge should have verified the truth of the story for, if so, then it is corroborative of the testimony of the offended party. More importantly, it was his duty to help purge the judiciary of the corrupt and misfits. The records of this Court show Municipal Judge Francisco Collado of San Fernando, La Union was considered resigned from the service on September 10, 1981.[16] As he is no longer in the service let a copy of this decision be furnished the Honorable Secretary of Justice, Manila, and the Integrated Bar of the Philippines, Metro Manila, for such appropriate action towards the criminal investigation and/or prosecution or disbarment proceedings against said former judge.

WHEREFORE, the judgment appealed from is hereby reversed and set aside and another judgment is hereby rendered acquitting the accused-appellants with costs de oficio. This decision is immediately executory and the appellants who are presently detained should be immediately released.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, JJ., concur.

[1] Page 7, Rollo.

[2] Page 20, Rollo.

[3] Page 49, Rollo.

[4] Pages 50-51, Rollo.

[5] Pages 50-51, Rollo.

[6] People vs. Paragsa, 84 SCRA 105 (1978).

[7] TSN, August 1, 1985, p. 14.

[8] Articles 308 to 310, Revised Penal Code.

[9] TSN, August 8, 1986, p. 4.

[10] TSN, November 10, 1987, p. 10.

[11] TSN, May 27, 1987, p. 6.

[12] Page 56, Rollo.

[13] TSN, Brief, October 14, 1987; pp. 23 to 24; and November 10, 1987, pp. 1-2.

[14] See Section 15, Rule 119 of the 1985 Rules of Criminal Procedure.

[15] Pages 118 to 122, Rollo.

[16] AM-2519-M.J. (Ester Montemayor vs. Judge Francisco Collado) charged- for failure to account for accrued rentals deposited with him in an ejectment case.

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