

THIRD DIVISION

[G.R. No. 225735, January 10, 2018]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. BELEN MEJARES Y VALENCIA, ACCUSED-APPELLANT.

D E C I S I O N

LEONEN, J.:

This Court affirms with modification the conviction of accused appellant Belen Mejares y Valencia (Mejares) for the crime of qualified theft. While this Court finds no reversible error in the ruling that she was guilty beyond reasonable doubt, this Court finds it necessary to modify the penalty initially imposed upon her. In light of the recently enacted Republic Act No. 10951,^[1] which adjusted the amounts of property and damage on which penalties are based, applying the Indeterminate Sentence Law, and considering the prosecution's failure to establish the precise values of the stolen items, accused-appellant must be ordered released on time served.

In an Information dated May 24, 2012,^[2] Mejares was charged with qualified theft of cash and jewelry amounting to P1,556,308.00. This Information read:

That on or about the 22nd day of May 2012 in the City of San Juan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a domestic servant of complainant Jacqueline Suzanne Gavino y Aquino, as such, enjoyed the trust and confidence reposed upon her with intent to gain, without the consent of the owner thereof and with grave abuse of confidence, did then and there willfully, unlawfully and feloniously take, steal and carry away the following items, to wit:

Rolex wrist	-	Php
watch		400,000.00
(antique)		
Assorted	-	1,000,000.00
jewelries		
gold and		
Cash	-	50,000.00
money		
Cash	-	86,308.00
money		
(\$2,000.00)		
Cash	-	20,000.00
assorted		
foreign		
money		

with a total amount of Php 1,556,308.00, belonging to said complainant to the damage and prejudice of the latter in the aforementioned amount.

CONTRARY TO LAW.^[3]

The prosecution presented five (5) witnesses. The first witness, Raquel Torres (Torres), was a household helper for Mark Vincent and Jacqueline Suzanne Gavino (the Spouses Gavino) from August 2011 to July 2012.^[4]

According to Torres, she was cleaning the dining area of the condominium unit of the Spouses Gavino at around 1:00 p.m. on May 22, 2012, when she noticed that Mejares' cellphone kept ringing. Mejares answered it, hurrying to the computer room and away from Torres. When Mejares returned, she was "pale, perspiring and panicky."^[5] When Torres asked about the identity of the caller, Mejares did not answer. She told her instead that Jacqueline Suzanne Gavino (Jackie) met an accident and instructed her to get something from a drawer in the masters' bedroom. Since it was locked, Mejares was supposedly told to destroy it.^[6]

Torres added that when Mejares emerged from the bedroom, she was holding a plastic hamper that contained a black wallet and envelopes and was talking with someone on her cellphone. After a few minutes, Mejares informed her that Jackie did not want other household members to know what happened and that Mejares was instructed to also take a watch and jewelry, since the cash in the drawer was not enough to pay the other driver in the accident who was threatening to sue. Torres narrated that after preparing everything, Mejares left with a green bag.^[7]

When Mejares returned at about 3:00p.m., she asked Torres if there had been an incoming landline call while she was gone. Torres answered in the negative and Mejares stated that she had purposely hung it. At 4:00 p.m., Torres started to receive calls from Jackie, who sounded "loud, normal and animated,"^[8] making Torres wonder if Jackie had really encountered an accident. Torres then asked Mejares once again if it was Jackie she had spoken with earlier. According to Torres, Mejares "grew ashen and perspired" before answering that she was certain.^[9]

The prosecution's second witness was private complainant, Jackie.

She recalled that when she interviewed Mejares back in May 2011, Mejares then indicated that she was familiar with the operation of the *dugo-dugo* gang. She further narrated that in the early afternoon of May 22, 2012, she was at work. She tried calling but could not access her household landline past 5:00p.m., so she decided to call Torres' cellular phone to have her instruct the driver to pick her up from the Movie and Television Review and Classification Board's Office. After the phone call was cut, she then received a call from Mejares, informing her about what happened.^[10]

According to Jackie, Mejares told her about receiving a call from a certain Nancy, who stated that Jackie wanted to avoid the publicity that may arise from her supposed accident. Jackie continued that Mejares thereafter claimed that she was instructed to break the drawer in the masters' bedroom and to take all its contents. However, Jackie clarified in her account that she had neither a personal secretary nor an aide named Nancy. She also affirmed that she did not figure in any accident.^[11]

The third prosecution witness was Bonifacio Baluyot (Baluyot), the stay-in driver of the Spouses Gavino who had been working for Jackie since 1976.^[12]

Baluyot claimed that on May 22, 2012, Mejares told him to bring her to Greenhills Shopping Mall, allegedly on Jackie's orders. He complied. He narrated that he saw her carry a green bag. After dropping Mejares at the mall entrance, he returned to the condominium. He added that when the incident was subsequently being investigated, he heard the guards say that they tried to stop Mejares from leaving, although she had told him that it was only Torres who was stopped by the guards for not having a gate pass.^[13]

The prosecution's fourth witness was Pedro Garcia (Garcia), the condominium security guard who was on duty at the lobby on May 22, 2012.^[14]

Garcia narrated that at around 1:30 p.m., he saw Mejares about to leave the premises carrying a green bag. However, he did not allow her to leave in the absence of a gate pass signed by her employer. Despite his insistence that Mejares call her employer, she did not. After a few moments, her cellphone rang. Instead of answering Garcia's query on the caller's identity, Mejares rushed to the elevator. Afterwards, Garcia saw Mejares leave using her employer's car driven by Baluyot. According to him, he still attempted to stop them by warning them that they could be victims of *dugo-dugo* gang, to no avail.^[15]

The prosecution's last witness was investigating officer PO3 Clifford Hipolito (PO3 Hipolito).

He testified that during the investigation, he questioned Mejares about what happened. She stated that someone called her and instructed her to destroy her employer's drawer, take the cash and valuables there, and bring everything to Baclaran because Jackie had met an accident. When asked if she was aware of the *dugo-dugo* gang, she answered that she was. PO3 Hipolito was likewise informed that condominium security initially prevented Mejares from leaving but she went back to the unit, refusing to call her employer.^[16]

The defense presented Mejares as its lone witness. She denied the charge and claimed that she was a victim of the *dugo-dugo* gang.

According to her, she received a phone call from the condominium unit's landline at 1:00 p.m. on May 22, 2012 from a certain Nancy, who introduced herself as Jackie's assistant and informed her that Jackie had met an accident. Afterwards, she claimed that Jackie herself talked to her and instructed her to get something from a drawer in the master's bedroom and to use a screwdriver to destroy its lock because the other driver in the accident had a 50-50 chance of survival. She further narrated that when the lobby guard did not allow her to leave after she had gathered and packed the contents of the drawer, Jackie called her and told her to return to the unit and to ask the driver to take her to Virra Mall. From there, she took a cab going to Baclaran Church, where she met an unknown woman. Before handing the bag to the unidentified lady, she claimed that she was able to talk again over the phone to Jackie, who told her to give the bag to the woman and return to the unit. She only had second thoughts about what had happened when after arriving at the condominium, Torres stated that she might have been tricked. She also contended that she had never heard of the *dugo-dugo* gang.^[17]

After trial, the Regional Trial Court found accused-appellant guilty beyond reasonable doubt of the crime of qualified theft of assets amounting to P1,056,308.00. The dispositive portion of its February 6, 2014 Decision^[18] read:

WHEREFORE, the court hereby renders judgment finding accused BELEN MEJARES y VALENCIA GUILTY beyond reasonable doubt of the felony of qualified theft of articles worth P1,056,308.00, thereby sentencing her to *reclusion perpetua*, pursuant to Article 310 vis à vis Article 309 of the Revised Penal Code. Accused is ordered to pay to Jacqueline Aquino Gavino the sum mentioned in actual damages. Cost against accused.

SO ORDERED.^[19]

On appeal, the Court of Appeals affirmed the Regional Trial Court Decision *in toto* in its July 30, 2015 Decision.^[20]

Accused-appellant filed her Notice of Appeal.^[21]

In its January 23, 2017 Resolution,^[22] this Court noted the parties' manifestations in lieu of supplemental briefs.

For resolution is the sole issue of whether or not accused-appellant Belen Mejares y Valencia is guilty beyond reasonable doubt of the crime of qualified theft.

I

Theft is consummated when three (3) elements concur: (1) the actual act of taking without the use of violence, intimidation, or force upon persons or things; (2) intent to gain on the part of the taker; and (3) the absence of the owner's consent.^[23] Moreover, for qualified theft to be committed, the following elements must concur:

1. Taking of personal property;
2. That the said property belongs to another;
3. That the said taking be done with intent to gain
4. That it be done without the owner's consent;
5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things;
6. That it be done with grave abuse of confidence.^[24]

Accused-appellant hopes to convince this Court that her actions only reflected the will of her employer, emphasizing that there could be no theft on her part because there was no intent to gain.^[25] She insists that she only took instructions from the secretary of private complainant and later on, from private complainant herself.^[26] Additionally, she claims that she is as much a victim of the *dugo-dugo* gang as was her employer.^[27]

Her contentions are untenable.

This Court has been consistent in holding that "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. [Thus,] [a]ctual gain is irrelevant as the important consideration is the intent to gain."^[28] In this case, it is clear from the established facts that it was accused-appellant who opened the drawer in the masters' bedroom and took away the cash and valuables it contained. Therefore, the burden is on the defense to prove that intent to gain was absent despite accused-appellant's *actual* taking of her employer's valuables. It is precisely this burden that the defense failed to discharge.

The Court of Appeals is correct in pointing out that the actions of accused-appellant before, during, and after the crime all belie her claim that she did not willfully commit the crime. It correctly underscored the following observations of the Regional Trial Court:

Why would accused hang the landline phone if not to insure that she was not discovered in the nick of time to have her loot recovered?

While accused portrays herself as the victim, prosecution evidence has established that she is the victimizer. This conclusion has the following bases: first, the surreptitious way accused handled the incoming calls; second, her failure to heed the warnings of persons around her, i.e. Raquel and security guard Garcia; third, her inability to make use of the myriad opportunities available to verify the alleged vehicular accident where her mistress figured in.^[29]

Normal human experience, as well as the consistency in and confluence of the testimonies of prosecution witnesses lead to no other conclusion than that accused-appellant, taking advantage of her being a domestic helper of private complainant for approximately a year, committed the crime of qualified theft. If she honestly believed that her employer had met an accident and was genuinely worried for her, she could have easily sought the help of any of her co-workers in the household. When warned about the *dugo-dugo* gang, accused-appellant could have paused to re-assess the situation. She failed to do all these security measures with no convincing justification. Indeed, accused-appellant's persistence to leave the condominium with the valuables and her refusal to let the security guard talk to her employer further belie her position.

To make matters worse, accused-appellant was a domestic helper who had been working for the Spouses Gavino for at least one (1) year when she committed the crime. By this fact alone, the offense committed is qualified and warrants graver penalties, pursuant to Article 310 of the Revised Penal Code, as amended:

Article 310. *Qualified theft*. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a **domestic servant**, or with **grave abuse of confidence**, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis supplied.)