

FIFTH DIVISION

[CA-G.R. CR NO. 35928, September 29, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL
MAGDAONG Y VASQUEZ AND REYNALDO S. RABOCARSAL,
ACCUSED-APPELLANTS.**

DECISION

ABDULWAHID, J.:

This is an appeal from the *Decision*^[1] dated March 25, 2013 of the Regional Trial Court (RTC), Branch 170, City of Malabon in Criminal Case No. 10-1200-MN, finding accused-appellants Arnel Magdaong and Reynaldo Rabocarsal guilty beyond reasonable doubt of the crime of simple theft and sentencing them to an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to eight (8) years and eight (8) months of *prision mayor* as maximum.

On June 2, 2010, accused-appellants and Eugene Toriano (Toriano) were charged with the crime of qualified theft. The accusatory portion of the Information reads, as follows:^[2]

That on or about 30 September 2009, in the City of Malabon, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Eugene Toriano y Bolgado, conspiring, confederating and mutually helping with co-accused Arnel Magdaong y Vasquez and Reynaldo Rabocarsal, who are employed at Crown Apparel as represented by complainant **JOHNSON IAN ANG Y WONG**, with intent to gain and without the knowledge and consent of the said employer, with grave abuse of confidence, did, then and there, willfully, unlawfully and feloniously take and cart away several items, namely: seventy five (75) dozens of back and front parts of Power Play T-shirts of assorted design, all amounting to Fifty Eight Thousand Five Hundred Pesos (P58,500.00) owned and belonging to the said Crown Apparel as represented by **JOHNSON IAN ANG Y WONG** to the latter's damage and prejudice in the aforementioned sum.

CONTRARY TO LAW.

Upon arraignment on July 22, 2010, accused-appellants and Toriano pleaded not guilty to the charges against them.^[3] Trial on the merits thereafter ensued.

The evidence for the prosecution show that accused-appellants Arnel Magdaong and Reynaldo Rabocarsal were employed as master cutter and cutter, respectively, by Crown Apparel Corporation which was owned and managed by the Ang family. As master cutter and cutter, Magdaong and Rabocarsal were tasked to cut fabric based

on patterns, with the excess fabric or retasos collected and eventually sold to customers. Toriano, on the other hand, was engaged in the business of making rugs from retasos which he bought from different garment factories, including Crown Apparel.

At about 4:00 o'clock in the afternoon of September 29, 2009, Alex Guanzon (Guanzon) a helper for Crown Apparel, was cleaning the cutting area when he saw accused-appellants talking with Toriano. A few minutes later, Jefferson Ang (Adjong), one of the owners of Crown Apparel, walked inside the cutting area and asked Toriano what he was doing there. Adjong told Toriano that only employees were allowed inside the factory and asked him to leave the premises at once.^[4]

A few hours later, at around 6:00 to 6:30 in the evening, Guanzon was directed to deliver some bags of *retaso* to Toriano as well as some t-shirt parts to Crown Apparel's subcontractor. Guanzon and the driver loaded the bags of *retaso* and t-shirt parts into the truck and first dropped off the bags of *retaso* at Toriano's house and then delivered the t-shirt parts to the subcontractor.^[5]

The following day, the subcontractor called Crown Apparel to say that the delivery was missing one sack of t-shirt parts. Guanzon went back to Toriano's house to ask if the missing sack of t-shirt parts was mistakenly dropped off together with the bags of *retasos*, but Toriano denied receiving the sack of t-shirt parts. Guanzon went back to Crown Apparel to report what happened, but Eric Ang (Eric) and Johnson Ian Ang (Johnson) did not believe Toriano and decided to seek police assistance before going to Toriano's house.^[6]

The Ang brothers, together with their driver, Guanzon and two policemen went to Toriano's house and upon arriving there, Eric asked if they could look for the forty-five (45) dozen t-shirt parts that may have been mistakenly dropped off the night before. A heated argument soon ensued between Toriano and Eric, with Toriano's father adding to the tension by pointed a sharp object at Eric and asking if they were being accused of theft.^[7]

While Toriano and Eric were arguing, Guanzon and the driver discovered some Power Play t-shirt parts inserted inside the bag of *retaso* delivered the night before. The policemen inspected the bag of *retaso* and discovered several pieces of Power Play t-shirt parts inside it. Toriano was thereafter arrested and brought to the police station.^[8]

At the police station, an inventory yielded thirty-one (31) pieces of t-shirt parts in assorted designs, with Toriano admitting that he has already sold forty-five (45) dozen other t-shirt parts to his buyer from Nueva Ecija. Toriano however promised to return what he had sold in order to prevent the filing of a case against him.^[9]

An investigation conducted by Crown Apparel revealed that accused-appellants were the ones who inserted the t-shirt parts with the *retasos* delivered to Toriano, as they were the only ones authorized to gather and pack retasos into bags and sacks to be sold to clients.^[10] This was confirmed on January 4, 2010, the first working day after the Christmas break, when Johnson confronted Magdaong with the t-shirt parts similar to those recovered from Toriano which were found under Magdaong's table.

Magdaong admitted conspiring with Rabocarsal to insert the t-shirt parts with the *retasos* and then selling the same to Toriano. Later that day, Magdaong went out for his lunch break and never reported back to work. Rabocarsal also did not report back for duty after the Christmas break.^[11]

For the defense's evidence, Toriano denied knowing accused-appellants Magdaong and Rabocarsal, saying that he has only bought *retaso* from Crown Apparel twice, and both times, he coordinated with Jefferson (Adjong) Ang not with accused-appellants.^[12] The first time he purchased *retaso* from Crown Apparel, he was accompanied by a fellow *retaso* buyer and he transacted with Adjong himself.^[13] The second time was on September 29, 2011, when Adjong called and offered to sell him three hundred (300) kilos of *retaso* for Php7,500. Toriano agreed and the sacks of *retaso* were delivered to his house that same evening by Crown Apparel's driver and helper.^[14]

The following day, or on September 30, 2011, Eric arrived with some policemen and they went through the sacks of *retaso* delivered the night before. Eric's group found eleven (11) pieces of t-shirt front parts among the sacks of *retaso* and Toriano was brought to the police station where Toriano agreed to return the t-shirt parts to Crown Apparel. That same evening, Toriano turned over one (1) big bag or twelve (12) dozen t-shirt parts to Alex Guanzon, Crown Apparel's helper.^[15]

On January 28, 2010, Eric called Toriano and asked him to testify against two Crown Apparel employees. Toriano refused because he did not know who these employees were, his refusal caused Eric to threaten Toriano with a lawsuit. The following day, Johnson called Toriano and also asked him to testify against the Crown Apparel employees who had instituted a complaint against the company with the Department of Labor and Employment. Again, Toriano refused to do so, reiterating that he did not know these Crown Apparel employees.^[16]

Accused-appellant Magdaong testified that Adjong, one of the co-owners of Crown Apparel, was the one in charge of packing and selling of the collected *retaso*.^[17] On September 29, 2011, Haynie, a Crown Apparel secretary instructed Magdaong to segregate the *retaso* from the textile and Magdaong asked some other workers to help him do so, since he did not want to be the only one to process the *retaso* for selling. After packing the *retaso* into four (4) sacks, Magdaong and the other workers brought the sacks to the elevator and then went home.^[18]

Magdaong likewise proceeded to illustrate where the different closed circuit television (CCTV) surveillance cameras were located throughout the factory, stating that the CCTVs were always turned on, including on the day when the supposed theft of t-shirt parts occurred.^[19]

Accused-appellant Rabocarsal, for his part, claimed that he was not part of the group of Adjong, Magdaong, Allan Sibayan and Danny Depra that packed the *retaso* into sacks on September 29, 2011, as he was directed by the secretary to go to the factory in Valenzuela first thing that morning.^[20]

Rabocarsal likewise denied that he and Magdaong were the ones in charge of collecting and selling the *retaso*, as Adjong personally oversaw the sale of *retaso*.

Rabocarsal also denied knowing Toriano, saying that he and Magdaong worked in the basement so they never met any of the *retaso* buyers.^[21]

On March 25, 2013, the RTC rendered the assailed *Decision*, acquitting Toriano of the charges against him but convicting accused-appellants of the lesser charge of simple theft. The dispositive portion of the *Decision* reads, as follows:^[22]

WHEREFORE, premises considered, Accused Eugene Toriano y Bolgado is acquitted of the crime charged for failure of the Prosecution to prove his guilt beyond reasonable doubt. On the other hand, Accused Arnel Magdaong y Vasquez and Accused Reynaldo Rabocarsal are both found guilty beyond reasonable doubt of the crime of simple theft only. The penalty imposable is the maximum period of *prision mayor* in its minimum and medium periods. Applying the Indeterminate Sentence Law, the penalty to be imposed upon each Accused is two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to eight (8) years and eight (8) months of *prision mayor*, as maximum.

SO ORDERED.

On May 2, 2013, accused-appellants filed a notice of appeal^[23] which the RTC gave due course to in its Order^[24] dated May 17, 2013.

The issues raised by accused-appellants for the consideration of this Court are as follows:^[25]

I.

THE REGIONAL TRIAL COURT 170 MALABON ERRED IN CONVICTING ACCUSED ARNEL MAGDAONG AND REYNALDO RABOCARSAL DESPITE THE ACQUITTAL OF ACCUSED EUGENE TURIANO (sic) BY VIRTUE OF THE ABSENCE OF CONSPIRACY;

II.

THE COURT ERRED IN CONVICTING THE ACCUSED ARNEL MAGDAONG AND REYNALDO RABOCARSAL FOR SIMPLE THEFT EVEN THOUGH THE ORIGINAL CHARGE WAS FOR QUALIFIED THEFT; [and]

III.

THE COURT ERRED IN CONVICTING THE ACCUSED ARNEL MAGDAONG AND REYNALDO RABOCARSAL FOR SIMPLE THEFT ON THE GROUND OF THE ABSENCE OF CONSPIRACY BETWEEN THE TWO OF THEM.

The appeal is meritorious.

While an accused stands before the court burdened by a previous preliminary investigation finding that there is probable cause to believe that he committed the crime charged, the judicial determination of his guilt or innocence necessarily starts with the recognition of his constitutional right to be presumed innocent of the charge he faces. This principle, a right of the accused, is enshrined no less in our

Constitution. It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt. Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense.^[26]

In order to prove the elements of theft punished under Article 308^[27] of the Revised Penal Code, the prosecution presented Eric Ang who testified to the effect that only the accused-appellants were authorized to collect and prepare the *retaso* to be sold to customers, to wit:^[28]

Q: Now, being in the same place of work and the same place of residence, could you know the nature of the job of a master cutter even though you are not connected with Crown Apparel?

A: Yes sir.

Q: What do they do?

A: They are in-charge of cutting the fabrics sir.

Q: This cutting of fabrics, are they pursuant to any design or pattern?

A: Yes sir.

Q: What do they do with the excess or extra fabric which is not included in the pattern?

A: Any excess fabric were placed inside a plastic bag wherein they will be kept for sale to customers sir.

Q: So please tell the Honorable Court, who prepare and who segregate these "retasos" for sale to customers later on in the plastic bag?

A: Only Arnel Magdaong and Reynaldo Rabocarsal were in-charge in the preparation of the "retasos" sir.

Q: You mean to say the separation of the "retasos" are only the exclusive prerogative of the cutters and no other employees in the company?

A: Definitely sir.

Nonetheless, Eric Ang repeatedly admitted^[29] that he was not a part of Crown Apparel, which was managed by his two brothers Johnson Ang and Jefferson "Adjong" Ang, hence, this Court cannot give full credence to his testimony that accused-appellants were the only ones tasked with the collection and preparation of the *retasos* for sale. On the other hand, the affidavits executed by Johnson^[30] and Jefferson^[31] before the Assistant City Prosecutor clearly stated that accused-appellants were the ones **exclusively entrusted** with the segregation and preparation of the *retasos* to be sold to customers. This was confirmed by Liza Manuel, a Crown Apparel secretary, who stated the following in her affidavit:^[32]

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2. Pinapatunayan ko na tanging sina ARNEL MAGDAONG at REYNALDO RABOCARSAL lamang ang tanging naghanda ng mga retasong ibinenta kay Eugene Toriano noong hapon ng September 29, 2009, dahil si Arnel Magdaong ay Master Cutter at Reynaldo Rabocarsal naman ang Assistant