

THIRD DIVISION

[G.R. No. 209373, July 30, 2014]

**JOEL YONGCO AND JULIETO LAÑOJAN, PETITIONERS, VS.
PEOPLE OF THE PHILIPPINES, RESPONDENT.**

[G.R. NO. 209414]

**ANECITO TANGIAN, JR., PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

VELASCO JR., J.:

The Case

This treats of the consolidated Petitions for Review on Certiorari under Rule 45 in relation to Rule 125 of the Rules of Court, assailing the Decision^[1] and Resolution of the Court of Appeals (CA) in CA-G.R. CR No. 00549-MIN, dated January 21, 2013 and September 10, 2013, respectively. Said rulings affirmed the Regional Trial Court (RTC) Decision convicting petitioners of qualified theft.

The Facts

Petitioners Joel Yongco, Julieto Lañojan, and Anecito Tangian, Jr. were employees of the City Government of Iligan. Tangian worked as a garbage truck driver for the city, while Yongco and Lañojan were security guards assigned to protect the premises of the City Engineer's Office (CEO). On November 14, 2005, an Information was filed before the RTC, Branch 5 in Iligan City, Lanao del Norte charging the three with Qualified Theft. The information docketed as Crim. Case No. 12092 reads:

That on or about April 16, 2005, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then regular and casual employees of the City government as drivers and helpers respectively, of a garbage truck with Plate No. 496, conspiring and confederating together and mutually helping each other, with grave abuse of confidence reposed upon them by the city government, and with intent to gain, did then and there willfully, unlawfully and feloniously take, steal and carry away the following articles, to wit: one (1) unit transmission, boom, differential of Tamaraw and I-beam of Nissan with a total value of P40,000.00, belonging to the City government of Iligan, represented by Atty. Rommel Abragan of the City Legal Office, Iligan City, without the consent and against the will of the said owner in the aforesaid sum of P40,000.00, Philippine Currency.^[2]

During the arraignment held on February 16, 2006, accused petitioners entered a plea of not guilty to the offense charged. Pre-trial was then conducted and closed on July 25, 2006. Thereafter, trial on the merits ensued.

Version of the Prosecution

The prosecution presented as one of its witnesses a casual employee of the city government, Pablo Salosod, who testified that on April 16, 2005 at around 1:30 a.m., while attending a wake at the Cosmopolitan Funeral Parlor, he was fetched and requested by petitioner Tangian to accompany him to the CEO. At the office garage, Salosod and his fellow garbage collectors were allegedly directed by petitioners Tangian and Yongco to load car parts that petitioners considered as waste items, the subject items of the theft, on the truck driven by Tangian. They then drove to Tominobo, Iligan City where the materials were unloaded in front of Delfin Junk Store, and before the truck left the shop, Salosod allegedly saw petitioner Lañojan giving a thumbs-up sign to Tangian. On the way back, Tangian allegedly confessed to Salosod that it was Lañojan who requested that the items be brought at the junk shop. Another employee, Rommel Ocaonilla, corroborated the testimony of Salosod.

Prosecution witness Oliveros Garcia meanwhile testified witnessing the unloading of the items in front of the junk store, after which, Lañojan covered the items up with a sack. The following morning, he allegedly saw Lañojan's brother-in-law, who coincidentally works at the shop, take the items inside.

Witnesses Dioscoro Galorio and Atty. Ulysses Lagcao, employee and consultant of the city government, respectively, testified that they conducted investigations relative to the incident and found out that the items stolen consisted of one Nissan transmission, one unit boom, one Nissan I-beam, and one differential of Tamaraw, with total valuation of PHP 12,000. Upon their investigation, they recommended to the city legal officer the filing of the present criminal case against the three petitioners.

Version of the Defense

In defense, petitioners testified in their behalves. Their testimony is summarized by the CA in the Decision now on appeal in the following wise:

Joel Yongco, 34, single, x x x and a casual employee, testified that, on August 9, 2004, he was issued a Job Order and detailed at the Civil Security Unit (CSU). He was assigned to guard the building installation of the CEO. On April 15, 2005, he was on duty with his companion, one Mr. Quintana. They relieved Lañojan and one Mr. Enumerables. Lañojan gave him (Yongco) four gate passes and said that the area would have to be cleared because the "Bacod" Iligan vehicle would be arriving. Yongco read the entries on one of [the] gate passes. They read: "Loaded assorted scraps with remark to be thrown at the dump site." At the bottom of the gate pass was the "note" of Engineer Cabahug with the signatures of the guards, Lañojan and Enumerables. From 5:00 PM to 12:00 midnight on April 15, 2005, there was only one shipment of scrap iron to the dump site. The dump truck driven by Tangian entered the CEO

premises at around 11:00 o'clock in the evening of the same date. Tangian went to the yard where the scrap iron were situated and asked Yongco to accompany and help him. Tangian gathered the scrap materials and the four of them (Tangian, Yongco, and the 2 helpers of Tangian) loaded the said scrap to the dump truck. At around 12:45 P.M., after loading the items, Tangian drove away without giving a gate pass to the guards on duty. Yongco did not ask Tangian for a gate pass because Yongco had one companion in the guard house to get the gate pass.

Julieta Lañojan, 48, who was working in the CSU division for 20 years and assigned to guard the CEO, testified that he was not on duty on April 15 and 16, 2005; he was on duty on April 14, 2005 at 7:00 A.M. up to April 15, 2005 of the same time. When Yongco and Quintana relieved him on April 15, 2005 at 7:00 in the morning, he gave the four gate passes which were used to ship out assorted scrap irons to them to be kept for the file. Engineer Cabahug was the one who directed the removal of the scrap iron because the area of the CEO would have to be cleared since new trucks for the government were coming. His house, which was along the national highway, was about 40-50 meters away from Delfin Junk Store. He knew Oliveros Garcia who was a kagawad of Tominobo, Iligan City. Aside from that, Garcia had filed an ejectment case against him (Lañojan), which was still pending in court.

x x x x

Anecito Tangian, Jr., 59, garbage truck driver at the City Engineer's Office for 16 years, testified that his highest level of educational attainment was Grade I. It was his tour of duty on April 15, 2005 at 9:00 o'clock in the evening up to April 16, 2005 at 6:00 o'clock in the morning. At around 5:30 in the morning of April 15, 2005, Lañojan asked him to load scrap materials onto the garbage truck and to bring them to the Delfin Junk Store in Tominobo. He asked Lañojan if there were any problems about the loading of the said items. Lañojan answered that there were no problems about the loading of the same, that the City Garbage would have to be cleared considering that "BACOD" trucks would be arriving at that area. He followed Lañojan because the latter was the guard at the City Garage. When he arrived for duty at the City Garage at around 9:00 in the evening, Yongco asked him if Lañojan already informed him about the loading of the items. After that he checked up the garbage truck while Yongco and the two helpers were loading the items. He did not know how many items were loaded because he only helped the three of them during the loading of the differential. After loading the scrap materials, Tangian and the two helpers drove away from the City Garage. They dropped by the Cosmo Funeral Homes for more than an hour before they proceeded to Tominobo. When they reached Delfin Junk Store, Lañojan gave a thumbs-up sign to Tangian, which meant okay. He then left and started his work collecting garbage.

[3]

On April 11, 2008, the RTC held petitioners liable for qualified theft via conspiracy. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Court finds the accused Julieta Lañojan, Anecito Tangian, Jr., and Joel Yongco GUILTY beyond reasonable doubt of the crime of Qualified Theft defined and penalized under Article 310 in relation to Article 309 of the Revised Penal Code, and the said accused are hereby sentenced to a penalty of imprisonment of six (6) years, eight (8) months and twenty (20) days of *prision correccional* maximum as the minimum term, to ten (10) years and eight (8) months of *prision mayor* maximum, as the maximum term, of their indeterminate sentence including the accessory penalties thereof.

SO ORDERED.^[4]

Aggrieved, petitioners, in their appeal, prayed that the CA reverse the RTC Decision. Petitioner Tangian reiterated in his Brief that he should not be considered as a conspirator since he merely innocently obeyed Lañojan's instructions on the assumption that the latter was his superior and that Lañojan was authorized to get rid of the scrap materials in the CEO premises and that he had no criminal intent whatsoever.

In their joint brief, Yongco and Lañojan also disclaimed the existence of a conspiracy. Yongco, in his defense, argued that Tangian and his two other helpers asked for his assistance which he extended in good faith, in view of Lañojan's statement earlier that day that the office garage has to be cleared. Lañojan, on the other hand, insisted that he cannot be considered as a conspirator since he was not present at the time of taking, and that the mere giving of a thumbs-up sign to Tangian when the latter delivered the materials to the junk shop does not amount to conspiracy.

Ruling of the Court of Appeals

On January 21, 2013, the CA issued the assailed Decision denying petitioners' appeals. In affirming the RTC Decision in toto, the CA ruled that there was indeed conspiracy because Tangian could not have taken out the items without a gate pass, but with the security guard Yongco's participation, he was able to do just that. The CA also ruled that it is implausible that Tangian would just leave the items in front of the junk shop unattended. Thus, the appellate court appreciated the testimonies of the prosecution witnesses that Lañojan's presence was not merely coincidental and that his thumbs-up and his subsequent act of covering the materials with sacks indicate that the plan was for him to receive the said items. Petitioners, via motion for reconsideration, sought the CA's reversal of the Decision only for the appellate court to deny the same through its challenged Resolution dated September 10, 2013.

Not contented with the adverted Decision of the CA as reiterated in the Resolution, petitioners Yongco and Lañojan jointly filed a Petition for Review on Certiorari while petitioner Tangian separately filed his own. The two petitions were later consolidated