

SECOND DIVISION

[G.R. No. 170863, March 20, 2013]

ENGR. ANTHONY V. ZAPANTA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve the petition for review on *certiorari*^[1] filed by petitioner Engr. Anthony V. Zapanta, challenging the June 27, 2005 decision^[2] and the November 24, 2005 resolution 3 of the Court of Appeals (CA) in CA-G.R. CR No. 28369. The CA decision affirmed the January 12, 2004 decision 4 of the Regional Trial Court (RTC) of Baguio City, Branch 3, in Criminal Case No. 20109-R, convicting the petitioner of the crime of qualified theft. The CA resolution denied the petitioner's motion for reconsideration.

The Factual Antecedents

An April 26, 2002 Information filed with the RTC charged the petitioner, together with Concordia O. Loyao, Jr., with the crime of qualified theft, committed as follows:

That sometime in the month of October, 2001, in the City of Baguio, Philippines, and within the jurisdiction of [the] Honorable Court, xxx accused ANTHONY V. ZAPANTA, being then the Project Manager of the Porta Vaga Building Construction, a project being undertaken then by the Construction Firm, ANMAR, Inc. under sub-contract with A. Mojica Construction and General Services, with the duty to manage and implement the fabrication and erection of the structural steel framing of the Porta Varga building including the receipt, audit and checking of all construction materials delivered at the job site – a position of full trust and confidence, and CONCORDIO O. LOYAO, JR., alias "JUN", a telescopic crane operator of ANMAR, Inc., conspiring, confederating, and mutually aiding one another, with grave abuse of confidence and with intent of gain, did then and there willfully, unlawfully and feloniously take, steal and carry away from the Porta Vaga project site along Session road, Baguio City, wide flange steel beams of different sizes with a total value of P2,269,731.69 without the knowledge and consent of the owner ANMAR, Inc., represented by its General Manager LORNA LEVA MARIGONDON, to the damage and prejudice of ANMAR, Inc., in the aforementioned sum of P2,269,731.69, Philippine Currency.^[5]

Arraigned on November 12, 2002, the petitioner entered a plea of "not guilty."^[6] Loyao remains at-large.

In the ensuing trial, the prosecution offered in evidence the oral testimonies of Danilo Bernardo, Edgardo Cano, Roberto Buen, Efren Marcelo, private complainant Engr. Lorna Marigondon, and Apolinaria de Jesus,^[7] as well as documentary evidence consisting of a security logbook entry, delivery receipts, photographs, letters, and sworn affidavits. The prosecution's pieces of evidence, taken together, established the facts recited below.

In 2001, A. Mojica Construction and General Services (AMCGS) undertook the Porta Vaga building construction in Session Road, Baguio City. AMCGS subcontracted the fabrication and erection of the building's structural and steel framing to Anmar, owned by the Marigondon family. Anmar ordered its construction materials from Linton Commercial in Pasig City. It hired Junio Trucking to deliver the construction materials to its project site in Baguio City. It assigned the petitioner as project manager with general managerial duties, including the receiving, custody, and checking of all building construction materials.^[8]

On two occasions in October 2001, the petitioner instructed Bernardo, Junio Trucking's truck driver, and about 10 Anmar welders, including Cano and Buen, to unload about 10 to 15 pieces of 20 feet long wide flange steel beams at Anmar's alleged new contract project along Marcos Highway, Baguio City. Sometime in November 2001, the petitioner again instructed Bernardo and several welders, including Cano and Buen, to unload about 5 to 16 pieces of 5 meters and 40 feet long wide flange steel beams along Marcos Highway, as well as on Mabini Street, Baguio City.^[9]

Sometime in January 2002, Engr. Nella Aquino, AMCGS' project manager, informed Engr. Marigondon that several wide flange steel beams had been returned to Anmar's warehouse on October 12, 19, and 26, 2001, as reflected in the security guard's logbook. Engr. Marigondon contacted the petitioner to explain the return, but the latter simply denied that the reported return took place. Engr. Marigondon requested Marcelo, her warehouseman, to conduct an inventory of the construction materials at the project site. Marcelo learned from Cano that several wide flange steel beams had been unloaded along Marcos Highway. There, Marcelo found and took pictures of some of the missing steel beams. He reported the matter to the Baguio City police headquarters and contacted Anmar to send a truck to retrieve the steel beams, but the truck came weeks later and, by then, the steel beams could no longer be found. The stolen steel beams amounted to P2,269,731.69.^[10]

In his defense, the petitioner vehemently denied the charge against him. He claimed that AMCGS, not Anmar, employed him, and his plan to build his own company had been Engr. Marigondon's motive in falsely accusing him of stealing construction materials.^[11]

The RTC's Ruling

In its January 12, 2004 decision,^[12] the RTC convicted the petitioner of qualified theft. It gave credence to the prosecution witnesses' straightforward and consistent testimonies and rejected the petitioner's bare denial. It sentenced the petitioner to suffer the penalty of imprisonment from 10 years and 3 months, as minimum, to 20 years, as maximum, to indemnify Anmar P2,269,731.69, with legal interest from

November 2001 until full payment, and to pay Engr. Marigondon P100,000.00 as moral damages.

The CA's Ruling

On appeal, the petitioner assailed the inconsistencies in the prosecution witnesses' statements, and reiterated his status as an AMCGS employee.^[13]

In its June 27, 2005 decision,^[14] the CA brushed aside the petitioner's arguments and affirmed the RTC's decision convicting the petitioner of qualified theft. It found that the prosecution witnesses' testimonies deserve full credence in the absence of any improper motive to testify falsely against the petitioner. It noted that the petitioner admitted his status as Anmar's employee and his receipt of salary from Anmar, not AMCGS. It rejected the petitioner's defense of denial for being self-serving. It, however, deleted the award of moral damages to Engr. Marigondon for lack of justification.

When the CA denied^[15] the motion for reconsideration^[16] that followed, the petitioner filed the present Rule 45 petition.

The Petition

The petitioner submits that, while the information charged him for acts committed "*sometime in the month of October, 2001,*" he was convicted for acts not covered by the information, *i.e.*, November 2001, thus depriving him of his constitutional right to be informed of the nature and cause of the accusation against him. He further argues that the prosecution failed to establish the fact of the loss of the steel beams since the *corpus delicti* was never identified and offered in evidence.

The Case for the Respondent

The respondent People of the Philippines, through the Office of the Solicitor General, counters that the issues raised by the petitioner in the petition pertain to the correctness of the calibration of the evidence by the RTC, as affirmed by the CA, which are issues of fact, not of law, and beyond the ambit of a Rule 45 petition. In any case, the respondent contends that the evidence on record indubitably shows the petitioner's liability for qualified theft.

The Issue

The case presents to us the issue of whether the CA committed a reversible error in affirming the RTC's decision convicting the petitioner of the crime of qualified theft.

Our Ruling

The petition lacks merit.

***Sufficiency of the allegation of date
of the commission of the crime***

Section 6, Rule 110 of the Rules of Criminal Procedure, which lays down the