

SECOND DIVISION

[G.R. No. 138494, November 21, 2002]

LEOSANDRO MELAYO Y LUHA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

QUISUMBING, J.:

In this petition for review on certiorari, petitioner Leosandro^[1] Melayo assails the decision^[2] of the Court of Appeals dated December 1, 1998, in CA-G.R. CR No. 21105, which affirmed *in toto* the ruling of the trial court finding him guilty of theft and sentencing him to suffer an indeterminate prison term of six (6) years of *prision correccional*, as minimum, to twelve (12) years of *prision mayor*, as maximum, and ordering him to pay private complainant, Theresa Mina, actual damages at the amount of P19,000 for the value of her stolen articles, plus interests and costs.

Petitioner was charged with the crime of theft before the Regional Trial Court of Manila, Branch 1, in an information that reads:

That on or about the 23rd day of September 1993, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away the following, to wit:

One colored Sony television set -	P16,000.00
One Imarflex rechargeable lamp-	1,500.00
Assorted clothings	- 1,000.00
Sleeping bag	- 500.00

belonging to THERESA^[3] G. MINA to the damage and prejudice of said owner in the aforesaid amount of P19,000.00, Philippine currency.

Contrary to law.^[4]

The accused pleaded not guilty.^[5] Trial on the merits then ensued.

For the prosecution, the following witnesses were presented: private complainant Theresa Mina, her sister-in-law Amelita Mina, and barangay chairman Dominador Mangalos.

THERESA G. MINA testified that in the morning of September 23, 1993, she requested help from herein petitioner Leosandro Melayo to carry her belongings to safety while her house was being razed by fire. She said that petitioner, whom she saw for the first time that day, took her belongings and then disappeared. Because

of the confusion brought by the fire, she was not able to report the incident to the police.

Five months later, that is on February 23, 1994, private complainant said she saw petitioner at the corner of Sagat and Santiago Streets. It was only then that she went to the barangay chairman to report that he took her belongings. The chairman, together with a barangay *tanod* (guard), looked for the house of petitioner and invited him to the barangay hall. There, private complainant asked petitioner where he took the things that were stolen from her. Petitioner denied the accusations against him.

Private complainant then requested the barangay chairman to accompany her to petitioner's house to look for the clothes he wore during the incident. Petitioner's aunt gave them permission to enter the house. Once inside, private complainant saw clothes hanging on the wall, which she identified as those allegedly worn by petitioner during the fire. The barangay chairman then asked petitioner to try on the pants and polo. Petitioner, his cousin Leo^[6] Mansalapus, and their housemate Algernon Lampas tried on the clothes. The clothes fit all three.

As to the value of the property allegedly stolen, private complainant testified that the 14" Sony Colored TV was worth ₱16,000, the Imarflex rechargeable lamp ₱1,000, the sleeping bag ₱500, and the clothes ₱1,000, totalling ₱19,000.^[7]

On cross-examination, private complainant admitted that prior to her complaint before the barangay, she did not know petitioner, except by face. Also, during the fire, it was she who approached petitioner to ask for help with her belongings. According to her, she saw him for a total of about five minutes before he disappeared. Finally, she admitted that when the barangay *tanod* looked for the house of petitioner, she did not go with them.^[8]

Witness AMELITA MINA corroborated her sister-in-law's testimony and said that they were together when the fire broke out on September 23, 1993. She likewise said that it was Theresa who sought the help of petitioner in carrying their belongings.^[9] On cross-examination, the witness also said that they only reported the loss of their belongings on February 23, 1994, five months after the incident happened.^[10]

The third witness for the prosecution, barangay chairman DOMINADOR MANGALOS, testified that on February 25 at around 9 or 10 o'clock in the evening, Theresa Mina came to him and said that she saw the man who took her belongings during the fire which occurred in Sagat Street months earlier. Petitioner and private complainant then met at the barangay hall. Later, private complainant asked if they could look inside petitioner's house to see if some of her belongings were still in there. With the permission of petitioner's aunt, they entered the house and saw clothes that were allegedly used by the man who helped her move the things during the fire. He asked Leosandro if the clothes were his and he answered yes. Then there was a hearing at the barangay headquarters to see if the parties could reach a settlement, which failed. Finally, he testified that petitioner never admitted to the commission of the offense.^[11]

On cross-examination, barangay chairman Mangalos admitted that even though they went and searched the house of petitioner, they did not find any of the alleged personal belongings lost by the private complainant. He also admitted that when the clothes, allegedly used by the petitioner during the incident, were seen by the

chairman and the private complainant, Leo Mansalapus claimed they were his and upon trying them on, the clothes fit him as well. Moreover, the barangay chairman admitted that the kind of clothing allegedly used by the culprit is very ordinary and could be worn by anyone.^[12]

The defense, for its part, presented the following: petitioner Leosandro Melayo and his witnesses Leo Mansalapus and Algernon Lampas.

In his testimony, petitioner LEOSANDRO MELAYO said that he was born on October 6, 1976. He testified that in the morning of September 23, 1993, shortly before 9 o'clock, he was working at Lucky Brakes Spare Parts at Gen. Luna St., Paco, Manila when his employer, Anita Cojuangco, told him there was a fire at Sagat Street where he lived. He then went to his cousin, Leo Mansalapus, at the shop to inform him of the fire. They immediately ran home.

Petitioner stressed that at the time, he was wearing maong shorts and white t-shirt because his job entailed heavy manual labor.

Upon reaching Sagat Street, petitioner found the fire raging in front of their house. So he and his cousin went inside and saved some of their belongings. He picked up a small bag and a washbasin containing clothes and one small electric fan.

According to petitioner, there were numerous persons in the area at the time, around 100 to 200, including the police, barangay *tanod*, and firemen.

After getting their belongings, petitioner and his cousin went to the corner of Lopez Jaena and Santiago Streets where his cousin's wife was waiting. There they stayed. Petitioner emphasized that he could not leave that corner because he was looking after their belongings. Around 11 A.M. they were told by the firemen that they could go back to their houses because the fire was already out.

Petitioner reiterated that he did not see private complainant during the fire nor did he know her before that. The first time he saw her was on February 23, 1994 in the barangay headquarters. There, Theresa Mina accused him of taking her belongings which he consistently denied.

They agreed that she would go to their house to see if any of her belongings were there. She did not find any. Instead, she saw a brown polo shirt and khaki pants which she claimed petitioner wore on the day of the incident. She had him put on these clothes. Petitioner acceded together with his cousin and housemate. But upon inspection, the pants had a school ID, that of Algernon.^[13]

The testimony of LEO MANSALAPUS mostly corroborated petitioner's. But he added that per his estimate, there were around 1,000 people in the area during the fire. He also said that he and petitioner saved a black and white TV set, an electric fan, and a basin containing clothes which they brought to the corner of Lopez Jaena and Santiago Streets where his wife was waiting.^[14]

On cross-examination, witness Mansalapus admitted that he and petitioner Melayo are first cousins. But he reiterated that the only reason he is testifying for Melayo is that the latter did not commit any crime.^[15]

ALGERNON LAMPAS testified that he and petitioner were housemates at 1208 Sagat Street, Paco, Manila.^[16] On September 23, 1993, he saw outside their window a

fire raging about six to seven meters from their house. He immediately told his cousin, the wife of Mansalapus, about it and they went out of the house together with the children. They went to the corner of Lopez Jaena St. Soon, Melayo and Mansalapus arrived. The two went to their house and returned with their black and white TV, electric fan, and a basin of clothes. Around 11 A.M., the fire was put out and they were told to return to their houses.

On February 23, 1994, the barangay *tanod* went to their house and invited them to the barangay hall. That was the first time, the witness said that he saw private complainant. She was complaining about her TV set. Then private complainant, together with the barangay chairman and *tanod*, went to their house to look for her missing properties. There she saw witness' shirt and pants. She told the barangay chairman that these were the clothes worn by the person who took her TV. Upon inspection of the pants, they found the witness' wallet with a student ID. Then they asked each of the three, Leosandro, Leo and Algernon to fit the pants.^[17]

On March 3, 1997, the trial court rendered a decision convicting the petitioner, decreeing as follows:

WHEREFORE, this court finds the accused LEOSANDRO MELAYO y LUHA GUILTY beyond reasonable doubt of the crime of theft with the aggravating circumstance of being committed on the occasion of a conflagration and pursuant to law hereby sentences him to suffer the indeterminate prison term of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum, and to pay the costs.

Further, the accused is ordered to pay complainant Theresa Mina actual damages in the sum of P19,000.00 representing the value of the stolen articles with interests thereon at the legal rate from the date of the filing of this case, i.e., July 11, 1994, until fully paid.

SO ORDERED.^[18]

The petitioner appealed to the Court of Appeals, which ruled against him, thus:

WHEREFORE, the decision appealed from is hereby AFFIRMED in toto, with costs against accused-petitioner.

SO ORDERED.^[19]

Hence, this petition with the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED IN IMPOSING THE WRONG PENALTY ON THE ACCUSED WHEN IT FAILED TO CONSIDER THE MINOR AGE OF THE ACCUSED-APPELLANT [PETITIONER] AT THE TIME OF THE ALLEGED COMMISSION OF THE CRIME AS PRIVILEGE MITIGATING CIRCUMSTANCE.

II

THE COURT OF APPEALS GRAVELY ERRED IN NOT CONSIDERING THAT THE TESTIMONY ON THE VALUE OF THE T.V. SET IS INCREDIBLE AND