

Mis. DC Batt
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

AUG 18 2017



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 218910

Present:

- versus -

VELASCO, JR., J.,
Chairperson,

*PERALTA,
BERSAMIN
REYES, and
TIJAM, JJ.

LUTHER SABADO, SATURNINO
SABADO y LOMBOY AND
HOSPICIO HARUTA y
MARTINEZ,

Accused,

LUTHER SABADO y
PANGANGAAN,
Accused-Appellant.

Promulgated:

July 5, 2017

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DECISION

TIJAM, J.:

Accused-appellant Luther Sabado y Pangangaan assails in this appeal the Decision¹ dated January 13, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05984, which affirmed the Decision² dated September 25, 2012 of the Regional Trial Court (RTC) of Imus, Cavite, Branch 20, in Criminal Case No. 3638-07 convicting accused-appellant of the crime of

* Designated additional Member per Raffle dated March 15, 2017 vice Associate Justice Francis H. Jardeleza.

¹ Penned by Associate Justice Victoria Isabel A. Paredes, concurred in by Associate Justices Magdangal M. De Leon and Jane Aurora C. Lantion; *rollo*, pp. 2-11.

² Penned by Presiding Judge Fernando L. Felicen; *CA rollo*, pp. 34-38.

Qualified Theft committed against his employer, Diamond Pawnshop, Dasmariñas, Cavite branch.

The Facts

The Information charging accused-appellant and two other accused of Qualified Theft reads as follows:

That on or about the 13th day of September 2006, in the Municipality of Dasmariñas, Province of Cavite, a place within the jurisdiction of this Honorable Court, the above-named accused, LUTHER P. SABADO, while employed at Diamond Pawnshop, with intent to gain and grave abuse of trust and confidence reposed on him, and in conspiracy with accused SATURNINO L. SABADO and HOSPICIO M. HARUTA who are non-employees of the said pawnshop, did then and there, willfully, unlawfully and feloniously take, steal and carry away an assortment of jewelry and cellular phones worth FIVE HUNDRED THOUSAND PESOS (P500,000.00) Philippine Currency, belonging to said Diamond Pawnshop without the owner's knowledge or consent, to his damage and prejudice.

CONTRARY TO LAW.³

Accused-appellant pleaded not guilty to the charge while his co-accused remained at large.

Roger Alama (Alama) testified that, on September 13, 2006, at around 12:15 p.m., while he was at Luzviminda 2, Dasmariñas, Cavite doing a regular task as collector of payments from the stall owners thereat, he saw accused-appellant coming out of the pawnshop, as well as two unidentified men standing near the pawnshop. He saw accused-appellant unlock the steel gate and called one of the men who entered the pawnshop. The other unidentified man, who seemed to be a lookout, stayed outside and was leaning against the glass window of the pawnshop. Thereafter, the man who went with the accused-appellant inside the pawnshop came out carrying a small bag and immediately left the place. Shortly thereafter, accused-appellant also came out, tied up and with a packing tape plastered to his mouth. When the tape was removed, accused-appellant declared that he was robbed inside the pawnshop by the two unidentified men.

Corroborating witness Gina Brogada (Brogada), the auditor and appraiser of Diamond Pawnshop, confirmed that the pawnshop was robbed, and after the inventory, she found out that there were missing items valued at PhP 582,200.00.

³ Id. at 34.

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Meanwhile, Police Chief Inspector Dominador Arevalo (PCI Arevalo) and PO1 Efren Recare (PO1 Recare) testified that, on September 20, 2006, SPO1 Antonio Valdez and SPO2 Mario Sanchez arrested the accused-appellant and his co-accused. During the arrest, accused-appellant and his co-accused were in possession of the following: (1) 18-K yellow gold necklace with anchor pendant; (2) 18-K yellow gold men's ring with horseshoe design; and (3) 14-K yellow gold ring with scale design. These items were turned over to the Dasmariñas Municipal Police Station. During a press briefing called for the purpose, accused-appellant and his co-accused were presented to PCI Arevalo, who was then the Chief of the Theft and Robbery Section of the Manila Police District. The photographs of the accused were also published in a newspaper.

Meanwhile, when the said pieces of jewelry were showed to Brogada, the latter positively identified the two men's ring and one necklace with pendant as those that were stolen from the pawnshop.

For his defense, accused-appellant alleged that on September 13, 2006, at around 12:00 noon, he was working alone in the pawnshop. When he was about to go out and opened the gate, a dark-skinned person wearing a hat blocked his way. He was then held at gunpoint to go inside the pawnshop. As they were inside, another person carrying a bag came in. The man with the gun ordered him to open the vault and threatened to kill him. After he opened the vault, his hands and feet were tied and his mouth was covered with a tape. Then the two unidentified men took all the contents of the vault and fled.

Accused-appellant also claimed that he was admitted back to work after the robbery incident. He was even instructed by the owner of the pawnshop to conduct an inventory of the contents of the vault and to make a cartographic sketch of the robbers. But after five or six days, he was invited to the police station for some questioning and, thereafter, a criminal information was filed against him.

After trial, the RTC found accused-appellant guilty of the crime of Qualified Theft, thus:

In the case at bar, the amount stolen is Five Hundred Thousand Pesos (Php 500,000.00). Pursuant to the ruling in Astudillo, the *proper penalty is reclusion perpetua*.

WHEREFORE, premises considered, this Court finds accused Luther Sabado **GUILTY** of the crime of Qualified Theft under the Revised Penal Code and he is hereby sentenced to suffer the penalty of *reclusion perpetua*. Accused is likewise ordered to pay the amount of Php 500,000.00 to private complainant Diamond Pawnshop.



Let the instant case against Saturnino Sabado y Lomboy and Hospicio Haruta y Martinez, both of whom are still at-large, be sent to the ARCHIVES until such time that they are apprehended and the Court acquires jurisdiction over their persons.

SO ORDERED.⁴

On appeal, the CA affirmed accused-appellant's conviction as follows:

WHEREFORE, premises considered, the Appeal is **DISMISSED**. The assailed Decision dated September 25, 2012, issued by the Regional Trial Court, Branch 20, Imus, Cavite, in Criminal Case No. 3638-07 is **AFFIRMED**.

SO ORDERED.⁵

Hence, this appeal.

The Issue

Whether or not the guilt of accused-appellant for the crime charged has been proven beyond reasonable doubt.

The Court's Ruling

The appeal lacks merit.

In *Miranda v. People*,⁶ the Court ruled that:

The elements of the crime of theft are as follows: (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. Theft becomes qualified when any of the following circumstances under Article 310 is present: (1) the theft is committed by a domestic servant; (2) *the theft is committed with grave abuse of confidence*; (3) the property stolen is either a motor vehicle, mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.⁷

⁴ Id. at 38.

⁵ *Rollo*, p. 10.

⁶ G.R. No. 176298, January 25, 2012.

⁷ Id.



The elements aforementioned were all alleged and proved. *First*, there was a taking of personal property consisting of pieces of jewelry, *i.e.* two men's rings and one necklace with pendant. *Second*, said pieces of jewelry belong to the Pawnshop. *Third*, the taking of said pieces of jewelry was with intent to gain. Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain. *Fourth*, the taking was obviously without the consent of the Pawnshop; and, *Fifth*, the taking was accomplished without the use of violence against or intimidation of persons or force upon things.⁸

Theft here became qualified because it was *committed with grave abuse of confidence*. Grave abuse of confidence, as an element of theft, must be the result of the relation by reason of dependence, guardianship, or vigilance, between the accused-appellant and the offended party that might create a high degree of confidence between them which the accused-appellant abused.⁹ Accused-appellant, as established by the prosecution, is an employee of the Pawnshop. Accused-appellant could not have committed the crime had he not been holding the position of the trusted employee which gave him not only sole access to the Pawnshop's vault but also control of the premises. The relevant portion of the RTC's disquisition reads:

Based on the extant records[,] it appears that accused Luther Sabado was a trusted employee of Diamond Pawnshop. In fact, the following circumstances show the trust and confidence reposed on him by the shop owners, to wit: he manages the shop alone; he has the keys to the locks of the shop; and he has access to the vault and knows the combination of the same. x x x.¹⁰

The management of Diamond Pawnshop clearly had reposed its trust and confidence in the accused-appellant, and it was this trust and confidence which he exploited to enrich himself to the damage and prejudice of his employer.

We view with disfavor accused-appellant's plea of acquittal on the ground that there exists no evidence which linked him directly to or showed his participation in the robbery. He underscores in particular that nobody witnessed what transpired inside the pawnshop during the incident, hence, he must be excused from any criminal liability. This contention is unmeritorious because even if it was not shown that he personally took away the pieces of jewelry, his overt act of opening the steel gate, facilitating the entry of one of his co-accused inside the pawnshop, and opening of the vault

⁸ *Ringor v. People*, G.R. No. 198904, December 11, 2013.

⁹ *People v. Cahilig*, G.R. No. 199208, July 30, 2014.

¹⁰ CA rollo, p. 36.

despite his avowal that the vault was controlled by a time delay mechanism, showed his complicity in the commission of the crime charged.

The CA correctly appreciated conspiracy between accused-appellant and the other accused. It has already been settled that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.¹¹ Here, conspiracy is inferred from the conduct of accused-appellant and the other accused before, during, and after the commission of the crime. In particular, accused-appellant's act of ushering in one of his co-accused inside the pawnshop already constitutes an overt act of his coordination with and actual participation in the common purpose or design to commit the felony.

Accordingly, We find no cogent reason to disturb the findings of the RTC which were affirmed by the CA as they are fully supported by the evidence on record. Time and again, the Court has held that the facts found by the RTC, as affirmed *in toto* by the CA, are as a general rule, conclusive upon this Court in the absence of any showing of grave abuse of discretion. In this case, none of the exceptions to the general rule on conclusiveness of said findings of facts are applicable. The Court gives weight and respect to the RTC's findings in criminal prosecution because the latter is in a better position to decide the question, having heard the witnesses in person and observed their deportment and manner of testifying during the trial.

Absent any showing that the RTC and the CA have overlooked substantial facts and circumstances, which, if considered, would change the result of the case, this Court gives deference to their appreciation of the facts and of the credibility of witnesses.

WHEREFORE, the instant appeal is **DISMISSED**. The Decision dated January 13, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05984, finding accused-appellant Luther Sabado y Pangangaan **GUILTY** of the crime of Qualified Theft is **AFFIRMED**.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

¹¹ *People v. Romero, et al.*, G.R. No. 145166, October 8, 2003.

WE CONCUR:



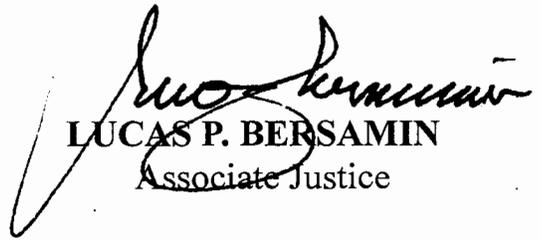
PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson



DIOSDADO M. PERALTA

Associate Justice



LUCAS P. BERSAMIN

Associate Justice

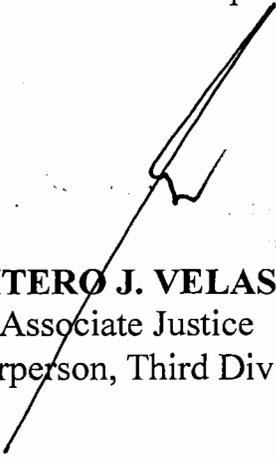


BIENVENIDO L. REYES

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

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MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

AUG 18 2017