

THIRD DIVISION

[CA-G.R. CR NO. 36113, November 21, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DEMPSEY OLI Y BAYOTAS, ACCUSED-APPELLANT.**

DECISION

DE GUIA-SALVADOR, R., J.:

This is an appeal from the Decision dated September 12, 2013 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 212, in Criminal Case No. MC11-13669,^[1] the decretal portion of which states:

WHEREFORE, IN VIEW OF THE FOREGOING, accused DEMPSEY OLI Y BAYOTAS is found GUILTY of the crime of Theft [and] is hereby sentenced to a prison term of two (2) years, four (4) months and one (1) day of prision correccional minimum to eight (8) years, eight (8) months and one (1) day of prision mayor plus one (1) year for the additional P10,000.00 in excess of P22,000.00 value of the property taken or a total of nine (9) years, eight (8) months and one (1) day, as maximum which is within the range of the penalty imposable.

Accordingly, the bond posted by accused Dempsey Oli y Bayotas is CANCELLED and let a COMMITMENT ORDER be issued for his confinement at the National Bilibid Prison, Muntinlupa City.

SO ORDERED.^[2]

The Facts

Accused-appellant Dempsey Oli y Bayotas ("appellant" / "Oli") and co-accused John Doe were charged with the crime of theft, allegedly committed as follows:

"That on or about the 6th day of April 2011, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, conspiring and confederating and mutually aiding and abetting one another, did then and there willfully, unlawfully and feloniously take, steal and carry away one (1) unit Iphone 3GS cellular phone worth Php 35,000.00 belonging to JESLEY PALILLO y TORRES, to his damage and prejudice in the aforementioned amount.

CONTRARY TO LAW."^[3]

Only appellant Oli was arrested. The other accused John Doe's identity and whereabouts are still unknown.^[4] Upon arraignment, appellant pleaded not guilty.^[5] During the pre-trial, the parties stipulated on and admitted the following facts:

1. The identity of accused DEMPSEY OLI y BAYOTAS as the one named in the Information;
2. The jurisdiction of the court to try the case;
3. The existence of the Inquest Referral Letter;
4. The existence of the Sworn Statement of Jesley Palillo y Torres;
5. The existence of the Affidavit of Arrest of the arresting officer.^[6]

Thereafter, trial ensued.

Prosecution's Version

In his testimony, private complainant Jesley Palillo narrated that on April 6, 2011, at around 8:20 to 8:30 in the morning, he was on board an MRT train going to Guadalupe, Makati.^[7] He boarded at the Cubao station, and sometime after he had gotten in, he noticed that someone was touching his pants,^[8] but he ignored it. When the train reached Ortigas station, he noticed somebody pull out his cellphone from his right pocket.^[9] He looked at the person beside him and after he saw that person holding his cellphone, the latter passed the phone to another person.^[10] The cellphone was a white Iphone 3GS.

After the phone was passed to another person, Palillo tried to reach for it but by then, he was being pushed inside the train by the rush hour crowd.^[11] He also tried to reach the person who passed it on to the other but he had difficulty getting out of the train.^[12] Finally, he was able to grab that person and called a security guard.^[13] They looked for the person to whom the cellphone was passed but they failed to find him.^[14] Meanwhile, the person he was able to get hold of was brought to the "outpost in Magallanes," from the Ortigas station.^[15]

The subject phone was worth Php35,000.00 and its ownership was proven by Palillo through its original box, manual and charger.^[16] It was bought in Japan by his sister.^[17]

The person that Palillo got hold of and brought to the MRT police station is the accused-appellant Dempsey Oli, whom the former identified through a set of pictures attached to the latter's bail bond application.^[18] He then proceeded to identify the sinumpaang salaysay he executed before the police station.^[19] When asked how he came to know that it was the appellant who took his cellphone, Palillo answered, "I saw my cell phone in his left hand and it was inverted backwards with an apple logo at the back."^[20] He also stated that his cellphone was not recovered.^[21]

Palillo added that the other person to whom the cellphone was passed was

"mentioned" at the police station by appellant as someone with the name Joseph or Richard.^[22] Appellant did not mention the person's real name.^[23]

On cross-examination, Palillo testified that when he restrained the person who took his cellphone, the latter did not react except that the latter's hands were raised while the former was holding him by the collar.^[24] Palillo asked, "*Saan mo ipinasa yung cellphone ko?*," but the person was only silent.^[25] Meanwhile, Palillo believes that the person to whom the cellphone was passed went to another car of the train because he could no longer be found at the ticket area.^[26]

Next to testify was security guard Ronald Caubat, who corroborated the testimony of complainant Jesley Palillo. Caubat testified that on April 6, 2011, at around 8:25 in the morning, he was on duty at the MRT Ortigas Station as security guard.^[27] His duty was to assist passengers boarding and alighting from the trains and inspect the ladder area.^[28] Then, at around the said time, passenger Palillo sought his assistance as according to the latter, he had been a victim of theft.^[29] Palillo pointed to a person whom he said was responsible for the theft of his Iphone.^[30] Caubat then approached the person and "turned him over" to a certain police officer PO1 Tumbado.^[31] He was able to know the name of the arrested person as Dempsey Oli whom he also identified and pointed to in open court.^[32] He also knew that the item taken was an "Iphone 3G."^[33] Then, he proceeded to identify the sinumpaang salaysay he executed before the police station.^[34]

On cross-examination, Caubat stated that when he saw the person claiming to be a victim of theft, the latter was holding the "suspect" (appellant) and pointing at the latter.^[35] He can no longer remember asking anything from the suspect.^[36] And when the suspect was brought to the policeman on duty, he heard the suspect being asked about his personal circumstances like name, age, and address.^[37] He did not hear the police asking the suspect whether he was really the one who took the victim's cellphone.^[38] When the police officer brought the suspect to the Shaw Boulevard station, he did not go with them anymore because he had to guard his post.^[39]

On re-direct examination, Caubat noted that he did not witness the appellant quarrelling nor resisting when the latter was brought to him by Palillo.^[40]

Appellant Dempsey Oli testified for his defense. He testified that he is the accused in the case;^[41] that on April 6, 2011, at around 8 o'clock in the morning, he was inside an MRT train at the Ortigas station;^[42] that he had no companion;^[43] that the train was going southbound;^[44] that suddenly, he was collared and brought to the MRT office;^[45] that he was surprised as there was no unusual incident that he could recall;^[46] that he was accused of taking a cellphone;^[47] that the one accusing him is Palillo;^[48] that at the MRT office, he was forced to produce the allegedly stolen cellphone;^[49] that he was brought to the MRT depot or storage yard in Pasay;^[50] that in Pasay, he was still told to produce the cellphone;^[51] that afterwards, documents were prepared and he was brought for inquest that same day;^[52] and that he denies the accusation that on that day, he, with intent to gain,

"took, stole and carried away" one cellphone belonging to Jesley Palillo.^[53]

On cross-examination, appellant stated that on material date and time, he was on his way to his mother in Zapote;^[54] that he boarded the MRT at the Quezon Avenue station;^[55] that there were many passengers;^[56] that Palillo boarded the train at the Cubao station;^[57] that appellant noticed the same because he was in front of the door;^[58] that after further questioning, he could no longer tell if the person who boarded in Cubao is the same person as the private complainant;^[59] that the train was packed ("*siksikan*") and he and the private complainant were very close to each other;^[60] that the private complainant stood next to his left shoulder;^[61] that when private complainant collared him, he was already outside the train at Ortigas station;^[62] that he was just standing when he was collared and told that he stole a cellphone and was dragged outside;^[63] that he slapped the private complainant's hand, but the latter still brought him outside;^[64] that he was unemployed;^[65] that he used to be a construction worker;^[66] that he was on his way to his mother to pick up a food steamer for making *puto*.^[67]

On re-direct examination, appellant stated that he got mad when he was collared and he expressed his anger by telling the private complainant not to touch him and by shoving away his hand;^[68] that he had been previously accused of taking food from a store, but such was not proven;^[69] and that he has no criminal record.^[70]

On re-cross-examination, appellant admitted having a tattoo of his name;^[71] that his highest educational attainment is second year of high school;^[72] and that he stopped schooling because of his father's incarceration for the crime of "physical injuries."^[73]

The RTC's Ruling

In the appealed decision, the RTC found appellant guilty beyond reasonable doubt of the crime charged. The court found that the elements of theft have all been proven.^[74] Rejecting the defense of "denial and alibi" interposed by appellant, the trial court ruled that the private complainant could not have mistakenly identified the appellant, having seen the latter holding the cellphone and passing the same to a companion.^[75] Additionally, the court held that alibi and denial are the weakest of defenses and, unless substantiated by clear and convincing proof, they are negative, self-serving and undeserving of any weight in law.^[76]

Hence, this appeal.

The appeal is centered on the credibility of the lone eyewitness, the private complainant Jesley Palillo. Appellant argues that Palillo is asking him "*Saan mo ipinasa ang cell phone ko?*" is a mere "reckless assumption."^[77] Appellant also attacks Palillo's failure to shout for help when appellant's cohort was escaping as contrary to human experience.^[78] Appellant alleges that the prosecution failed to prove its case through circumstantial evidence.^[79] Further, appellant alleges that the value of Php35,000.00 attached to the cellphone is not supported by evidence

like receipts and other documents.^[80] He argues that the trial court should have imposed the minimum penalty corresponding to the value of Php5.00 for the stolen amount.^[81]

The Issues

The issues for resolution are: Is the testimony of private complainant as sole eyewitness to the crime credible and enough to convict appellant? Is the penalty imposed by the trial court correct?

The Court's Ruling

We deny the appeal.

On the question of the credibility of the lone eyewitness, it has been consistently reiterated that basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are generally accorded great weight and respect on appeal. When the issue is one of credibility, this Court will generally not disturb the findings of the trial court unless it plainly overlooked certain facts of substance and value that, if considered, might affect the outcome of the case.^[82] The reason therefor is not hard to discern. The trial courts are in a better position to decide questions of credibility having heard the witnesses and observed their deportment and manner of testifying during the trial.^[83]

We agree with the trial court that the testimony of the private complainant Jesley Palillo as the lone eyewitness to the occurrence of the theft is enough to convict appellant. We find Palillo's testimony credible as it was clear and convincing enough especially on the matter of him witnessing the actual commission of the crime. Palillo clearly narrated that on the material date and time, he was on-board an MRT train going to Guadalupe, Makati;^[84] that sometime after he had gotten in, he noticed that someone was touching his pants;^[85] that when the train reached Ortigas station, he noticed somebody pull out his cellphone from his right pocket;^[86] that he looked at the person beside him and saw that person holding his cellphone;^[87] and that the said person passed on the cellphone to another person.^[88]

The statement could not be clearer. There is no doubt in the witness Palillo having perceived and seen the commission of the crime by appellant and his co-conspirator. It was Palillo himself who grabbed the appellant and reported him to a security guard.^[89] There is no proof of mistake having been committed; on the contrary, a mistake in identification was not possible, as Palillo never appeared to have lost sight of the appellant from the time he saw him take his cellphone up to the time that he grabbed and apprehended him and brought him to the security guard. Then, there is likewise no possibility of ill-motive to wrongly accuse the appellant. Such is not even alleged by the latter. Instead, Palillo is in fact motivated to find the taker or takers of his cellphone. He has nothing to gain by apprehending the wrong person who might be punished for the crime in lieu of the actual perpetrator and who would not be able to return the lost item as that innocent person would genuinely not know its whereabouts.