

PONCIANO CORTEZ AND ELLEN BICO, PETITIONERS, VS. COURT OF APPEALS, ET AL., RESPONDENT.

G.R. Nos. 104687-88. June 19, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals affirming in toto the decision of the Regional Trial Court of Quezon City,[2] the dispositive portion of which states:

"WHEREFORE, there being proof beyond reasonable doubt, the court hereby imposes sentence as follows:

1. In Crim. Case No. 20582, the amount involved is P17,058.41. Under Article 309, para. 1, the court imposes on accused Cortez and de la Torre, as principals, the penalty of from 3 years 6 months and 21 days of prision correccional to 7 years 4 months and 1 day of prision mayor. On accused Bico as an accomplice, the court imposes penalty of one degree lower, i.e., 1 year and 11 days to 3 years 6 months and 21 days. Further, the accused shall indemnify private complainant de los Reyes the amount of P17,058.41;

2. In Crim. Case No. 20583, the amount involved is P5,775.00. On the accused Cortez and de la Torre, the court imposes penalty of from 3 months and 11 days of arresto mayor to 1 year 8 months and 21 days of prision correccional. On the accused Bico as accomplice, the court imposes a penalty of 30 days of arresto menor. Further, the accused shall indemnify private complainant de los Reyes the sum of P5,775.00."

On June 23, 1982, two criminal cases for Qualified Theft were filed against Ponciano Cortez y Desiderio, Enrique de la Torre y Baria and Ellen Dano Bico before the then Court of First Instance of Rizal, Branch 52 (now the Regional Trial Court, Branch 106), Quezon City.

The Information on the first count reads:

"That on or about the 10th day of June, 1982, in Quezon City, Philippines, the above-named accused, being then all employees of the gasoline station located at the corner of Baler and Roosevelt Avenue, San Francisco del Monte, this city, owned by Felipe de los Reyes, conspiring together, confederating with and mutually helping one another, and having free access to the different parts of the said establishment, with intent of gain and grave abuse of confidence and without the knowledge and consent of the owner thereof, did then and there, wilfully, unlawfully and feloniously take, steal and carry away several liters of gasoline amounting to P17,058.41, Philippine Currency, belonging to Felipe de los Reyes, to the damage and prejudice of the said owner in the total amount aforementioned and in such other amount as maybe awarded to him in under the provisions of the Civil Code."

On the second count, the Information alleges:

"That on or about the 6th day of April, 1982, in Quezon City, Philippines, the above-named accused, being then all employees of the gasoline station located at the corner of Baler and Roosevelt Avenue, San Francisco del Monte, this city, owned by Felipe de los Reyes, conspiring together, confederating with and mutually helping one another, and having free access to the different parts of the said establishment, with intent of gain

and grave abuse of confidence and without the knowledge and consent of the owner thereof, did then and there, wilfully, unlawfully and feloniously take, steal and carry away several liters of gasoline amounting to P5,775.00, Philippine Currency, belonging to Felipe de los Reyes, to the damage and prejudice of the said owner in the total amount aforementioned and in such other amount as maybe awarded to him under the provisions of the Civil Code."

On August 16, 1982, petitioners were arraigned and pleaded "Not Guilty."

In the ensuing trial, the prosecution presented three (3) witnesses, namely, complainant Dr. Felipe de los Reyes, Blandina Sabornido, and Pat. Fulgencio Salvacion of the Quezon City Police.

The defense, on their part, presented the three accused on the witness stand.

The facts are as follows:

Dr. Felipe de los Reyes, owner and operator of a trucking company and several gasoline stations, noticed, between February and April 1982, that there were shortages in the inventories of his gas station located at the corner of Roosevelt Avenue and Baler Street. Dr. de los Reyes hired the Alfaro Security and Detective Agency to trace the persons responsible for the shortages and the investigation revealed that the same could only be caused by someone from the inside. From then on, complainant kept a close watch on his employees.

Petitioner Ponciano Cortez, one of several drivers employed by complainant, was assigned delivery truck No. 649 that also functioned as a tank. Cortez' job was to accept delivery of gasoline from the Shell plant in Pandacan, Manila and to deliver them to the gasoline stations owned by complainant, among which was the one located at the corner of Roosevelt Avenue and Baler Street.[3]

Petitioner Ellen Dano Bico was employed by complainant from 1979 up to 1982 as acting manager and cashier. Bico's working hours at the station were from 8:00 a.m. to 7:00 p.m.[4] As the one assigned to receive the gasoline delivered by Cortez, she kept the dipstick used to measure the contents of the underground tank.[5]

After his discovery of the inventory shortage, complainant found that the dipstick kept by Bico had been tampered with, such that it had become six inches shorter. Because of the shortened dipstick, the reading of the volume of the contents in the underground tanks was inflated by 600 to 1,000 liters.

Blandina Sabornido, whose father Alejandro Sabornido worked as a "gasoline boy" or pump attendant in the gas station owned by complainant, stayed with her father from 1980 to 1983 in one of the rooms built in the said gas station. She testified that de la Torre, was a gasoline boy in the same gas station who lived in a room adjacent to the room occupied by her and her father.[6] Between January and June, 1982, de la Torre got gasoline from the delivery tank more or less about ten times.[7] In the month of April 1982, particularly on April 4, 5 and 7, de la Torre and Cortez siphoned off gasoline from the tank with the use of a hose and transferred the same to the drums. De la Torre and Cortez succeeded in drawing five drums of gasoline from the delivery tank and they placed these drums in a room behind the gas station where it was sold in gallon containers to taxi and jeepney drivers.[8]

On June 10, 1982 at about 8:00 in the evening, while Blandina was outside her room at the gas station, she again saw Cortez and de la Torre siphoning gasoline from the delivery tank with the use of a hose and transferring it to as many as five drums. As in the past, they kept the drums in a room at the back of the gasoline station, selling the gasoline by the gallon to taxi and jeepney drivers for five days.[9]

Dr. de los Reyes said that, based on delivery receipts and sales reports, the shortage, as of April 6, 1982 was computed at 1,134.4 liters with a total value of P5,775 and as of June 10, 1982, it was 5,088 liters with a total value of P17,058.41.

After trial, the court rendered a decision on September 13, 1985 convicting the three accused of the crime charged.

Petitioners Ponciano Cortez and Ellen Bico appealed the decision to the Court of Appeals. De la Torre withdrew his appeal and died while serving his sentence.

On November 29, 1991, the Court of Appeals affirmed in toto the decision of the trial court.

Hence, this petition.

Petitioners argue that they were convicted on the basis of conjectures. They question how the amount of P17,058.41 as the value of the gasoline allegedly stolen by them on June 10, 1982 and the amount of P5,755.00, on April 6, 1982, was arrived at. They aver that, since no one caught them in the act of stealing gasoline, their conviction is not justified. They discount as hearsay evidence, the finding of the Alfaro Security and Detective Agency that the shortages were the result of an "inside job," since no one was presented to testify to that effect. They claim that the testimony of Blandina Sabornido, the prosecution's main witness, has no probative value because the same was "coached, inconsistent and unbelievable."^[10] Thus, they conclude, they should be acquitted of the crime charged on the ground of failure of the prosecution to prove their guilt beyond reasonable doubt.

We hold petitioners' contentions to be devoid of merit.

First of all, we find as satisfactory Dr. de los Reyes' explanation to the trial court of the process by which he computed the amount of the shortages in his gasoline inventory.

"De los Reyes explained to the court the mathematical computation of the inventory which indicated the shortages. He reduced the mathematics into a chart, (Exh. H). The chart is an illustration of comparative sales by meter difference against the sounding difference.

In the month of April, the shortage amounted to 1,134.4 liters with a total value of P5,775. (Exh. H-2). The contents of the tank for April are indicated by the following commercial documents: delivery receipt dated 2 April 1982 (Exh. M) signed by Cortez and Bico; sales report dated 4 April 1982 signed by Bico (Exh. J); sales report dated 6 April 1982 signed by Bico (Exh. K) and delivery receipt dated 7 April 1982 signed by Cortez and Bico (Exh. N).

In the month of June, the shortage consisted of the following: 2,200 + 1,788 + 1,100 liters (Exh. H-1), with a total value of P17,058.41. The contents of the tank for June are indicated by the following commercial documents: delivery receipt dated 10 June 1982 signed by Bico and Cortez (Exh. L); and sales report dated 15 June 1982 signed by Bico (Exh. G).

After he discovered the inventory shortage in June, de los Reyes found that the dipstick (Exh. F) had been reduced by about 6 inches. The dipstick meter is used to measure the quantity of gasoline and diesel fuel in the underground tanks. Because it had been shortened, the dipstick was no longer accurate, and produced a reading inflated by 600 to 1000 liters. De los Reyes made a chart (Exh. I) to show the pump and tank system involved in the delivery of fuel products. It also shows a magnified section of the dipstick. It was Bico who kept the dipstick, and who measured the contents of the underground tanks with it.

De los Reyes explained that the standard business practice among oil dealers allows for a margin (either a discrepancy or an excess) of 50 liters for each underground tank. He took this into consideration in computing the inventory, but nonetheless reached the conclusion that there were definite shortages."

The explanation is exhaustive and conclusively supports the claim of the amount of the shortages in the gasoline

inventory.

We do not find the testimony of the detective agency's personnel as necessary to establish the guilt of the accused for it was hired merely to discover how the shortages were incurred. When Dr. de los Reyes testified regarding the detective agency's report, it was only by way of explanation as to why he suspected his employees of being responsible for the shortages. The prosecution never attempted to prove the existence of the crime by means of the findings of the detective agency. It was Dr. de los Reyes himself who managed to catch the perpetrators after finding that the dipstick kept by Bico had been shortened by six inches.

Moreover, contrary to petitioners' contention, there was an eyewitness to the commission of the crime in the person of Blandina Sabornido whom the prosecution presented in court. She testified in a direct and straightforward manner, which belies petitioners' claim that she was "coached." The minor inconsistencies in her testimony strengthen rather than weaken it. We have said that slight variations in the testimony of witnesses as to minor and inconsequential details or collateral matters do not affect their credibility.[11] Said variations, in fact, are indicative of truth[12] and slight contradictions even serve to strengthen the sincerity of a witness' testimony[13] proving that it was not rehearsed.[14]

Petitioners point to an alleged inconsistency in Blandina's testimony with respect to the length of her stay at the gasoline station. According to petitioners, Blandina claimed that she stayed for five months at the gasoline station prior to June 1982, but in another portion of her testimony she stated that she stayed at the gasoline station from 1980 to 1983. This apparent inconsistency is only superficial. Obviously, what Blandina wanted to say was that she arrived in 1980 at the gasoline station where her father had a room, and that she left it in 1983. When she testified on direct examination that she stayed for five months at the station prior to June, 1982, the question asked by the prosecution referred to the period when Blandina saw petitioner Cortez and de la Torre siphon gasoline from the delivery tank. Thus, when the prosecution asked Blandina how many times during the five-month period she saw Cortez and de la Torre get gasoline from the truck, she answered ten times. The alleged inconsistency mentioned by petitioners is clearly inconsequential, if not non-existent.

According to petitioners, since Blandina was a resident of Sta. Teresita, Cagayan, she was coached to state in court that she was at the station. We do not find it unusual for Blandina to be staying at the station as her father worked there as a gasoline attendant and he lived there in a room, a fact not disputed by petitioners. Blandina who was fifteen years old at the time the incident occurred, had not gone to school starting 1979 and resumed her studies only in 1984,[15] during which period, she stayed with her father at the gas station.

Blandina's credibility was further established when she correctly identified the streets where the gas station was located.

Petitioners aver that Blandina was actually a maid of complainant who was utilized as a witness for the prosecution. This claim is unfounded. Blandina clearly testified that she was not a maid of complainant but merely visited the residence of complainant because her sister Priscilla who was a cashier at complainant's Cubao gas station was a boarder in complainant's residence.[16]

Blandina also testified that on June 10, 1982, Cortez and de la Torre stole five drums of gasoline,[17] and that from April 2, 1982 to April 7, 1982, they stole another five drums.[18] Moreover, the quantity stolen was established and supported by the testimony of complainant who referred to commercial documents like delivery receipts and sales reports.[19]

Petitioners claim that it is incredible for Blandina to remember the dates, namely, June 10, 1982 and April 6, 1982, because she did not have a diary to record the events. But Blandina explained that she remembered June 10,

1982 because this was the birthday of her brother.[20] That she remembered April 6, 1982 is not unusual because it was during this period when Cortez and de la Torre stole gasoline from the tank in close succession, i.e., April 4, 5, and 7.

Blandina declared that during the five-month period prior to June 1982, she saw Cortez and de la Torre steal gasoline from the delivery truck ten times. Petitioners now wonder why they were charged only on two counts and not of ten. The fact, however, that the prosecution did not charge petitioners with eight more counts does not exonerate them from the two counts which were supported by proof beyond reasonable doubt.

Bico's participation in the crime as an accomplice was clearly established. She was the one who received the gasoline and kept the dipstick and made it appear that the volume of gasoline deposited in the underground tank was the same as that reflected in the delivery receipts. Obviously, she cooperated in the execution of the offense by previous or simultaneous acts.[21] As correctly observed by the trial court:

"While it was the two men who perpetrated the offense, it was Bico who tried to conceal the offense by signing the corresponding delivery receipts and sales reports. She cannot claim that the two men simply put one over her. She is a high school graduate and had been working as cashier and then as gas station manager for eight years. She knew the routine procedures for checking deliveries.

It is impossible that the two men managed to lop off 6 inches from the dipstick without her knowledge, since she was the custodian of the dipstick. Further, it is highly unlikely that in the ordinary course of events, she persistently failed to notice that the containers of the underground tanks were considerably less than they should have been for a period of at least 3 months." [22]

WHEREFORE, the appealed decision is hereby AFFIRMED in toto.

SO ORDERED.

Feliciano, (Chairman), Melo, Vitug, and Francisco, JJ., concur.

[1] CA-G.R. CR Nos. 02708-02709, Fidel P. Purisima, J., ponente, Eduardo R. Bengzon and Salome A. Montoya, JJ., concurring; Rollo, p. 11.

[2] Rollo, p. 26.

[3] TSN, P. Cortez, January 8, 1985, pp. 2-4.

[4] TSN, E. Bico, January 25, 1990, pp. 3-4.

[5] TSN, E. Bico, March 4, 1985, p. 2.

[6] Ibid., at pp. 3-9.

[7] Ibid., p. 5.

[8] Ibid., pp. 5-17.

[9] Ibid., at 4, 15.

[10] Rollo, p. 8.

[11] *People v. Arbois*, 138 SCRA 24.

- [12] *People v. Cardinas*, 118 SCRA 456.
- [13] *People v. Agudo*, 137 SCRA 516.
- [14] *People v. Rizal*, 103 SCRA 282.
- [15] TSN, B. Sabornido, October 2, 1984, p. 6.
- [16] TSN, B. Sabornido, October 2, 1984, pp. 7-8.
- [17] TSN, B. Sabornido, p. 14.
- [18] *Ibid.*, p. 16.
- [19] Exhs. "M," "J," "K," "N," "L," and "G."
- [20] TSN, N. Sabornido, p. 12.
- [21] Revised Penal Code, Art. 18.
- [22] Decision, dated September 13, 1985, p. 6.

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