

SECOND DIVISION

[G.R. No. 126319, October 12, 1998]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERNANDO CAÑALES Y CARLAN, ACCUSED-APPELLANT.**

DECISION

PUNO, J.:

Accused-appellant Fernando Cañales, together with Romeo Sarmiento, Jr., Joven Lim and Peter Doe alias "Lolong" were charged with qualified theft in an Information which reads:

x x x

"That on or about the 10th day of November, 1987 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused being then employees of the complainant FIRST BASE INDUSTRIES CORP., represented by ELMOR SYJUECO, and as such has access in the premises of the business of the latter, conspiring together and mutually helping one another, with intent to gain, without the knowledge and consent of the owner/complainant and with grave abused (sic) of trust and confidence reposed upon them, did then and there wilfully, unlawfully and feloniously steal, take and carry away One (1) Unit of the Heino Truck with Plt. No. GCE 199 worth P300,000.00 and Seven Hundred (700) cartones (sic) of Frozen Prawn worth P1.5 Million, belonging to the FIRST BASE INDUSTRIES CORP., to the damage and prejudice of the latter in the aforementioned total amount of P1.8 Million."

They all pleaded not guilty upon arraignment. Accused Sarmiento jumped bail after arraignment. On July 23, 1993, the RTC, NCJR, Branch 122, Caloocan City,^[1] then presided by Judge B.A. Adefuin-dela Cruz, convicted Cañales and Sarmiento but acquitted Lim. They were sentenced as follows:

x x x

"PREMISES CONSIDERED, the Court finds accused ROMEO SARMIENTO, JR. Y ASANZA and FERNANDO CAÑALES y CARIAN guilty beyond reasonable doubt of the crime of qualified theft as defined and penalized under Art. 310 in relation to Art. 308 and Art. 309 of the Revised Penal Code, and hereby sentences each of them to suffer the indeterminate penalty of THIRTEEN (13) YEARS, ONE (1) MONTH and ELEVEN (11) DAYS to EIGHTEEN (18) YEARS, NINE (9) MONTHS and TWENTY-FOUR (24) DAYS, both of reclusion temporal, and to indemnify, jointly and severally, the complainant First Base Industries Corporation in the sum of P2.3 Million, the value of the frozen prawns only, considering that the

truck with the van valued at P300,000.00 was recovered and already released to the complainant; and to pay, jointly and severally, costs.

Accused Cañales appealed to the Court of Appeals. On July 9, 1996, the Fifth Division^[2] of the Court of Appeals affirmed the conviction of the accused and meted on him the "penalty of reclusion perpetua for forty years with the accessory penalties of death under Article 40 of the Revised Penal Code." In light of the penalty and in accord with Section 13, Rule 124 of the Revised Rules of Criminal Procedure, the Court of Appeals certified the case at bar to this Court for final disposition.

We now review the evidence.

The evidence for the prosecution is accurately summarized in the Brief of the Solicitor General, viz:

"On November 9, 1987, Danilo Ramos, employee and truck helper of First Base Industries Corporation since August 15, 1987, reported for work. He was assigned as truck helper to a Filipinas Prime Mover van with Plate No. GCE 199 which was to be driven by his co-employee Romeo Sarmiento (pp. 3-4, TSN, October 13, 1989 and p. 10, TSN, October 25, 1989. Both Ramos and Sarmiento were instructed by their supervisor to pick up a cargo of chicken at Vitarich Marilao, Bulacan, and to transport the same to Pier 12, North Harbor, Manila (pp. 4-5, TSN, October 13, 1989). After unloading the cargo of chicken, they were to unload the van with frozen prawns also at Pier 12 and bring [sic] the van to the container yard at Sta. Ana, Manila and eventually to Lubao, Pampanga (pp. 5, TSN, October 13, 1989).

"Ramos and Sarmiento arrived at Pier 12 from Marilao, Bulacan, at 11:00 o'clock in the evening of November 9, 1987 (p. 10, TSN, October 13, 1989). After they had loaded the frozen prawns into the van, they left Pier 12, North Harbor, at [sic] between 1:00 to 2:00 o'clock in the morning of November 10, 1987 (p. 7, TSN, October 13, 1989). When they were somewhere between the Pier 10 and 12 North Harbor, Sarmiento slackened speed in order to allow two (2) persons to board the van (p. 8, TSN, October 13, 1989). Sarmiento introduced the two (2) persons to Ramos as his friend and compadre "Nanding" and "Lolong" (pp. 8-9, TSN, October 13, 1989), and told Danilo Ramos that he was just bringing them to the Manila City Hall (p. 9, TSN, October 13, 1989). "Nanding", herein appellant, at first sat beside Ramos (p. 8, TSN, October 13, 1989). But when they were nearing Manila City Hall, appellant told Ramos to sit between him and Sarmiento. After Ramos had done this, Sarmiento told him to cooperate with them in whatever they planned to do because they would make money (p. 10, TSN, October 13, 1989). Ramos kept silent as he was scared and started to perspire profusely (pp. 10-11, TSN, October 13, 1989). They passed the Manila City Hall and continued on their way to Rizal Avenue, Manila (Ibid., pp. 10-11, TSN, October 13, 1989). Upon reaching 6th Avenue, Caloocan City, Sarmiento stopped the van in front of the Chinese Pagoda (Castillo ng Intsik) (p. 15, TSN, October 13, 1989) and told Ramos: 'Ramos makipag-cooperate ka lang sa amin, bahala ako sa iyo basta makipag-

cooperate ka, hahatian ka namin ng isandaang libong piso' (pp. 18-19, TSN, October 13, 1989). Fearing for his safety, Ramos agree [sic] (p. 19, TSN, October 13, 1989). Upon hearing Ramos agree, Sarmiento resumed driving the truck until they eventually stopped in front of an apartment of 6th Avenue, Caloocan City. By that time it was already 3:00 to 4:00 o'clock in the morning of November 10, 1987 (Ibid., p. 19, TSN, Oct. 13, 1989). Appellant, Ramos and Sarmiento alighted from the truck and proceeded to the door of the apartment and knocked. The door was opened by a stout woman (p. 20, TSN, Oct. 13, 1989). Appellant told Ramos and Sarmiento to go inside the apartment. Upon entering, Ramos and Sarmiento sat in the sala (Ibid., p. 20, TSN, Oct. 13, 1989). Appellant got the Forwarders Cargo Receipt (FCR) from Ramos (p. 21, TSN, Oct. 13, 1989; Exh. "C"), then he and Lolong left the apartment, leaving Ramos and Sarmiento behind (p. 22, TSN, Oct. 13, 1989). Appellant and Lolong drove away in the van. While waiting, Ramos drank coffee and Sarmiento drawn [sic] beer. The latter told the former not to worry (pp. 22-23, TSN, Oct. 13, 1989). At 5:00 o'clock in the morning, Sarmiento fell asleep. Finding his chance to escape, Ramos went out of the apartment and immediately proceeded to the nearest police station on 6th Avenue, Caloocan City (pp. 23-24, TSN, Oct. 13, 1989) where he reported to the police that the truck to which he was assigned as helper had been hijacked and that one of the culprits, Romeo Sarmiento, was sleeping inside an apartment near the detachment (p. 24, TSN, Oct. 13, 1989). Two policemen, Patrolman Reynaldo Ventinilla and Eddie Loreto, were dispatched to investigate. Ramos led them to the apartment where they found Sarmiento still asleep. Ramos woke Sarmiento up and he was brought to the detachment (p. 25, TSN, Oct. 13, 1989). Upon their return to the police detachment, Ramos told the policemen that the two companions of Sarmiento, referring to appellant and Lolong, would return to the apartment after disposing of the frozen prawns (p. 26, TSN, Oct. 13, 1989). The same responding policemen, along with Ramos, went back to the apartment and while the two policemen stayed at the canteen beside the apartment (p. 27, TSN, Oct. 13, 1989). They waited until 12:00 noon but when nobody showed up (Ibid., p. 27, TSN, Oct. 13, 1989) they returned to the police detachment (Ibid., p. 27, TSN, Oct. 13, 1989). The hijacked truck was eventually found abandoned at the corner of Santolan and Marcos Highway in Marikina (p. 24, TSN, Oct. 6, 1989)."

The evidence for the accused-appellant shows that he based his defense on alibi and denial. He alleged that he was a stay-in family driver of Atty. Agapito Oquindo. On November 9, 1997, he stayed in the house of Atty. Oquindo. He went to bed at about 8 p.m. and woke up at 5 a.m., the next day.

He said that he learned about the crime in **People's Journal** which carried his name as a suspect. His friends teased him but he ignored them. He did not think he was the one referred to in the news item. On November 29, 1989, he was arrested in the office of Atty. Oquindo in Caloocan City and investigated by Sgt. Alejandro Licuan. Due to the alleged threats of Sgt. Licuan, he signed a statement confessing to the crime. He used his Muslim name Fraizan R. Mahdi in signing the confession. He was brought to Fiscal Bautista to subscribe to the confession but he refused, and instead sought a re-investigation of the charge against him. He also denied knowing his co-accused Romeo Sarmiento.

As aforesaid, both the trial court and the appellate court convicted the accused-appellant. In his 7-page Brief, which can hardly be comprehended, accused-appellant raises the following errors, viz:

"Error 1. The money at stake in the information and amended information is P1,800,000. Any sum of money, let us imagine P2,800,000, is illegal.

Error 2. In case of qualified theft, where car, van, and trucks use [sic] the loots are [sic] left at highway, only the remaining value of the cargoes is computed.

Error 3. This is an unsupported slip [sic] on DANILO S. RAOS, [sic]

Error 4. P/Sgt. ALEJANDRO C. LICUAN is jester." [sic]

The appeal is utterly bereft of merit.

The first error is evidentiary in character. Appellant's insistence that the value of the frozen prawn is only P1,500,000.00 is refuted by Exhibit "C," the Forwarder's Cargo Receipt.

The second assigned error deserves scant consideration. The recovery of the stolen motor vehicle does not mean that the crime of qualified theft was not consummated. Neither will it diminish the criminal responsibility of appellant. In *People v. Carpio*,^[3] we rejected these arguments, viz:

"(T)he gist of the offense of larceny consists in the furtive taking and asportation of property, animo lucrandi, and with intent to deprive the true owner of the possession thereof. The act of asportation in this case was undoubtedly committed with intent on the part of the thief to profit by the act, and since he effectively deprived the true owner of the possession of the entire automobile, the offense of larceny comprised the whole car. The fact that the accused stripped the car of its tires and abandoned the machine in a distant part of the city did not make the appellant any less liable for the larceny of the automobile. The deprivation of the owner and the trespass upon his right of possession were complete as to the entire car; and the fact that the thieves thought it wise promptly to abandon the machine in no wise limits their criminal responsibility to the particular parts of the car that were appropriate and subsequently used by the appellant upon his own car."

In his third assignment of error, appellant assails the testimonies of prosecution witnesses Ramos and Sgt. Licuan. He alleged:

"(a) Ramos testified that it took them four (4) hours to load the cargoes of chicken into the van, but on cross-examination he contradicted himself by stating that it took them eight (8) hours;

"(b) There is inconsistency between Ramos' sworn statement and his testimony before the trial court as to whether he even bade goodbye when he sneaked out of the apartment, to the stout woman who opened