

## FIRST DIVISION

[ G.R. No. 122290, April 06, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
REYNALDO BAGO Y MADRID, ACCUSED-APPELLANT, ARMANDO  
CAPARAS Y CUENCO AND RODOLFO ONGSECO Y VEGO, ACCUSED.**

### D E C I S I O N

**PUNO, J.:**

Appellant **REYNALDO BAGO** was charged with qualified theft, while his co-accused **ARMANDO CAPARAS** and **RODOLFO ONGSECO** were charged with simple theft, in an Information<sup>[1]</sup> which reads:

"That sometime during the period from January 1992 to March 23, 1992, in Quezon City, Philippines, REYNALDO BAGO y MADRID, being then employed as factory worker of the Azkcon Metal Industries detailed with the Power Construction Supply Company located at No. 130 Judge Juan Luna Street, San Francisco del Monte, this City, and as such has free access to the different departments of the company, with grave abuse of confidence, in conspiracy with his co-accused ARMANDO CAPARAS and RODOLFO ONGSECO y VEGO, conspiring together, confederating with and mutually helping one another, with intent to gain and without the knowledge and consent of the owner thereof, did then and there wilfully, unlawfully and feloniously take, steal and carry away assorted cold rolled sheets and scraps valued in the total amount of P194,865.00, Philippine Currency, belonging to Power Construction Supply Company, represented by WILLIAM HILO, to the damage and prejudice of the owner thereof in the aforementioned amount.

"CONTRARY TO LAW."

Appellant and his co-accused pled not guilty. Trial ensued.

Appellant was an employee of Azkcon Metal Industries (Azkcon for brevity) from 1988 to 1992. He started working as a factory worker and later became a machine operator and a truck helper. From 1991 to 1992, he served as team leader at the cutting department under the supervision of Material Comptroller **WILLIAM HILO** who kept track of all the materials coming in and going out of the company's plant in Kalookan City.<sup>[2]</sup>

Azkcon has a business arrangement with Power Construction Supply Company (Power Construction) whereby Azkcon buys cold rolled sheets from the latter. These cold rolled sheets are also cut by Power Construction for a fee and Azkcon converts them into drums or containers. Appellant's job was to go to Power Construction's

establishment in Quezon City to oversee the cutting of the cold rolled sheets and ensure their delivery to Azkcon using the trucks sent by Hilo.<sup>[3]</sup>

On April 21, 1992, appellant and his co-workers<sup>[5]</sup> went to Power Construction and loaded two cold rolled sheets in a truck owned by Azkcon.<sup>[5]</sup> Before entering the premises of Azkcon, appellant presented to security guard **RUBEN DE LA CRUZ MANANGAN** two receipts,<sup>[6]</sup> both dated April 21, 1992, covering the cold rolled sheets from Power Construction. Manangan inspected the contents of the truck. As everything was accounted for, Manangan stamped on the two receipts covering the materials. Appellant then presented a third receipt,<sup>[7]</sup> with Invoice No. 51111, dated March 23, 1992, for stamping. Manangan likewise stamped the third receipt. As the third receipt bore a different date, Manangan asked appellant if the materials covered by said receipt were in the truck. Appellant replied that the materials had long been delivered. Manangan did not investigate further but later reported the incident to the Chief of Security Department, **AFLOR ONG**. Ong checked the third receipt and when he failed to find the materials listed thereon, he reported to Hilo.<sup>[8]</sup>

Upon receipt of the report, Hilo discreetly conducted a more in-depth investigation. He found out that the materials covered by the third receipt, worth P192,000.00, were not delivered to Azkcon. He checked the third receipt and the gate pass of Power Construction for March 23, 1992 - the date of the questioned transaction - and discovered that the truck used by appellant on said date did not belong to Azkcon. It also turned out that the subject materials had already been paid for by Azkcon.<sup>[9]</sup>

Power Construction's security guard, **JUN GAVARAN**, confirmed that on March 23, 1992, appellant and his companions picked up cold rolled sheets from Power Construction and loaded them in a truck. The truck did not bear the logo of Azkcon. Gavarán noted on a ledger that the truck came at 2:15 p.m. and left at 3:35 p.m.

Hilo did not immediately report the matter to his superior. He chose to wait for appellant to commit a similar misdemeanor and catch him red-handed. He waited in vain. He then decided to inform his superiors about the theft in May 1992. Hilo was directed to report the theft and file a complaint with the police authorities.

A police team, led by **SPO3 ALFREDO ALFARO**, investigated appellant at Azkcon. Appellant insisted that the materials covered by the third receipt had been delivered to Azkcon. The investigation of appellant continued at the police station. PO3 Andres Balod interrogated appellant. Appellant asked for a lawyer and was brought to the Integrated Bar of the Philippines (IBP) where he was assisted by Atty. Florimond C. Rous. Atty. Rous talked to him and inquired if he was willing to give a statement to the police. The interrogation then proceeded and appellant admitted his participation in the theft. He disclosed that his cohorts on May 23, 1992 were ARMANDO CAPARAS and RODOLFO ONGSECO, former employees of Azkcon. He revealed that they usually loaded the stolen materials in a truck rented by Caparas and Ongseco. He received P10,000 to P35,000<sup>[10]</sup> for his participation in the different thefts.<sup>[11]</sup> Appellant affixed his signature on the written statement.<sup>[12]</sup> After the investigation, PO3 Balod referred the case to Fiscal Paragua.

The next day, the police went to Malinta, Valenzuela and apprehended accused Caparas and Ongseco. It was appellant who pointed out the residence of Caparas and Ongseco to the police. The two identified a certain Chua as the alleged buyer of the stolen goods. The police invited Chua for investigation. Inexplicably, the investigation of Chua was not reduced to writing.<sup>[13]</sup>

Appellant denied participation in the crime charged. He described his job as team leader at the cutting department of Azkcon. He said that Hilo would order him to proceed to Power Construction Supply to oversee the cutting and procurement of the materials needed by Azkcon. Hilo would then instruct him to wait for his call and the arrival of their truck at Power Construction Supply. They would usually use Azkcon's trucks, but at other times, Hilo would rent trucks from others.<sup>[14]</sup>

As soon as the truck would arrive at the premises of the supplier, the driver would ask for appellant. He would then load the materials in the truck and would show the receipts covering the materials to the security guard of Power Construction Supply for stamping. The materials inside the truck would be counterchecked against the quantity and quality stated in the receipts. Appellant would then return to Azkcon usually at about 4:00 p.m. Thus, he would mainly stay at the supplier's premises to oversee the cutting of the cold rolled sheets.<sup>[15]</sup>

Appellant claimed he does not know prosecution witness Jun Gavaran, the security guard of Philippine Construction Supply. He also denied knowing accused Caparas and Ongseco. Allegedly, he saw them for the first time at the police station. He admitted knowing prosecution witnesses Manangan and Ong. He acknowledged that he had no quarrel with Gavaran, Manangan and Ong.<sup>[16]</sup>

On May 21, 1992, four (4) policemen in civilian clothes arrested him without a warrant while working in Azkcon. They told him that Hilo filed a complaint against him. He was detained at the La Loma police station. Hilo came and pointed him as the one responsible for the theft but without informing him what he stole. Upon orders of Hilo, the policemen started to beat him. They forced him to admit the crime. They also compelled him to give a statement but he refused.<sup>[17]</sup>

The next day, the policemen and Hilo brought him to Valenzuela. Hilo indicated to the policemen the residence of accused Caparas and Ongseco. That was the first time he saw his co-accused.<sup>[18]</sup>

Then, the policemen forced appellant to go to the IBP office in Quezon City. They gave him Atty. Rous as counsel although he insisted on hiring his own counsel. Atty. Rous never conferred with him. No investigation was conducted at the IBP. The police did not ask him a single question. Without reading his prepared statement, he signed it as the police threatened to harm him. He acknowledged his signatures on the invoices marked as Exhibits "A" to "D",<sup>[19]</sup> but claimed he could not recall the circumstances under which he signed them.<sup>[20]</sup>

After seven (7) days at the La Loma police station, he was taken to the Fiscal's Office in Quezon City. The inquest fiscal did not talk to him. He was asked about the voluntariness of his signature in his extra-judicial confession.<sup>[21]</sup>

Thereafter, he was brought back to the station.<sup>[22]</sup>

Appellant's father, **PABLO BAGO**, testified that on June 15, 1992, he went to the NBI to seek protection for his son as they were receiving threats from Hilo and police officers Balod and Alfaro. Days later, Hilo, Alfaro and Balod went to his house in Quezon City looking for appellant. Hilo warned that appellant should admit the crime lest something untoward would happen to him.<sup>[23]</sup> Again, after his son's arraignment, a certain Col. Hernandez visited their house and insisted on taking appellant to Azkcon. Pablo refused, arguing that the case had already been filed in court.<sup>[24]</sup> On another occasion, Col. Hernandez and his lady friend dropped by his house and convinced him and his son to talk to Mr. King, the owner of Azkcon. During their meeting, Mr. King allegedly told Pablo that he knew that appellant was innocent but asked him to testify against the persons responsible for the crime. Pablo replied that they would think about the proposal.<sup>[25]</sup> Mr. King's lawyer, Atty. Capistrano, also gave him the same advice. Atty. Capistrano requested them to go to his office where appellant could execute a statement. Instead of going there, Pablo and the appellant proceeded to the office of appellant's lawyer.<sup>[26]</sup>

Allegedly, appellant was maltreated while in the custody of the police. Pablo claimed that he reported the physical abuse to the NBI.<sup>[27]</sup>

Prosecution's rebuttal witness **ATTY. FLORIMUND C. ROUS**, free legal aid counsel of IBP, testified that on May 22, 1992, appellant was brought to their office for the execution of his extra-judicial confession. As a matter of procedure, he first examined the body of appellant to determine any sign of physical abuse or maltreatment while the latter was in police custody. Finding none, he inquired from appellant whether he was willing to confess to the commission of the theft. Beforehand, he already informed appellant of the consequence of his confession, i.e., that it could be used against him. Nonetheless, appellant affirmed his willingness to execute a written confession. Thus, the policeman proceeded to take the statement of appellant. Appellant signed his extrajudicial confession<sup>[28]</sup> in his (Atty. Rous') presence.

Rebuttal witness **ATTY. MELANIO CAPISTRANO** testified that he was Azkcon's legal counsel. He confirmed that a conference was held at Azkcon premises in connection with the theft. Present were appellant, Pablo Bago, Mr. King and a former employee of Azkcon. Due to the complexity of the *modus operandi*, Mr. King suspected that appellant had other companions in committing the theft. Mr. King then informed him that appellant had agreed to turn state witness. Appellant confessed that his supervisor William Hilo, a certain Severino Encarnacion and his co-accused Ongseco and Caparas took part in the heist. Allegedly, Encarnacion was the brains behind the theft; Hilo took care of the operations on the Azkcon side, while Ongseco and Caparas took care of the procurement of the stolen goods. Atty. Capistrano expressed reservations about the involvement of Hilo as he was the one who reported the theft to the management. After the conference, he advised appellant to consult his own lawyer and execute a statement so he could determine if they would use appellant as a state witness. Prior to his arraignment, appellant was told that he should decide whether he wanted to be a state witness. In their next scheduled meeting, appellant and his lawyer, Atty. Jambora, failed to appear.<sup>[29]</sup>

On sur-rebuttal, Pablo Bago insisted that on July 1992, Col. Hernandez went to Peñaranda, Nueva Ecija and took pictures of his house. Col. Hernandez invited him and appellant to go to Azkcon. They refused as appellant had already posted bail at that time. Atty. Capistrano, on the other hand, insisted that appellant should name the other employees involved in the theft so that they could be dismissed from the company.<sup>[30]</sup>

On April 26, 1995, the Regional Trial Court of Quezon City<sup>[31]</sup> convicted appellant of qualified theft. Accused Caparas and Ongseco were acquitted for insufficiency of evidence. The dispositive portion of the decision<sup>[32]</sup> reads:

"WHEREFORE, in view of all the foregoing, the Court finds accused REYNALDO BAGO y MADRID guilty beyond reasonable doubt as principal of the crime of Qualified Theft as defined and penalized under Article 308, in relation to Article 309, paragraph 1 and Article 310 of the Revised Penal Code, and hereby sentences said accused to an indeterminate penalty of imprisonment ranging from Twenty (20) years and One (1) day of *Reclusion Perpetua* as minimum to Twenty-Eight (28) years, Ten (10) months and One (1) day of *Reclusion Perpetua* as maximum, with the accessory penalties of the law and to indemnify the complainant in the sum of P194,865.00, representing the value of the stolen cold rolled sheets, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"Accused ARMANDO CAPARAS Y CUENCO and RODOLFO ONGSECO Y VEGO are hereby ACQUITTED for insufficiency of evidence.

"SO ORDERED."

Appellant moved for reconsideration of the trial court's decision. The motion was denied for lack of merit,<sup>[33]</sup> although the dispositive portion of the trial court's decision was amended, thus:

"WHEREFORE, in view of all the foregoing reasons, the Motion for Reconsideration is hereby DENIED for lack of merit.

"Pursuant to People vs. Conrado Lucas (240 SCRA 66), [the] dispositive portion of the decision is hereby modified but only insofar as accused Reynaldo Bago is concerned to read as follows:

"WHEREFORE, in view of all the foregoing, the Court finds accused Reynaldo Bago y Madrid GUILTY beyond reasonable doubt as principal in the crime of Qualified Theft as defined and penalized under Article 309, paragraph 1 and Article 310 of the Revised Penal Code, and hereby sentences said accused to the penalty of *reclusion perpetua*, with the accessory penalties of the law, and to indemnify the complainant in the sum of P194,865.00, representing the value of the stolen cold rolled sheets, without subsidiary imprisonment in case of insolvency, with costs.