

SECOND DIVISION

[CA-G.R. CR No. 35305, March 10, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL TABADA, JR. Y MELES A.K.A. "PAENG", ACCUSED-APPELLANT.

DECISION

BRUSELAS, JR. J.:

Brought up to us on appeal is a *Decision*^[1] that found the accused-appellant Rafael Tabada, Jr. y Meles, a.k.a. "Paeng" ("Tabada") guilty beyond reasonable doubt of *Theft*, the dispositive portion of which reads as follows:

"WHEREFORE, this Court finds accused **RAFAEL TABADA, JR. y MELES** a.k.a. "Paeng" GUILTY beyond reasonable doubt of the crime of *Theft* defined and penalized under Articles 308 and 309 of the Revised Penal Code.

There being no mitigating nor aggravating circumstance proven, the penalty shall be imposed in its medium period (Article 64 of the Revised Penal Code).

For the theft of an MSI laptop valued at P 22,000.00, accused **RAFAEL TABADA, JR. y MELES** is hereby imposed an indeterminate penalty of **FOUR (4) YEARS, NINE (9) MONTHS and TEN (10) DAYS** of *prision correctional* [sic] in its medium period as minimum to EIGHT (8) YEARS and EIGHT (8) MONTHS of *prision mayor* in its medium period as maximum.

Concerning the civil liability aspect of the crime, Article 105 of the Revised Penal Code provides that the accused is obliged to return to the private offended party the stolen item, whenever possible, with allowance for any deterioration or diminution of value (*People v. Daniela, et al.*, G.R. No. 139230, April 24, 2003). Since restitution is no longer possible as the MSI laptop in this case was never recovered from the scene of the crime, accused RAFAEL TABADA, JR. y MELES is directed to **PAY** owner Aldrin Yamzon y Abal the amount of **TWENTY TWO THOUSAND PESOS (P 22,000.00)**.

With costs de oficio against the accused.

SO ORDERED."^[2]

Appellant Tabada stood charged under the crime of theft, the accusory portion of which read:

"That on or about August 23, 2011, in the City of Manila, Philippines, the said accused, with intent of gain and without the knowledge and consent

of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away a LAPTOP (MSI) valued at P 22,000.00, belonging to ALDRIN YAMZON Y ABAL, to the damage and prejudice of the aforesaid owner in the said amount of P 22,000.00, Philippine Currency.

Contrary to law.”^[3]

During the arraignment, Tabada pleaded “*not guilty*” to the felony with which he was charged.^[4]

During pre-trial, the following stipulations were made: (1) that the offense was committed in the City of Manila; and (2) the identity of the accused as the same person charged in the information.^[5]

During the trial on the merits, the prosecution presented the following witnesses: (1) Marilyn Yamzon y Abal (“*Marilyn*”), the private complainant's sister and eyewitness to the offense; (2) PO2 Christian Brual (“*PO2 Brual*”), one of the arresting officers; (3) Private complainant Aldrin Yamzon (“*Aldrin*”); (4) Barangay Chairman Corazon S. Viñas (“*Viñas*”) of Barangay 110, Zone 9, District 1 of Manila; and (5) PO2 Bernardo Libunao (“*PO2 Libunao*”), whose proposed direct testimony was stipulated upon. The defense, on the other hand, presented accused-appellant Tabada as its sole witness.

According to the prosecution's version of the facts, it appears that on August 23, 2011, at around 3:00 mid morning, prosecution witness Marilyn was doing laundry at the bathroom of their bungalow house when she heard an unusual noise coming from the window. Her instinct made her look into the direction of the noise and she immediately saw a man carrying her brother's laptop. Realizing that her brother's laptop was placed near the window, she sprung from her position and strained to find out who the man was, who now sprinted out the window. As soon as she peeped from the window, it was the face of her long-time neighbor, Tabada, whom she saw illumined by the lamp post.

Marilyn readily shook her brother, Aldrin, from his sleep to tell him about his stolen laptop. Aldrin attempted to run after the accused but it proved too late as the accused already dashed away. Marilyn told her brother to instead report the incident to the barangay authorities as soon as morning came.

At around eleven o'clock in the morning of the same day, Marilyn and Aldrin proceeded to the *barangay* hall of *Barangay* 110, Zone 9, District 1 of Manila, to report the incident. It was from the barangay authorities that they learned that Tabada had been arrested earlier and detained at the Raxabago Police Precinct No. 1. At the police precinct where Tabada was detained, Marilyn identified appellant as the one who stole her brother's laptop.

Aldrin claimed that he bought his laptop on a cash basis from SM Cubao in the amount of Twenty Two Thousand Pesos (P 22,000.00).

In lieu of the intended testimony of PO2 Libunao, the following stipulations were instead entered into: (1) the existence and due execution of the Joint Affidavit of Apprehension; (2) the existence of the letter-referral of Supt. Marvin Wynn Marcos to the Office of the City Prosecutor of Manila; and (3) the existence of the Booking Sheet and Arrest Report made on Tabada.^[6]

The defense, on the other hand, presented a different version of the facts as Tabada denied the charge against him. He claimed that at around seven o'clock in the morning of 23 August 2011, he may have been arrested by their barangay chairman for theft because he stole the LPG *Gasul* tank belonging to another neighbor, but that he was not responsible for stealing the laptop owned by Aldrin Yamzon. After his arrest, Tabada was taken to Precinct No. 1 and was charged with the felony, but the case was eventually dismissed because the LPG *Gasul* tank was returned to the owners.

Tabada alleged that he only learned of the stolen laptop when Aldrin filed a complaint against him and pointed to him as the one who took his laptop while already at Precinct No. 1, although the said laptop was not recovered from him.

Tabada maintained that he knew Aldrin because they grew up together and he used to live in the latter's house as a *houseboy*. At the time of the arrest, however, he was no longer a *houseboy* of the Yamzons. Tabada also claimed that Aldrin had a grudge against him because they had a fistfight two (2) months after the alleged theft incident. He claimed that at one time an altercation ensued between him and Aldrin when the latter pointed a gun at his buddies while they were having a drinking spree in front of the house of Aldrin.

After the trial, the court *a quo* rendered the assailed decision finding Tabada guilty beyond reasonable doubt of simple theft.

Hence, this appeal.

Tabada seeks his acquittal by raising the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S VERSION AND DEFENSE OF DENIAL AND RELYING ON THE IMPROBABLE TESTIMONY OF PROSECUTION WITNESS MARILYN YAMZON;

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT;

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO ESTABLISH THE IDENTITY OF THE PERPETRATOR OF THE CRIME BEYOND REASONABLE DOUBT;

IV.

EVEN ASSUMING THAT THE PROSECUTION WAS ABLE TO PROVE THE UNLAWFUL TAKING OF ALDRIN YAMZON'S LAPTOP, THE TRIAL COURT GRAVELY ERRED IN ACCEPTING THE ALLEGED VALUE OF THE SAME WITHOUT ANY SUBSTANTIATING EVIDENCE, AND IN IMPOSING THE

PENALTY OF FOUR (4) YEARS, NINE (9) MONTHS and TEN (10) DAYS OF *PRISION CORRECCIONAL* AND ITS MEDIUM PERIOD AS MINIMUM TO EIGHT (8) YEARS AND EIGHT (8) MONTHS OF *PRISION MAYOR* IN ITS MEDIUM PERIOD AS MAXIMUM."

Tabada maintains that his conviction was brought about by the improbable testimony of prosecution witness Marilyn, to which the court *a quo* has ascribed, effectively disregarding the accused-appellant's version and his defense of denial.

Appellant Tabada claims that the prosecution failed to positively identify him as the one who took the purported missing laptop because there was nothing in the testimony of prosecution witness, Marilyn, that would show that she actually saw him take away the supposed missing laptop of her brother Aldrin. He points to the testimony of Marilyn during cross examination, wherein she admitted that from the place where she was washing clothes, she could not see the laptop of her brother; thus, Tabada insists that it was impossible for Marilyn to see who actually took the supposed missing laptop of her brother.

A careful perusal of the pertinent portion of the said cross-examination, however, reveals that while Marilyn was doing laundry in an area where she could not see the laptop near the window, she immediately went to the window to check out the noises that she heard. It was then when she peeped through a window that she saw a person holding the laptop of his brother and that she was able to identify the person as appellant Tabada because he was standing in front of their house near a lighted *Meralco* post. A portion of the cross examination of Marilyn conducted by the defense counsel, Atty. Cuevas is hereunder quoted to show in better light the identification made of the accused by the eyewitness:

"ATTY. CUEVAS, JR.

Q Did you see the laptop before you did your chores as washing of your clothes?

A Yes, sir. That's where I sleep, sir.

Q **From the place where you were washing your clothes, can you see where the laptop was located?**

A **No, sir.**

Q **So you would not be able to see it?**

A **Yes, sir.**

Q You stated also that you reported the incident to the barangay?

A Yes, sir.

Q And when did you report such incident?

A In the morning, sir.

Q In the morning at around what time?

A Around 11:00, sir.

Q At around 11:00, in the morning. How about filing the complaint against the accused?

A After he was arrested, sir.

Q When was the accused arrested?

A August 25, sir.

Q No. Relative to the date when you allegedly saw.

A Also on that same day, sir.

Q So you stated that you heard noises coming from the window?

A Yes, sir.

Q And what did you do when you heard these noises?

A I immediately went to the window to check it out, sir.

Q And what did you do when you went to the window?

A I peeped in and I saw the person holding the laptop of my brother, sir. I knew the person, sir.

Q Where was that male person at that time you looked at the window?

A He was already here near the Meralco Post. I was just in front of our house, sir.

Q How far, for example that is the window where you were looking through, how far is the male person at that time?

A Maybe he was about five (5) meters away from her, sir. (the witness is pointing to a lady inside the courtroom)"^[7] (emphasis ours)

Marilyn's direct examination likewise pointed to the appellant Tabada as the perpetrator of the crime,

"Q Now, do you recall, madam witness, if any unusual incident happened on that day August 23, 2011 at around 3:00 o'clock in the morning?

A Yes, sir. I heard some noise.

Q What did you hear?

A There was some noise coming from our window and I immediately went there to check it out, sir.

Q So what did you do upon hearing that noise coming