

THIRD DIVISION

[G.R. No. 142039, May 27, 2004]

MODESTO "MOODY" MABUNGA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

CARPIO MORALES, J.:

The Court of Appeals having, by Decision of June 30, 1999,^[1] affirmed that of the Regional Trial Court of Romblon^[2] convicting appellant Modesto Mabunga of robbery with force upon things under Article 299 of the Revised Penal Code, he comes to this Court on a petition for review.

In the morning of October 2, 1994, employees of the Bureau of Fire Protection (BFP) including Davy Villaruel (Villaruel) discovered that the hasp of the door of the BFP office in Barangay Capaclan, Romblon, Romblon was destroyed, and that the only typewriter in their office, a "Triumph" bearing Serial Number 340118640, was missing.

From the testimonies of prosecution witnesses tricycle driver Sixto Bernardo (Bernardo), Diana Malay (Diana), Villaruel, Sylvia Silverio Comienzo (Sylvia), and SPO2 Eleazar Madali, the prosecution presented its case as follows:

Around 3:00 o'clock in the afternoon of October 15, 1994, as Diana was in front of her store in Capaclan, Romblon, Romblon waiting for a tricycle, she saw appellant, a dealer of marble slabs, who was carrying a box which bore the marking "HOPE" and tied with gray straw string, board a pedicab driven by Bernardo. Having heard from her husband Rodolfo Malay who works with the BFP that appellant was the prime suspect of the police for the "robbery" at the BFP, Diana immediately informed her husband of what she saw. She was thereupon instructed by her husband to follow appellant.^[3]

As Diana noticed that the pedicab was heading for the pier, she proceeded on foot to the house of Villaruel^[4] whom she informed of what she had witnessed.

After the lapse of about 5 minutes,^[5] Villaruel, on board his scooter, proceeded to the pier. By that time appellant had reached the pier, alighted from Bernardo's tricycle, and unloaded the "HOPE" box.

In the meantime, Diana contacted Chief of Police Major Ernesto Madrona at his house.^[6]

Appellant, not long after alighting from the tricycle at the pier, reboarded the same tricycle^[7] driven by Bernardo, without the box, and headed for his house at

Capaclan. Diana, in fact, saw him on board the tricycle on his way home.

Diana later boarded the tricycle of Bernardo after the latter brought home appellant, and repaired to the pier. There, by the gate, she saw Villaruel who confirmed to her that he had verified from Bernardo, whom he earlier saw by the same gate, that the latter indeed conveyed appellant to the pier, with a "HOPE" box.

Diana also learned from Villaruel that "he really saw the box brought by [appellant]." She thus returned on foot to the house of Major Madrona who instructed SPO2 Eleazar Madali and PO2 Eustaquio Rogero "to surreptitiously watch a box of Hope brand cigarettes placed under a bench inside the PPA passengers terminal owned by [appellant] and wait until somebody gets said box and load it aboard the vessel M/V Peñafrancia 8."^[8]

On Villaruel's entering the terminal^[9] he was told by Sylvia, the cashier on duty at the restaurant therein, that a man, whom she later identified to be appellant through a photograph shown to her that same day, entrusted the box to her, he telling her that it contained a damaged electric fan.^[10]

Villaruel thereupon kept watch over the box, as SPO2 Madali and PO2 Rogero later did discreetly, until M/V Peñafrancia departed for Batangas at 8:00 p.m., with appellant on board the same. About an hour later, PPA officers Reynaldo Dianco and Leo Vedito Fontellera arrived at the terminal and the box was turned over by them to SPO2 Madali and PO2 Rogero. The box, when opened, contained the lost BFP typewriter.

On February 7, 1995, appellant was charged with robbery before the Regional Trial Court of Romblon, Romblon under an information reading:

That on or about the 1st day of October, 1994, at around 12:00 midnight, in [B]arangay Capaclan, municipality of Romblon, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent [to] gain, did then and there willfully, unlawfully and feloniously enter the Office of the Bureau of Fire Protection by forcibly breaking the door hasp of the main door and upon having gained entry therein, take, steal and carry away one (1) typewriter (Triumph brand) with Serial No. 340118640, valued at P5,894.00, Philippine currency, belonging to and owned by the government, without its consent, and to the damage and prejudice of the government in the aforestated amount.

^[11]

On arraignment on February 21, 1995, appellant, with the assistance of counsel, pleaded "not guilty."^[12] Thereafter, trial ensued.

Appellant interposed alibi with respect to the date and place of occurrence of the alleged robbery. While he admitted bringing to the pier on October 15, 1994 a box, he claimed, however, that it bore the marking "CHAMPION," not "HOPE." At the witness stand, he gave the following tale:

He left Romblon on September 24, 1994 and arrived in Manila the next day. After the lapse of 12 hours, he went to the Cubao station of the Batangas Laguna Tayabas Bus (BLTB) Company and boarded a bus bound for Matnog, Sorsogon. He reached

Matnog on the afternoon of September 27, 1994 and stayed there overnight before proceeding to Allen, Samar which he reached on September 28, 1994. He then boarded a jeep bound for San Jose, Northern Samar where he stayed for one (1) hour, after which he proceeded to Calbayog City which he reached on September 29, 1994. He transferred to another jeep bound for Tacloban and arrived there on September 30, 1994. For a day he stayed in Tacloban to rest, after which he proceeded to Palo, Leyte to visit his "project." He arrived in Palo on October 1, 1994. The next day, he went to Tacloban City and purchased materials for polishing marble. He returned to Palo and supervised his marble "project" for a week. When the "project" was finished, he returned to Cebu on October 6, 1994 and the next day boarded the ferry "[Backwagon] Bay" for Romblon. He reached Romblon on October 9, 1994.^[13]

In support of his alibi, he presented bus tickets and purchase receipts of materials, viz:

- Exhibit "1"– BLTB ticket No. 60850, dated September 26, 1994, (Cubao to Matnog, Sorsogon)
- Exhibit "2"– Bus ticket dated September 28, 1994 issued by E. Tabinas Enterprises to Moody Mabunga (Matnog, Sorsogon, to Allen, Samar).
- Exhibit "3"– Invoice No. 18639 issued on October 2, 1993 by Terrazzo Construction and Marble Supply to Moody Mabunga.^[14]

Appellant further claimed that on the afternoon of October 15, 1994, he, along with his son, boarded the pedicab of Bernardo to which they loaded a box marked "CHAMPION" containing marble novelties to be brought to Manila via Viva Penafancia 8; on reaching the pier, he laid down the box at the gate of the PPA and stood beside it as he waited for the ship to dock; and when he later boarded the ship, he placed the box at the back of his cot.^[15]

Finding appellant guilty beyond reasonable doubt of robbery, Branch 81 of the RTC Romblon sentenced him to suffer "an indeterminate penalty of from 4 years and 2 months of prison correccional, as minimum to 8 years and 1 day of prision mayor, as maximum, with the accessory penalties of the law, and to pay the costs."^[16]

The Court of Appeals, in affirming the decision of the trial court, relied on Section 3(j) Rule 131 of the Revised Rules on Evidence which reads:

SEC. 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x

(j) That a person in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him;

The appellate court having denied his motion for reconsideration,^[17] appellant lodged the present appeal, ascribing to it the following errors:

1. THE COURT OF APPEALS GRAVELY ERRED WHEN IT DISREGARDED THE UNIMPUGNED ALIBI OF THE ACCUSED, NOTWITHSTANDING THE ABSENCE OF POSITIVE IDENTIFICATION.
2. THE COURT OF APEALS GRAVELY ERRED WHEN IT ADMITTED IN EVIDENCE THE TYPEWRITER, WHICH WAS SEARCHED WITHOUT WARRANT AND IN THE ABSENCE OF THE ACCUSED.
3. THE COURT OF APPEALS GRAVELY ERRED WHEN IT PRESUMED THE ELEMENT OF INTENT TO GAIN, WHEN THE SUPPOSED ACT OF THE ACCUSED IN LEAVING THE BOX TO A STRANGER AND NEVER COMING BACK TO CLAIM IT NEGATED THE NOTION OF *ANIMUS LUCRANDI*.^[18] (Underscoring supplied)

The appeal is impressed with merit.

While courts have consistently looked upon alibi with suspicion not only because it is inherently weak and unreliable as a defense, but because it can easily be fabricated,^[19] the basic rule is for the prosecution, upon which lies the onus, to establish all the elements of a crime to thereby hold him guilty beyond reasonable doubt. Such burden does not shift as it remains with the prosecution. Tasked with the burden of persuasion, the prosecution must thus rely on the strength of its evidence and not on the weakness of the defense.^[20]

Admittedly, the evidence for the prosecution is circumstantial. The alleged robbery was discovered when the employees of the BFP reported for work on October 2, 1994 and noticed that the hasp of the office door was broken and the typewriter was missing.

On the sole basis of the presumption laid down under above-quoted Section 3(j) of Rule 131 of the Revised Rules on Evidence, the appellate court affirmed the conviction of appellant.

A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action.^[21] It is an "inference as to the existence of a fact not actually known, arising from its usual connection with another which is known, or a conjecture based on past experience as to what course of human affairs ordinarily take."^[22]

A presumption has the effect of shifting the burden of proof to the party who would be disadvantaged by a finding of the presumed fact. The presumption controls decision on the presumed fact unless there is counterproof that the presumed fact is not so.^[23]

In **criminal** cases, however, presumptions should be taken with caution especially in light of serious concerns that they might water down the requirement of proof beyond reasonable doubt. As special considerations must be given to the right of the accused to be presumed innocent, there should be limits on the use of presumptions against an accused.

Although possession of stolen property within a limited time from the commission of the theft or robbery is not in itself a crime, it being possible to possess the same and remain innocent, such possession may be sufficient for the formation of an inference that the possessor is the thief unless the evidence satisfactorily proves that the property was acquired by the accused by legal means.

How the presumption under Section 3(j) Rule 131 is to be understood, *United States v. Catimbang*^[24] explains:

According to the modern view convictions in cases of this kind are not sustained upon a presumption of law as to the guilt of the accused. The conviction rests wholly upon an inference of fact as to the guilt of the accused. If as a matter of probability and reasoning based on the fact of possession of the stolen goods, taken in connection with other evidence, it may fairly be concluded beyond reasonable doubt that the accused is guilty of the theft, judgment or conviction may properly be entered. x x x

The inference of guilt is one of fact and rests upon the common experience of men. But the experience of men has taught them that an apparently guilty possession may be explained so as to rebut such an inference and an accused person may therefore put witness on the stand or go to the witness stand himself to explain his possession, and any reasonable explanation of his possession, inconsistent with his guilty connection with the commission of the crime, will rebut the inference as to his guilt which the prosecution seeks to have drawn from his guilty possession of the stolen goods.

It is in this sense that it is sometimes said that the unexplained possession of recently stolen goods will sustain a conviction of the crime of larceny.^[25] (Emphasis and underscoring supplied)

Before an inference of guilt arising from possession of recently stolen goods can be made, however, the following basic facts need to be proven by the prosecution: (1) that the crime was committed; (2) that the crime was committed recently; (3) that the stolen property was **found in the possession of the defendant**; and (4) that the defendant is unable to explain his possession satisfactorily.^[26]

For purposes moreover of **conclusively** proving possession, the following considerations have to be emphasized: (1) the possession must be unexplained by any innocent origin; (2) the possession must be fairly recent; and (3) **the possession must be exclusive**.^[27]

Contrary to the findings of both the trial and appellate courts, the People failed to prove beyond reasonable doubt that appellant was caught in **exclusive possession** of the recently stolen good.

While possession need not mean actual physical control over the thing for it may include constructive possession, it is still necessary that **for possession to be deemed constructive the accused knowingly has the power and the intention at a given time to exercise dominion or control over a thing,**