

TWENTIETH DIVISION

[CA-G.R. CEB-CR NO. 00985, October 28, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RESTITUTO CARCEDO, ACCUSED-APPELLANT.**

DECISION

HERNANDO, J.:

Before Us is an Appeal from the Decision^[1] dated July 22, 2008 rendered by the Regional Trial Court (RTC), Branch 10 of Abuyog, Leyte in Crim. Case No. 2304, finding accused-appellant Restituto Carcedo @ Boboy, guilty beyond reasonable doubt of the crime of Theft. The dispositive portion of the assailed Decision reads:

WHEREFORE, finding accused guilty beyond reasonable doubt, this Court hereby sentences the accused, to suffer an indeterminate sentence of **Three (3) years, Six (6) months and Twenty One (21) days as** minimum term to **Eight (8) years and Eight (8) months and One (1) day** as the maximum term, ordering the accused to indemnify the offended party the amount of Thirty Thousand (Php30,000.00) Pesos and to pay costs.

SO ORDERED.^[2]

The Antecedents:

Accused Restituto Carcedo @ Boboy was charged with the crime of Theft in an Information^[3] dated April 6, 2014, the accusatory portion of which reads:

That on or about the 11th day of October, 2003, in the Municipality of Javier, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, did then and there wilfully, unlawfully and feloniously steal and carry away cash money in the amount of P30,000.00 belonging to ANACLITO TISADO against his will and without his consent and to his damage and prejudice in the amount aforestated.

ACTS CONTRARY TO LAW.

When arraigned on July 20, 2004, accused pleaded not guilty to the crime charged.

[4] Hence, pre-trial was set.[5] After the pre-trial was terminated[6], trial on the merits ensued.

Version of the Prosecution

The prosecution presented two witnesses, namely, Winefredo Cabarda and Anaclito Regis Tisado.

Winefredo Cabarda, a *Barangay Kagawad* and resident of Calzada, Javier, Leyte testified that he knew accused Restituto Carcedo because the latter and his wife are residents of their *barangay*. In fact, accused's wife is also a *Barangay Kagawad*. Cabarda narrated that on October 11, 2003 at around 11:30 in the morning, he was in the Chapel of *Barangay* Calzada, Javier, Leyte, unloading pipes which they would use to replace the old pipes to be utilized for street lights. There, he personally witnessed a person, half-naked and wearing a black mask, whom he later recognized as accused Restituto Carcedo, jumping out from the window of Anaclito Tisado's house which is located just across the Chapel. Cabarda alleged that he was only about thirty (30) meters away from Tisado's house. Cabarda then approached accused but the latter ran away. Cabarda tried to chase him but accused was able to flee.

On cross-examination, Cabarda explained that accused was wearing a black mask which covered only the part from his nose to the mouth. Hence, he was able to recognize accused because he saw the portion from accused's eyes upwards as well as from his neck down and that he was familiar with accused's body built.

Private complainant Anaclito Regis Tisado also testified and declared that on October 11, 2003 at around 12:30 in the afternoon, he was in Tacloban City when he received a long distance call from former *Kagawad* Rosendo Cernias informing him that his house in *Barangay* Calzada, Javier, Leyte was robbed. Upon being informed, Tisado went home but arrived only at around seven o'clock in the evening because his service vehicle encountered an engine trouble. When he arrived home, he immediately checked his place and found out that the padlock in his room was already destroyed and that his money in the amount of Thirty Thousand Pesos (Php30,000.00) which he placed inside a biscuit can was missing. According to Tisado, said amount constituted the proceeds of the *copra* that he had sold in Tacloban City. He, thus, reported the incident to the *Barangay* Captain and had it entered in the *barangay* blotter as well as in the Police Blotter. He was then informed by *Barangay Kagawad* Winefredo Cabarda that it was accused Restituto Carcedo who perpetrated the thievery in his house.

Version of the defense

The defense interposed denial and presented two witnesses, accused himself, Restituto Carcedo and a certain Edwin Barotel.

Accused Restituto Carcedo, a resident of *Barangay* Calzada, Javier, Leyte, testified that on October 11, 2003 at around eleven o'clock in the morning, he was working at his ricefield in *Barangay* San Sotero, Javier, Leyte together with his father, mother, brother and a friend named Edwin Barotel. He arrived there at 7:30 in the morning and worked until 4:00 in the afternoon. Accused alleged that at around 11:30 in the morning, they took their lunch in the house of his parents located

about 30 to 35 meters away from the farmland that they were working on. They later rested for a while and resumed work in the ricefield at 1:00 in the afternoon until 4:00. They also rested first before they went home in *Barangay* Calzada. When he arrived home, he was then informed by his wife that he was allegedly seen by Winefredo Cabarda jumping out from the window of the house of Anaclito Tisado. Upon hearing it, accused went to the house of Winefredo Cabarda and confronted the latter. When he asked Winefredo Cabarda about what he had said, the latter allegedly did not say anything. Accused thus told him that it was a delicate information and that it was not good. Thereafter, accused went home.

Accused further narrated that he became restless and so, he proceeded to the house of Anaclito Tisado at around 6:00 in the evening of the same day. He also confronted Tisado, who confirmed to him that indeed Cabarda told him (Tisado) that he (Cabarda) had seen accused jumped out from the window of Tisado's house. Accused then belied the same and told Tisado that he was not in *Barangay* Calzada at that time because he was in *Barangay* San Sotero working in his ricefield. Accused alleged that he knew for the first time that he was being accused of thievery only after about three (3) months when a Warrant of Arrest was issued against him.

On cross-examination, accused explained that *Barangay* San Sotero and *Barangay* Calzada are located in the same municipality and *via* motorcycle, it would only take about twenty (20) minutes to reach *Barangay* San Sotero from Calzada. Accused declared that prior to the incident, he had no quarrel, trouble or altercation with Winefredo Cabarda. He was also surprised why he was being implicated in the theft incident. Nonetheless, he did not file a case for Oral Defamation against Cabarda. He alleged that the latter was made a witness against him because he (Cabarda) is complainant Tisado's "*batos*". Accused further averred that on said time and date, he was physically fit to perform any work.

The second witness, Edwin Barotel, corroborated accused with respect to his testimony that he (accused) was in *Barangay* San Sotero, Javier, Leyte on October 11, 2003 from around 7:30 in the morning until 4:30 in the afternoon. Barotel insisted that he was with accused the whole time on that day. According to Barotal, accused went to him that morning and requested him to bring accused in his motorcycle to *Barangay* San Sotero. Barotal alleged that they arrived in accused's ricefield in San Sotero at around 7:45 in the morning. There, they cleaned the ricefield and stayed there up to 4:00 in the afternoon and rested at the house of accused's mother in *Barangay* San Sotero Leyte from 11:00 in the morning to 12:00 noon.

The trial court's ruling:

On July 22, 2008, the trial court found accused guilty beyond reasonable doubt of the crime charged against him. It sentenced him to suffer an indeterminate penalty of three (3) years, six (6) months and twenty-one (21) days of minimum term to eight (8) years and eight (8) months and one (1) day as the maximum term as well as to indemnify the offended party the amount of Php30,000.00 and to pay costs.

Hence, this appeal by the accused-appellant anchored on a lone assignment of error, thus:

The Assigned Error: ^[7]

I.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

The Court's Ruling:

We find merit in the appeal.

Appellant questions the reliance of the trial court on the testimony of prosecution's witness, Winefredo Cabarda and points out purported inconsistencies and improbabilities on the latter's testimony. Appellant first asserts that from the testimony of Cabarda himself, the culprit was allegedly wearing a black mask at the time that he(Cabarda) saw him jump out from the window. This alone should have already cast reasonable doubt with respect to the identity of the culprit. Appellant also questions Cabarda's identification of him for lacking in specific details. Appellant points out that Cabarda only saw the portion of the culprit's eyes upwards and neck downwards, hence he insists that Cabarda should have given a specific description or perhaps offered distinguishing features/marks that would set him apart from the rest of the likely perpetrators. He also questions why Cabarda, as *kagawad*, did not alert other persons who were with him at the time he purportedly saw appellant jump out from the window and why a certain *Kagawad* Olarte, who was supposedly with Cabarda was mysteriously left out of the loop in the whole proceedings when he could have corroborated Cabarda's testimony. Also, appellant asserts that the failure of the prosecution to present proof other than the bare and unsubstantiated testimony of private complainant that he owned and lost the amount of Php30,000.00 is insufficient. Appellant thus argues that all the foregoing have weakened the prosecution's case.

Appellee People insists otherwise. It argues that the trial court did not err in convicting appellant as all the elements for the crime of theft had been left in no doubt, sufficiently established by the prosecution.

Appellant's points are well-taken.

The primordial issue at bench is whether or not Cabarda's identification of appellant was reliable and thus sufficient to convict appellant.

We answer in the negative.

In every criminal case, the task of the prosecution is always two-fold, that is, (1) to prove beyond reasonable doubt the commission of the crime charged; and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being likewise clearly ascertained. ^[8]

Although it is firmly entrenched in this jurisdiction that findings of the trial court on the credibility of the witnesses are accorded great weight and respect because it had ample opportunity to observe the demeanor of the declarants at the witness stand, this rule admits exceptions.^[9] The saving instance is said to be when a fact or circumstance of weight and influence has been overlooked, or its significance misconstrued by the trial court sufficient to harbor serious misgivings on its conclusions.^[10]

The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal.^[11] In that regard, an identification that does not preclude a reasonable possibility of mistake cannot be accorded any evidentiary force.^[12] The intervention of any mistake or the appearance of any weakness in the identification simply means that the accused's constitutional right of presumption of innocence until the contrary is proved is not overcome, thereby warranting an acquittal, even if doubt may cloud his innocence.^[13] Indeed, the presumption of innocence constitutionally guaranteed to every individual is forever of primary importance, and every conviction for crime must rest on the strength of the evidence of the State, not on the weakness of the defense.^[14]

When is identification of the perpetrator of a crime positive and reliable enough for establishing his guilt beyond reasonable? In *People v. Caliso*^[15], the Supreme Court had the occasion to answer this query, thus:

The identification of a malefactor, to be positive and sufficient for conviction, does not always require direct evidence from an eyewitness; otherwise, no conviction will be possible in crimes where there are no eyewitnesses. Indeed, trustworthy circumstantial evidence can equally confirm the identification and overcome the constitutionally presumed innocence of the accused. Thus, the Court has distinguished two types of positive identification in *People v. Gallarde*, to wit: (a) that by direct evidence, through an eyewitness to the very commission of the act; and (b) that by circumstantial evidence, such as where the accused is last seen with the victim immediately before or after the crime. The Court said:

xxx **Positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime.** There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, **although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime.** This is the