

## THIRD DIVISION

[ G.R. No. 146296, October 15, 2007 ]

### EDUARDO GULMATICO Y BRIGATAY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

#### DECISION

#### NACHURA, J.:

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision<sup>[2]</sup> dated July 31, 2000 which affirmed the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Valenzuela City, dated April 16, 1999, convicting petitioner Eduardo Gulmatico (petitioner) of the crime of Robbery, with the modified conclusion that the felony proven was Theft instead.

#### *The Facts*

Petitioner was charged with the crime of Robbery in an Information dated January 2, 1997 which reads:

That on or about the 31<sup>st</sup> day of December, 1996, in Valenzuela, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain and by means of force, that is, by breaking the door, and without the knowledge and consent of the owner thereof, did then and there, willfully, unlawfully and feloniously take, rob and carry away one (1) AIWA VHS worth P8,000.00, one (1) BL Rayban, worth P3,000.00, one (1) gold necklace worth P1,200.00, one (1) camera Fuji worth P1,400.00 and one (1) leather wallet with cash money of P100.00 belonging to one REBECCA HUERVA-LIPAYCO, to the damage and prejudice of the owner in the total amount of P12,800.00.

CONTRARY TO LAW.<sup>[4]</sup>

Upon arraignment on January 15, 1997, petitioner pleaded not guilty to the offense charged.<sup>[5]</sup> Thus, trial on the merits ensued. In the course of the trial, two varying versions arose.

#### *Version of the Prosecution*

Spouses Gary Lipayco (Gary) and Rebecca Huerva-Lipayco (Rebecca) -- the Lipaycos -- are employees of CDO-Foodsphere, Inc. and reside at 2-D Bonifacio St. Canumay, Valenzuela City. On December 31, 1996, the spouses went to work. When Rebecca returned home between 11:00 in the morning and 12:00 noon of the same day, she found their door broken open, their place in shambles and some of their things missing. She went to report the incident first to the *barangay* but finding no official

in the *barangay* hall, she went to the nearest police outpost and had the incident blotted. An investigation was immediately conducted and the statements of witnesses were taken. Angelo "Cookie" Alera (Angelo) and Michael Arnaldo (Michael), then both eight (8) years old, testified that at about noon of December 31, 1996, while they were playing nearby together with other children,<sup>[6]</sup> they saw petitioner push the door of the house of the Lipaycos, enter the same, ransack the cabinet and take a VHS player<sup>[7]</sup> and a wallet containing P100.00.<sup>[8]</sup> Conchita Alera (Conchita) corroborated the statements of Angelo and Michael since she also saw the petitioner inside the house of the Lipaycos.<sup>[9]</sup> The items missing and unrecovered were one (1) AIWA VHS player worth P8,000.00; one (1) Bausch & Lomb (BL) Rayban worth P3,000.00; one (1) gold necklace worth P1,200.00; one (1) Fuji camera worth P1,400.00; and one (1) leather wallet containing P100.00, or a total of P12,800.00.<sup>[10]</sup>

### ***Version of the Defense***

Petitioner is a family friend of the Lipaycos and a godfather of the latter's child. He is also employed at CDO-Foodsphere, Inc. as a company driver. Due to the nature of his work, petitioner was often away and entertained himself with a car stereo which he would always bring with him. Petitioner claimed that he would place the said car stereo on top of the delivery vehicle's dashboard. After work, he would bring the car stereo with him.<sup>[11]</sup> Petitioner denied the accusations made against him. He testified that on December 30, 1996, he made deliveries in Malolos, Bulacan, where he stayed overnight. The next day, December 31, 1996, he returned to their office and left work at already about 11:30 in the morning. He waited for a while so that he could get the second half of his 13<sup>th</sup> month pay. Then, he went to another company compound to get a suitable box for his holiday ham which he entrusted to Conchita for safekeeping. After securing a box, he went to Conchita's house to get the ham. While Conchita was getting petitioner's ham, he passed by the house of the Lipaycos to see if Gary was there, by calling out for him at the door<sup>[12]</sup> since Rebecca asked petitioner at their office if he saw Gary. Petitioner attested that the door was slightly opened and he slightly pushed it to look for Gary. However, Gary was out.<sup>[13]</sup> Thereafter, Conchita gave the ham to petitioner and he placed it inside the box. Carrying the same in a big plastic bag and his car stereo, petitioner on board a tricycle, went to his sleeping quarters. Ricky Acostosa, also an employee of CDO-Foodsphere, Inc. testified that he and the petitioner boarded the same tricycle on the said date on the way to their sleeping quarters. He observed that petitioner was carrying a car stereo and a box of ham at the time and that he did not notice that petitioner was carrying any VHS player.<sup>[14]</sup> Thereafter, petitioner left for Villamor Airbase in Pasay City where he celebrated the New Year's Eve with his relatives. He returned to his quarters on January 1, 1997 and in the afternoon of the same date, upon knowledge that Rebecca was looking for him, petitioner went to the Lipaycos' house where he was apprehended by the police and was subsequently detained.<sup>[15]</sup> Upon posting the corresponding bail bond for his provisional liberty in the amount of P24,000.00, the RTC ordered the petitioner's release.<sup>[16]</sup>

### ***The RTC's Ruling***

On April 16, 1999, the RTC held that petitioner's defenses of denial and alibi cannot prevail over the positive identification of petitioner as the perpetrator of the crime

by Michael and Angelo, who testified with sufficient coherence and clarity. Thus, the RTC disposed of this case in this wise:

WHEREFORE, judgment is hereby rendered finding accused EDUARDO GULMATICO y BRIGATAY guilty beyond reasonable doubt and as principal of the crime of robbery and, applying the Indeterminate Sentence Law, hereby sentences him to a penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum. The accused is further sentenced to pay complaining witness Rebecca Huerva-Lipayco the amount of P12,800.00 representing the total value of the goods stolen without subsidiary imprisonment in case of insolvency. Finally, the accused is sentenced to pay the costs of suit.

SO ORDERED.<sup>[17]</sup>

Aggrieved, petitioner appealed the RTC Decision to the CA.<sup>[18]</sup>

### ***The CA's Ruling***

On July 31, 2000, the CA affirmed the ruling of the RTC that the petitioner's defenses of denial and alibi cannot prevail over the positive identification of the petitioner by the eyewitnesses which were categorical, consistent and without any showing of ill motive on the latter's part. However, the CA opined that while asportation was proven, the element that petitioner entered the Lipaycos' house by breaking its door was not established since Michael and Angelo testified that petitioner merely pushed the door open in order to gain entry. Moreover, based on the photographs of the said door, the CA found that the same was intact and unbroken. Thus:

Properly, then, the felony proven against Gulmatico is *Theft* defined in Art. 308 and penalized under Art. 309 of the Revised Penal Code, although the end penalties imposable are just the same as those imposed by the trial court.

WHEREFORE, except for the felony which is instead *Theft* as defined and punished in Arts. 308 and 309 of the Revised Penal Code, the appealed Decision is AFFIRMED.

SO ORDERED.<sup>[19]</sup>

On August 25, 2000, petitioner filed his Motion for Reconsideration<sup>[20]</sup> of the assailed Decision which the CA denied in its Resolution<sup>[21]</sup> dated December 8, 2000.

Hence, this Petition raising the sole issue of whether or not the Honorable Court of Appeals decided correctly in finding herein petitioner still guilty of Theft notwithstanding the fact that the evidence of the prosecution was preponderantly flawed and unmeritorious, short of the required proof beyond reasonable doubt.

Correlatively, the instant Petition is based on the following grounds:

#### **I.**

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING HEREIN ACCUSED-APPELLANT STILL GUILTY OF THE CRIME OF THEFT WHEN IT PREMISED ITS FINDING OF THE AFFIRMATION ON THE FOLLOWING CONSIDERATIONS:

a) That there were two eyewitnesses (two 8-year-olds) who were familiar with the accused and had good opportunity to observe the felony and the felon;

b) That the veracity of the testimonies of these two eyewitnesses should not be doubted because the Trial Court has shown its appreciation of the testimonies of witnesses 'who were able to relay to the (Trial) court with sufficient coherence and clarity what they saw;

c) That there was another witness who corroborated the testimonies of the two boys;

d) That the testimonies of these prosecution witnesses were aboveboard as 'none of the witnesses were discredited by the defense as having ill will towards or motive against the accused,' concluding therefore that there was nothing which could have tainted the truthfulness of said testimonies;

e) That the defense put up by the accused using DENIAL, was no match to the prosecution where the testimonies of the prosecution witnesses were positive, clear and unbiased;

f) That the defense of ALIBI cannot also save the day for the accused.

## II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE FINDINGS OF THE TRIAL COURT, WHICH FOUND ACCUSED-APPELLANT GUILTY OF A CRIME BASED ON THE WEAKNESS OF DEFENSE

## III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED, JUST LIKE THE TRIAL COURT, IN NOT GIVING WEIGHT TO THE DEFENSE EVIDENCE.<sup>[22]</sup>

Moreover, petitioner argues that the testimonies of Michael and Angelo are deficient as the two boys merely testified that petitioner took the VHS player and the wallet; that the witnesses' testimonies are incoherent due to their numerous loopholes as regards the alleged taking; that it was physically impossible for the witnesses to view the commission of the crime, considering the interior of the Lipaycos' residence; that the prosecution failed to rebut petitioner's testimony that he was in the premises for the purpose of getting his ham from Conchita; that Michael and Angelo were pre-coached in giving their testimonies by their respective mothers; that Michael and Angelo mistakenly identified petitioner's car stereo as the VHS player; that petitioner's non-flight speaks of his innocence; that Rebecca's testimony before the police and the photographs of the broken door are pieces of evidence

which are contrary to the witnesses' testimony that the petitioner merely pushed the door in order to gain entry, hence, the finding of the crime of Theft; and that since the witnesses merely saw that petitioner take only the VHS player and the wallet, the value of the items lost amounts only to P8,100.00, hence, the petitioner, without conceding the offense charged, is entitled to the imposition of a lesser penalty. Lastly, petitioner attests that he is innocent of the offense charged and prays for his acquittal.<sup>[23]</sup>

On the other hand, respondent People of the Philippines through the Office of the Solicitor General (OSG) posits that the direct, positive and categorical testimonies of Michael and Angelo pointing to the petitioner as the perpetrator of the crime of Theft are entitled to full faith and credit; that petitioner failed to prove any improper motive on the part of the mothers of Michael and Angelo in allegedly coaching the minors to testify against him; that petitioner's defenses of denial and alibi are unavailing; that factual findings of the RTC particularly in its assessment of credibility of witnesses are entitled to respect; and that non-flight is not proof of innocence.<sup>[24]</sup>

The Petition lacks merit.

While it is true that the RTC and the CA had separate and different findings as to the crime committed, this Court holds that asportation was indeed established. Thus, we agree with the ruling of the CA that the crime of Theft was committed based on the evidence presented.

Article 308 of the Revised Penal Code defines theft as follows:

Art. 308. Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence, against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

The elements of theft are: (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.<sup>[25]</sup> Therefore, in theft, *corpus delicti* has two elements, namely: (1) that the property was lost by the owner, and (2) that it was lost by felonious taking.<sup>[26]</sup>

At this juncture, petitioner offers the defense of denial, postulating that when Michael and Angelo saw the petitioner, he was carrying at the time his car stereo which they have mistaken to be the VHS player of the Lipaycos. Moreover, petitioner contends that he is not invoking the defense of alibi because he admittedly passed by the house of the Lipaycos on December 31, 1996.<sup>[27]</sup> However, a perusal of the petitioner's pleadings before this Court shows that the proffered defense is still alibi, since petitioner alleged that he cannot be at two places at the same time.<sup>[28]</sup>

We reject petitioner's arguments.

*First.* It could not be said that Michael and Angelo, young as they were, could have