

## NINETEENTH DIVISION

[ CA-G.R. CEB-CR. NO. 00315, July 31, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDDIE  
CONSULAR, ACCUSED-APPELLANT.**

### D E C I S I O N

**LAGURA-YAP, J.:**

This appeal of Eddie Consular seeks to set aside the December 13, 2004 Decision rendered by the Regional Trial Court (RTC), Branch 65, San Miguel, Jordan, Guimaras convicting him of Frustrated Qualified Theft in Criminal Case No. 0603.

#### ***Factual Antecedents***

Eddie Consular stands charged of Qualified Theft pursuant to an Information<sup>[1]</sup> filed on January 12, 2001, the accusatory portion of which is as follows:

“That on or about the 11<sup>th</sup> day of May 2000, in the Municipality of Buenavista, Province of Guimaras, Philippines and within the jurisdiction of this Honorable Court, without violence or intimidation against persons nor force upon things, with intent to gain and without the knowledge and consent of Abelardo Gabiota, did then and there willfully, unlawfully, and feloniously gathered two hundred twenty pieces (220) coconuts from the coconut plantation of Abelardo Gabiota, to the damage and prejudice of said Abelardo Gabiota in the amount of TWO THOUSAND PESOS (P 2,000.00), Philippine Currency.

CONTRARY TO LAW.”

On 15 February, 2001, accused posted bail<sup>[2]</sup>.

On 17 October, 2001, accused pleaded “Not Guilty” to the crime charged.<sup>[3]</sup>

#### *Evidence of the Prosecution*<sup>[4]</sup>

The prosecution presented four witness- complainant Gabiota, Francisco Igpuara, Police Officer Leonilo Trio and Police Officer Gellada.

Complainant witness (Gabiota) testified that at about 9 o'clock in the morning of 11 May 2000, he was in Mclain when a friend, Frankie Igpuara, reported to him that his coconuts were being harvested by the accused. Igpuara asked Gabiota if he had given his consent to accused. Gabiota said he did not. Gabiota went to his coconut plantation and saw the accused on top of a coconut tree taking its fruits. Gabiota went to get a policeman who accompanied him to the land. When he returned together with Police Officer Trio and a certain Danny, the accused was no longer

there. They gathered the coconuts and brought these to the police station. They took pictures. Gabiota said that he owns the land where there were coconut trees standing. The land is covered under TCT No. T-180030. Gabiota said that the value of the coconuts was P 2,000.00. He paid P 30,000.00 to his counsel for filing the case and P 1,500.00 for his (counsel) appearance.

On cross-examination, Gabiota admitted that the house of the accused was inside the coconut plantation. In 1972, the accused was not living in the land. The accused did not plant the coconut trees. Gabiota hired the accused as coconut gatherer. He did not allow the accused to gather the coconuts without his (Gabiota) permission. On 11 May 2000, Gabiota did not hire the accused to harvest the coconuts from his plantation. Gabiota said he did not acknowledge the coconuts which were gathered by the accused without his permission. When he saw the coconuts scattered in his land, he did not confront the accused. Instead, he went to the police. The 320 pieces of coconuts were with the police.

Francisco Iguara testified that on the aforementioned date and time, he saw the accused Eddie Consular harvesting coconuts in the coconut plantation owned by Gabiota. When he met the latter, Iguara informed Gabiota of what he saw. The latter uttered "Eddie is bad because he gathered coconut fruits without asking permission from me".

On cross-examination, Iguara told the court that he knew the accused. The house of the accused was inside the coconut plantation of Gabiota. When Iguara passed by the coconut plantation, he saw the accused and his son climbing the coconut tree and gathering the fruits.

Police Officer Leonilo Trio testified that at 4:20 o'clock in the afternoon of 11 May 2000, he, together with Police Officer Gellada, proceeded to Sitio Cabanbanan, Barangay Salvacion, Buenavista, Guimaras in connection with the report of Gabiota that his coconuts were harvested by accused. When they arrived, no one was around but they saw the gathered coconuts on the ground. They counted the coconuts and took pictures. While they were counting the coconuts, the son of the accused arrived. They counted 320 coconuts. The coconuts were delivered to the police station the following morning.

Police Officer Gellada corroborated Police Officer Trio's testimony that upon Gabiota's report, they went to Sitio Cabanbanan and saw the coconuts on the ground.

On cross-examination, Police Officer Gellada said that he did not know who gathered the coconuts, which were brought to the police station the next day. He also did not know who brought the coconuts there.

The prosecution offered documentary exhibits consisting of three pictures, Transfer Certificate of Title No. T-180030, Tax Declaration, and Certification from the Police Blotter.

#### *Version of the Defense*<sup>[5]</sup>

The defense presented the accused, his wife (Elfa Consular) and Police Officer Baisa.

Accused Eddie Consular testified that the owner of the land where he planted

coconuts is Abelardo Gabiota. He had been gathering coconuts from Gabiota's land since 1979. The agreement was for him to gather coconuts then he will inform Gabiota. He is paid by dividing the coconuts into two. The coconuts which he gathered on 11 May 2000 were taken by the police, Gabiota and his son and Iguara. They brought the coconuts to the Municipal Hall. He complained to the police but was told that they will call Gabiota. He was scheduled to meet Gabiota on 15 May but Gabiota did not come. Then, he received a subpoena stating that he was an accused. According to the accused, Gabiota is no longer the owner of the land but Herman Castro. When he was charged of qualified theft, the owner of the land was no longer Gabiota. The accused said he is a farm worker recognized by the Department of Agrarian Reform though he cannot show proof to the court.

On cross-examination, the accused declared that he gathered coconuts every three months. He harvested coconuts from 1999 to 2001. When he gathered coconuts on 11 May 2000, he did not ask permission from Gabiota or from Herman Castro. He asked permission from Iguara, the overseer of Herman Castro.

Elfa Consular testified that it is not true that her husband stole coconuts. The land of Gabiota was already sold to Herman Castro. Gabiota, Iguara and Police Officer Trio got the coconuts in front of their house and brought these to the municipal hall.

On cross-examination, Elfa Consular said that they were not in their house when the coconuts were gathered. When they arrived, the coconuts were already gathered.

Police Officer Baisa testified that he and Gabiota gathered the coconuts and brought these to the police station. The accused was not present. Police Officer Baisa did not know who gathered the coconuts. He did not know if there was a complaint when their assistance was sought for gathering the coconuts.

The defense offered the Deed of Sale executed by Abelardo Gabiota as its documentary exhibit.

On September 23, 2005, the RTC promulgated the assailed Decision, the decretal portion<sup>[6]</sup> of which reads:

"WHEREFORE, premises considered judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime of FRUSTRATED QUALIFIED THEFT, defined and penalized under Article 310 in relation to Article 50 of the Revised Penal Code.

Applying the indeterminate sentence law accused is sentenced to suffer a penalty of imprisonment of four (4) years and two (2) months to six (6) years of *prision correccional* and to restore unto the complainant the amount of P 2,000.00.

Accused is also directed to reimburse the complaining witness Abelardo Gabiota the amount of Fifteen Thousand (P 15,000.00) Pesos broken as follows:

P 10,000.00 as attorney's fees  
5,000.00 as actual expenses.

SO ORDERED.”

On October 6, 2005<sup>[7]</sup>, accused filed a Motion for Reconsideration.

On 24 October 2005<sup>[8]</sup>, the RTC issued an Order denying the Motion.

Hence, this instant appeal.

### **Assignment of Errors**

Eddie Consular (accused-appellant) enumerates in his Brief<sup>[9]</sup>, the grounds for his appeal which serve as errors allegedly committed by the lower court:

I. The decision of (sic) did not established (sic) all the elements of the crime.

II. That the lower court did not consider the fact that there was (sic) no coconut fruits presented in court nor there was any presented during the ocular inspection.

III. That the lower court failed to consider that the evidence does not fulfill the test of moral certainty and are not sufficient to support conviction.

On the first ground, accused-appellant notes that the lower court in its assailed decision, established as facts, that the accused gathered the coconuts in the plantation; that the taking was done without the consent of the alleged owner and that it was not he (accused) who took the coconut fruits outside the plantation, hence the decision of frustrated qualified theft.

Also, the lower court failed to decide the matter of intent to gain. The accused-appellant claims of an agreement between the complainant and him wherein he will gather the coconut fruits and then inform the latter (complainant) and take his share. This proves that he has an interest or an expected income from the coconuts. Hence, he does not have to steal just to gain from the fruits.

Accused-appellant adds that even if he had material possession of the coconuts as he had put them near his house, it does not imply that he has the intention to dispose of it. His interest over the coconuts necessitates that he keeps these where it is safe.

On the second ground, accused-appellant points out to complainant's claim that he stole 320 pieces of coconut trees from the plantation of the accused. However, during the trial, the alleged coconut trees were not presented. Neither were these presented during the ocular inspection. The prosecution only presented a picture of the coconut fruits during the investigation by the police. Accused-complainant contends that without the presentation of the coconut fruits to the court, there is no proof that the coconut fruits were the ones he stole.

And on the third ground, accused-appellant points out that since he admitted having gathered the coconut fruits, it would be rather odd if he would be guilty of qualified

theft. He also went to the police station to question the acts of the complainant and the police. The alleged agreement that he (accused-appellant) can gather coconut fruits and inform the complainant, that he has been hired by the complainant as a coconut gatherer and that he has a share in the proceeds thereof are facts that are inconsistent with his guilt. The lower court failed to fulfill the test of moral certainty (of his guilt). He should not have been convicted, but acquitted.

The Solicitor General posits the contrary in his Brief<sup>[10]</sup>:

APPELLEE PROVED APPELLANT'S GUILT FOR QUALIFIED THEFT BEYOND REASONABLE DOUBT.

It is the Solicitor General's contention that all the elements of qualified theft are present in this case, i.e., the taking of coconuts from the premises of a plantation, the coconuts belong to another, the taking was done with intent to gain, the taking was made without the consent of the owner and that the taking was made without use of violence against or intimidation of persons or force upon things.

There is no merit to the assertion of accused-appellant that the prosecution failed to prove intent to gain. Based on jurisprudence, *Benjamin Beltran, Jr., et. al. v. The Honorable Court of Appeals, et. al.*<sup>[11]</sup>, the intent to gain may be presumed from the proven unlawful taking. In this case, accused-appellant's act of taking the coconuts carries the presumption that he acted with intent to gain.

The Solicitor General refutes accused-appellant's contention that since no coconut fruits were presented in court or in the ocular inspection, the *corpus delicti* was not established. There are witnesses for the prosecution who testified on the photographs of the coconuts taken at the crime scene. One witness testified that the coconut fruits were decomposing at the police station. Another identified accused-appellant as the culprit. Even accused-appellant testified about the coconut fruits brought to the police station.

It is significant that accused-appellant admitted he did not ask permission from the complainant before harvesting the coconut fruits on the date in question and that the coconut fruits referred by the prosecution and the defense are the same. The police witnesses identified the photographs of the coconut fruits taken from the crime scene. One police officer who testified for the defense said he helped transport the coconut fruits from the plantation to the police station. Most of all, the admission of accused-appellant that he gathered the coconut fruits and that he reported to the police the acts of complainant do not detract from his liability for the crime committed. There are eyewitnesses who saw him gather the coconut fruits in complainant's plantation. Clearly, the complainant is guilty of qualified theft.

Accused-appellant filed a Reply Brief<sup>[12]</sup> taking exception to the jurisprudence cited by the Solicitor General in *Benjamin Beltran, Jr., et. al. v. Court of Appeals, et. al.*<sup>[13]</sup> which states among others that intent to gain cannot be presumed if there are special circumstances that reveal a different intent on the part of the perpetrator. In the instant case, a special circumstance is present that would negate the said presumption, that is, that the complainant and accused-appellant have an existing agreement to share the fruits of the coconut trees every time there is a harvest. The sharing agreement created a reasonable ground as to whether or not the harvesting of the coconut fruits was unlawful. Moreover, the fact that the accused had been