

EIGHTH DIVISION

[CA-G.R. CR No. 35538, August 20, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMAR BOBIER Y APODACA @ "PUNKS", ACCUSED-APPELLANT.

DECISION

LAMPAS PERALTA, J.:

Before the Court is an appeal from the Decision dated October 29, 2012^[1] in Criminal Case No. T-5294 of Branch 18, Regional Trial Court, Tabaco City finding accused-appellant Amar Bobier y Apodaca @ "Punks" guilty beyond reasonable doubt of theft, defined under Article 308, Revised Penal Code (RPC), and sentencing him to suffer the indeterminate penalty of eight (8) years, eight (8) months and one (1) day of *prison mayor*, as minimum, to eleven (11) years, four (4) months and one (1) day of *prison mayor*, as maximum, plus additional two (2) years of imprisonment pursuant to Article 309 (1), RPC, and to indemnify private complainant Bayan Telecommunications, Inc. the amount of P47,271.00.

THE ANTECEDENTS

On August 22, 2011, around 3:00 A.M., Camelo Perez and Jose Ballester, Barangay Tanods on-duty, were patrolling Purok 2, Barangay Matagbac, Tabaco City, Albay when they chanced upon four (4) men pulling telephone cable wire cut off from nearby street posts. The Barangay Tanods approached the four (4) men to apprehend them. As the street post was illuminated, they recognized one of the men as accused-appellant Amar Bobier y Apodaca, a resident of Barangay Matagbac and known thereat as "Punks." Upon noticing the Barangay Tanods, the four (4) men scampered away, leaving behind the stolen telephone cable wire. The Barangay Tanods chased accused-appellant, but when he was about to be cornered he turned around, faced Barangay Tanod Camelo Perez and threw at the latter the pliers he was carrying.^[2]

Barangay Tanods Camelo Perez and Jose Ballester proceeded to the house of Barangay Captain Reynaldo Borrromeo to report the incident. Barangay Captain Reynaldo Borrromeo informed the police of the theft, instructed the other Barangay Tanods to continue the search for accused-appellant and proceeded to the crime scene to secure and roll the stolen telephone cable wire left behind and have the same measured.^[3]

Around 4:00 A.M., Police Officer 3 (PO3) Roy Aldrin B. Torre, on board a mobile car, received the information sent by Barangay Captain Reynaldo Borrromeo and relayed the same to the Tabaco Police Station. The police station received the message around 4:30 A.M. and by 5:00 A.M., dispatched duty investigators Police Officer 2 (PO2) Jermaine Bilaro and PO2 Benedict De Lima Codia to verify and investigate the reported incident. After the investigation, the recovered telephone cable wire and the pliers were brought by Barangay Captain Reynaldo Borrromeo and Barangay

Tanods Camelo Perez and Jose Ballester to the Tabaco Police Station using the barangay patrol jeep as the recovered telephone cable wire could not be accommodated in the mobile car. The recovered telephone cable wire, estimated to be more or less fifty-four (54) meters, and the pliers were turned over to PO2 Jermaine Bilaro, who then deposited the same to Police Officer 1 (PO1) Robbie Jean Belga, the property/evidence custodian.^[4]

From the police station, Barangay Captain Reynaldo Borrromeo and Barangay Tanod Jose Ballester proceeded to the barangay hall for update on the search operation. Around 7:00 A.M., Barangay Captain Reynaldo Borrromeo received information that the person found sleeping in front of a house in Purok 5 appeared to be accused-appellant. Barangay Captain Reynaldo Borrromeo, together with Barangay Tanods Jose Ballester, Reynaldo Cañeta and Alexander Serrano proceeded to the place. They woke the person found sleeping with his face covered by a jacket and found that he was accused-appellant. They asked accused-appellant to come with them at the barangay outpost and informed him that he was a suspect in a theft incident. As accused-appellant resisted arrest and tried to jump from the barangay patrol jeep, the arresting barangay officials were prompted to handcuff him. Accused-appellant was then brought to the police station for investigation and booking. Accused-appellant was also brought to the Ziga Memorial District Hospital for medical examination.^[5]

However, accused-appellant denied any involvement in the theft. Allegedly, around 10:00 P.M. of August 21, 2010, he went to the place of Jerwel Padua at Purok 5 and had drinks with Santiago Boncodin while Jerwel Padua, Barangay Tanod Danilo Bonza and Corazon Padua Bonaobra were playing "tong-its." He fell asleep after the drinking session and was only awakened around 7:00 A.M. when he was stricken by a rope by the arresting Barangay Tanods. He was forced to go to the police station with the barangay officials because he was mauled, handcuffed and tied to the jeep with a rope. He was not also informed that there was a case against him. He was implicated because the Barangay Tanods had grudge against him as the motorcycle he was riding almost sideswiped Barangay Tanod Reynaldo Cañeta on July 14, 2010.^[6]

The respective factual versions of the parties, as summarized by the trial court in its Decision dated October 29, 2012, are as follows:

"x x x Camelo Perez narrated x x x that on August 22, 2010 at around 3:00 o'clock in the morning, he was with Jose Ballester on patrol when he saw a person pulling Bayantel cable wire near the post illuminated by a lamp post; he approached the fellow pulling the cable wire and recognized the fellow to be Amar Bobier, the herein accused, and who is known to him for a long time and is better known as Punks; that when the latter fled, they chased him and when he got near Amar, the latter threw a plier to him; as they were not able to catch up with the accused, they instead went to the barangay captain and narrated to him the incident; x x x

Barangay Captain Reynaldo Borrromeo x x x would tell the Court that at about 3:00 o'clock in the morning of August 22, 2010, he was at his house when Tanods Perez and Ballester reported to him a theft incident at Purok 2, Matagbac, Tabaco City; after receipt of such report, he instructed the tanods to make a follow-up of the suspects one of whom

was identified as alias Punks, a resident of Purok 2, Matagbac, Tabaco City; after his instructions to the tanods, he went to the scene of the incident and have the wires measured have it rolled and turned over to the policemen; as the wire cannot be accommodated to the patrol car, he used his jeep in bringing the wires to the police station; tanods Perez and Ballester were with him during the turnover of the wires to the police station; at the police station, the incident was recorded in the police blotter; after the recording of the incident in the police blotter book and the turnover of the wires, they went home to make follow-up operation on the suspects; upon reaching the barangay hall, an informant told him that a person who might be Punk is sleeping in front of the house of a certain person; with tanod Cañete, Serrano and Jose Ballester; they went to the place and on reaching the place, there was the fellow who was sleeping covering himself with a jacket; he woke up the suspect and removed the jacket and came to know that he is the suspect, Punks; he told the suspect to go with him, but the former resisted, so, he handcuffed him and boarded him to the jeep and proceeded to the police station; the incident was recorded in the barangay blotter book x x x.

x x x x x x x x x

Denying the accusation leveled against him, accused, Amar Bobier testified that in the evening of August 21, 2011 at about 10:00 o'clock, he was at the place of Jerwel Padua drinking with Santiago, while Jerwel, Dan Benosa and Corazon Padua were playing tong-its; they began their drinking spree at 10:00 o'clock in the evening because before proceeding to the house of Jerwel, he was then at the lower portion of Matagbac; after drinking, he slept at the place where they had their drinking spree and because he got sleep, he did not know what time the tong-its players left; that the place where the theft incident happened is very far from Jerwel Padua's place; that the prosecution witness who testified against him must probably have grudge against him because prior to the fiesta in their place, July 14, his companion was driving the motorcycle they almost sideswipe tanod Cañete; that it was about 7:00 o'clock in the morning of August 22, 2011 when he was struck probably by a rope that he was awakened and told that he had a case and he was handcuffed, boarded on a vehicle and brought to the police station; at the police station, he explained that he had a drinking spree at the house of Jerwel."^[7]

In an information dated August 23, 2011, accused-appellant was charged with the crime of theft, the accusatory portion of which reads:

"That on or about 2:50 o' clock in the morning of August 22, 2011, at Matagbac, Tabaco City, Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused in conspiracy with three still unidentified persons, did then and there willfully, unlawfully and feloniously take, steal and carry away without the consent of owner BAYANTEL TELECOMMUNICATION, INC., represented by TEOFILO T. BULALACAO, **FIFTY FOUR (54) meters of cable wire**, amounting to **FORTY-SEVEN THOUSAND TWO HUNDRED SEVENTY-ONE PESOS (P47,271.00)**, in Philippine Currency, to the damage and prejudice of Bayantel Telecommunication, Inc.

ACTS CONTRARY TO LAW."^[8]

When arraigned on September 29, 2011, accused-appellant pleaded "not guilty" to the charge.^[9]

During the pre-trial,^[10] the parties agreed that the issue to be resolved was "Whether or not the accused is guilty of the offense charged in the Information."

^[11] The defense made the following admissions:

"1. That the accused Amar Bobier y Apodaca, who had been arraigned in this case, is the same person who is presently represented by Atty. Nasayao. - x x x

2. That Amar Bobier y Apodaca is also known as "Punks". - x x x

3. That Punks was at Matagbac, Tabaco City, at around 2:50 o'clock in the morning of August 22, 2011. - x x x

4. x x x x x x x x x

5. That Punks is known even before August 22, 2011 to Brgy. Tanods Carmelo Perez, Jose Ballester, Brgy. Capt. Reynaldo Borromeo, Brgy. Tanods Alexander Serrano and Reynaldo Cañeta. - x x x

6. That Punks was arrested in the early morning of August 22, 2011. - x x x

7. x x x x x x x x x

8. That having been arrested in the early morning of August 22, 2011, Punks was brought to the City Prosecution Office of Tabaco City for inquest supposedly for theft at around 6:00 in the evening of the same date. - x x x"^[12]

Trial ensued. The witnesses for the prosecution were (i) Barangay Tanod Camelo Perez;^[13] (ii) Barangay Captain Reynaldo Borromeo;^[14] (iii) PO2 Benedict De Lima Codia;^[15] and, (iv) Security Officer Teofilo Tandan, Bayan Telecommunications, Inc.'s representative.^[16] The prosecution and the defense stipulated on the testimonies of (i) PO1 Robbie Belga;^[17] (ii) Barangay Tanod Jose Ballester;^[18] and, (iii) PO2 Jermaine Bilaro.^[19]

The witnesses for the defense were (i) accused-appellant;^[20] (ii) accused-appellant's friend Jerwel Padua;^[21] and, (iii) accused-appellant's friend Dindo Bonagua.^[22]

In a Decision dated October 29, 2012, the trial court convicted accused-appellant of theft and sentenced him as follows:

"WHEREFORE, from all the foregoing, judgment is hereby rendered finding accused, **AMAR BOBIER @ "Punks", GUILTY** beyond reasonable doubt for the offense charged. Accordingly, he is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from **EIGHT (8) YEARS, EIGHT (8) MONTHS and ONE (1) DAY OF**

PRISON MAYOR, as minimum, to ELEVEN (11) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF PRISON MAYOR, as maximum, with additional two years of imprisonment in accordance with paragraph 1, Article 309 of the Revised Penal Code; and to indemnify Bayan Telecommunications, Inc., the amount of Php47,271.00.

SO ORDERED."^[23]

Thereupon, accused-appellant filed the present appeal^[24] which is premised on the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE, WITH MORAL CERTAINTY, ALL THE ELEMENTS OF THE CRIME CHARGED.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[25]

ISSUE

Whether the trial court erred in convicting accused-appellant of theft.

THE COURT'S RULING

In convicting accused-appellant of the crime of theft, the trial court noted that (i) the positive testimony of Barangay Tanod Camelo Perez must prevail over the negative denial of accused-appellant; (ii) the testimonies of accused-appellant and his witness Jerwel Padua were conflicting; and, (iii) accused-appellant failed to show any ill motive on the part of Barangay Tanod Camelo Perez in testifying against him.^[26]

Accused-appellant faults the trial court in so ruling. Allegedly, (i) "the prosecution evidence consisted mainly of the self-serving and hearsay testimonies of Camelo Perez, Barangay Captain Reynaldo Borromeo, PO1 Robbie Jane Belga, PO2 Benedict Codia and Teofilo Bulalacao Tandaan, all of which are insufficient to overcome the accused-appellant's presumption of innocence;"^[27] (ii) "the element of ownership is lacking"^[28] since the testimony of Teofilo Tandaan "regarding Bayantel's ownership of the cable wire x x x confiscated by the barangay officials has no basis"^[29] and "the authority of Teofilo Bulalacao Tandaan of Bayantel was not supported by any written document by the prosecution;"^[30] (iii) "the constitutional presumption of innocence should prevail in the accused-appellant's favor"^[31] since the stolen telephone cable wire was not found in the possession of accused-appellant; and, (iv) the penalty imposed was incorrect because "the testimony of Teofilo that the amount of the cable wires is approximately Forty Seven Thousand Two Hundred Seventy One Pesos (Php47,271.00) is a sweeping estimate which has no basis at all since said witness did not even show any computation nor any document coming from Bayantel as to how he arrived at this value."^[32]