

## EIGHTH DIVISION

[ CA-G.R. CR No. 34760, May 28, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERT CUIROLLO Y RANGASA AND MICHAEL MARTINEZ Y BARRIOS, ACCUSED-APPELLANTS.**

### D E C I S I O N

**INTING, S.B., J.:**

This is an *Appeal*<sup>[1]</sup> from the Decision<sup>[2]</sup> dated August 2, 2011 of the Regional Trial Court (RTC) of Tabaco City, Branch 18, in Criminal Case No. T-5074 finding Albert Cuirollo y Rangasa and Michael Martinez y Barrios (accused-appellants) guilty beyond reasonable doubt of the crime of Theft under Article 308 of the Revised Penal Code.

In an Information<sup>[3]</sup> dated March 5, 2010, accused-appellants were charged with the crime of theft allegedly committed as follows:

"That on February 18, 2010 between 1:00 AM to 9:00 AM at Sitio Capantagan, Cale, Tiwi, Albay, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, with intent to gain, conspiring and mutually helping one another, take, steal and carry away power cables, without the knowledge and consent of **Aboitiz Power Renewables, Inc. (APRI)**, to the damage and prejudice of the said firm in the amount of **FIVE MILLION ONE HUNDRED THOUSAND PESOS (P5,100,000.00)**, Philippine Currency.

ACTS CONTRARY TO LAW."

On arraignment, both accused-appellants pleaded "not guilty" to the charges against them. The case thereafter proceeded to trial on the merits.

#### **The Prosecution's Version of Facts**

In its Brief<sup>[4]</sup>, the Office of the Solicitor General (OSG) presents the following version of facts:

"On 18 February 2010 at around 9:50 o'clock in the morning, Larry R. Clapis and his co-worker Marlon J. Mariscotes, both security guards of Aboitiz Power Renewable, Inc. (APRI) were informed by Erullo Barrameda that some cable wires were missing at Well-Site 6. Upon instruction from Maribert Martin, Site Security Supervisor of APRI, Clapis and Mariscotes went to Well-Site 6 located at Purok 6, Sitio Kapantagan, Barangay Cale, Tiwi, Albay to verify the report. In the area, they spotted some coverings of cable wires in a dry river bed. Near the dry river bed was a nipa hut. From the door way, the guards saw the two (2) men, who were later on

identified as Albert Curollo and Michael Martinez, and they had with them sheathed bolos, a pair of wet knitted gloves, a hack saw blade and cable insulations. Capis immediately reported what they saw to Maribert Martin.

Meanwhile, on the same date at around 3:00 o'clock in the afternoon, PO1 Ronald Lomibao, Police Inspector Gomez and two fellow police officers went to a place between Baño and Cale, Tiwi, Albay in response to a call for police assistance from the security officers of APRI regarding the theft of their cable wires.

In the area, they saw a nipa hut which was already surrounded by some security officers of APRI. The police officers found the two appellants inside the nipa hut. The police searched the area and recovered among others, strips of cable wire coverings etc. They photographed the recovered items and after which, the appellants were arrested and brought to the police station for further investigation. At the police station, the officers prepared the seizure receipt of the confiscated materials.

Hector Rodriguez, Administrative Officer of APRI estimated the value of the stolen cables and submitted his findings to Chevron warehouse unit which is the steam contractor of APRI. Also, Rico Maligaya, a security officer of Chevron reported on the pilferage of electric and signal cables at Well Site 5 and 6 and mentioned that the lost cables were what was used to supply all the electric power of the Well Sites and Tiwi Geothermal plant, the loss of which resulted in the shutdown of the turbine of APRI.

All in all, APRI estimated the cost of the stolen materials at One Hundred Eight Thousand Five Hundred Ten US dollars (\$108,510.00) or the equivalent of Five Million One Hundred Thousand Pesos (Php5,100,000.00)."<sup>[5]</sup>

### **Version of the Defense**

On the other hand, accused-appellants narrate their own version of facts as follows:

"Accused **Albert Curollo** denied the charges. He claimed that in the afternoon of February 18, 2010, they were up in the mountain stripping abaca. The abaca plantation was owned by Aniano Cuya. Efren Competente, Cuya's tenant, ordered Curollo and co-accused Martinez to get their basic necessities downhill, to which they complied.

While waiting for the goods, Curollo and Martinez slept in the latter's house located in the lower portion of the mountain. While they were asleep, security guards Martin and Maricostes awakened them and ordered them to wear gloves. Later, they were handcuffed and brought to the Tiwi Police Station where they were investigated and incarcerated. They were accused of having stolen cables which they did not even see.

When they went downhill, they brought along with them a bolo which they used in harvesting abaca.

Accused **Michael Martinez** (Martinez) also denied the charge. He averred that in the noontime of February 18, 2010, the owner of the abaca plantation directed him to secure provisions downhill. He asked co-accused Curollo to accompany him. While they were waiting for the provisions, they slept inside his (Martinez) parents' hut in the afternoon of the same date. Police officer Lomibao awakened them and ordered them to go out of the hut and stay at the yard. Martin, a security guard, ordered them to wear gloves. Martinez complied because he got scared as the men had guns.

Further, Martinez denied that he owned a pair of pliers allegedly recovered in the hut on February 18, 2010.

**Efren Competente** (Competente), tenant of the abaca plantation where the two (2) accused worked, stated that on February 17, 2010, Albert Curollo and Michael Martinez were with him stripping abaca. In the late afternoon of February 18, 2010, he requested Curollo and Martinez to secure provisions. They failed to come back, thus, Competente also went downhill. He found out that the two accused were arrested.

On February 18, 2010, at around 2:00 o'clock in the afternoon, **Jeric Cruel** (Cruel) was in the river tending his carabao when he saw three (3) guards of APRI, Errol Barrameda, Maricostes and Wilson Cleofas, bringing the coverings of cable (in a bundle) towards the hut of accused Martinez. The guards placed the said coverings at the back of the hut. Thereafter, the guards woke up the two (2) accused and told them to wear gloves so that nothing bad will happen to them. Later, policemen arrived. They handcuffed the accused and told them to go with them to the police station.

Later, Cruel inquired from the policemen why they handcuffed the accused because they did not commit any wrong. The police replied that they were just passing by the area.

Upon seeing the guards carrying cable wires coverings, Cruel hid himself and observed them where they are going to place the items because the guards are known in the place for having people "*framed-up*".<sup>[6]</sup>

On August 2, 2011, after weighing the evidence of both the prosecution and the defense, the trial court handed down a judgment of conviction, disposing in this wise:

"WHEREFORE, from all the foregoing judgment is hereby rendered finding accused, ALBERT CUROLLO y Rangasa and MICHAEL MARTINEZ y Barrios, "GUILTY" beyond reasonable doubt for the offense of Theft. Accordingly, accused are hereby SENTENCED to suffer the indeterminate penalty of imprisonment ranging from Four (4) years, Nine (9) months and Ten (10) days of Prision Correccional as minimum to Seven (7) years, Four (4) months and One (1) day of Prision Mayor, as maximum plus an additional penalty of twenty (20) years imprisonment of Reclusion Temporal in accordance with Article 309 (1) of the Revised Penal Code; and, to indemnify Aboitiz Power Renewable, Inc. (APRI), the amount of P5,100,000.00.

SO ORDERED."<sup>[7]</sup>

Hence, this present appeal.

### **The Issue**

In their Brief, accused-appellants interposed a lone assignment of error, *to wit*:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THEFT.<sup>[8]</sup>

### **The Court's Ruling**

After a careful examination of the evidence on record, the Court is of the view that the circumstantial evidence proffered by the prosecution does not show beyond reasonable doubt that the accused-appellants perpetrated the crime for which they stand charged. It has been held that where the evidence is purely circumstantial, there must be an even greater need to apply the rule that the prosecution depends not on the weakness of the defense but on the strength of its own evidence. Conviction must rest on nothing less than a moral certainty of the guilt of the accused.<sup>[9]</sup>

Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. In order that conviction be had, the following elements must concur:

1. There is more than one circumstance;
2. The facts from which the inferences are derived are proven;
3. The combination of the circumstances is such as to produce a conviction beyond reasonable doubt.<sup>[10]</sup>

To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a **fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person**. The circumstantial evidence must exclude the possibility that some other person has committed the crime.<sup>[11]</sup>

In this case, the prosecution failed to prove the guilt of herein accused-appellants beyond reasonable doubt. Although a person found in possession of a stolen thing is presumed to be the taker thereof, and the author of the theft, this presumption, however, was overturned by the accused-appellants. In this regard, We reproduce the pertinent portions of the defense witness's (Jeric Cruel) testimony, thus:

"x x x x

Q: Where were you on February 18, 2010?

A: On February 18, 2010 at around 2:00 o'clock in the afternoon I untied my carabao in order for it to take a bath and suddenly I saw the three guards of the Napocor bringing with them the cover of a wire.

Q: Mr. Witness, my question to you is very clear. Do you remember where were you on February 18, 2010, you said