

SPECIAL FOURTEENTH DIVISION

[CA-G.R. CV NO. 69832, August 15, 2006]

**PHILIPPINE INTERNATIONAL CONVENTION CENTER,
REPRESENTED BY VICTORIA BERCILLES, PLAINTIFF-APPELLANT,
VS. GREGORY WILLIAM OLSEN, DEFENDANT-APPELLEE.**

D E C I S I O N

CRUZ, J.:

For allegedly asporting nine audio and visual equipment (or "missing equipment") of the Philippine International Convention Center (or "appellant") from its sound control room, Gregory William Olsen (or "appellee"), an Australian citizen, was indicted for theft before the Regional Trial Court of Pasay City (Branch 111). The information pertinently reads:

"That on or about and for the period June 13 – 19, 1997 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above named accused, GREGORY WILLIAM OLSEN, did then and there willfully, unlawfully and feloniously, with intent of gain and without the consent of the Philippine International Convention Center, represented in this case by Ms. Victoria Berciles (sic), take, steal and carry away the following Philippine International Convention Center properties, viz: one (1) unit JVC HR J7 PMS video recorder/player; one (1) unit Pioneer CLDS 330 Laser Disc player with S.N. QA2611647; one (1) unit C Audio RA4001 Power Amplifier S.N. R.A. 501023; one (1) unit Denon 77OR Dual Cassete tape deck S.N. 5082402693; one (1) unit Tascam CD 401 MK II CD Player S.N. 0320273962; one portable equipment consisting of: 1 unit Denon 730 R Recording Cassette deck S.N. 4070400306; 1 unit Denon 77OR Dual Cassette tape deck S.N. 5127600418; 1 unit Tascam CD 410 Mk II Cd player S.N. 0320246; Navitar Slide to Video converter; University Sound Power Amplifier Model A150; two (2) units Motorola handheld radios with charger and one (1) unit printer, all of which is valued at Five Hundred Thousand Pesos (P500,000.00) more or less to the damage and prejudice of its owners."

As appellee entered a not-guilty plea, trial ensued. Appellant intervened in the case through a private prosecutor.

Because of appellee's non-appearance at a scheduled trial after posting bail for his provisional liberty, the lower court proceeded with the trial *in absentia* (order dated February 18, 1998).

The prosecution presented the testimonies of: (i) Alvin Miranda (or "Alvin") and Raymond Garcia (or "Raymond"), to prove that appellee took the missing equipment from appellant's sound control room; (ii) Victoria Bercilles, who testified on the quantity and value of the missing equipment; (iii) Agnes Pineda, bank officer from

Bangko Sentral ng Pilipinas (or "BSP"), to show that, as part of appellant's rehabilitation, BSP paid the latter's contractor, Electro Systems Industries Corporation (or "contractor"), for the value of the missing equipment; and (iv) Atty. Julius Caesar Llamas, to prove that appellee was afforded constitutional rights during custodial investigation.

On June 8, 1999, the trial court rendered a decision acquitting appellee of the crime charged. The dispositive portion of the decision reads:

"WHEREFORE, and in view of the foregoing, the Court hereby acquits, on reasonable doubt, ACCUSED GREGORY WILLIAM OLSEN of the crime of THEFT as charged in the information of June 23, 1997.

The cash bond which he posted for his provisional liberty under O.R. No. 7670127 in the amount of P20,000.00 dated August 21, 1997 is hereby ordered to be released to the named payor.

SO ORDERED."

Appellant filed a motion for reconsideration of the trial court's decision on the civil aspect of the case. In an order dated March 15, 2000, however, the lower court denied the motion on the ground that the testimonies of appellant's witnesses, particularly on the taking of the missing equipment, "did not prove or substantially show that the accused was responsible."

Unfazed, appellant interposed the instant appeal ascribing error to the lower court –

"IN NOT FINDING (APPELLEE) CIVILLY LIABLE FOR UNLAWFULLY TAKING THE SOUND AND ELECTRIC EQUIPMENT OWNED BY (APPELLANT)."

Appellant contends that the trial court, in resolving the issue concerning appellee's civil liability, applied the quantum of evidence required in criminal cases; and that the taking of the missing equipment by appellee, the amount of damage sustained by appellant and the ownership of the missing equipment were established by preponderance of evidence.

On the other hand, appellee maintains that he is not civilly liable because the act from which the civil liability might arise did not exist.

The appeal is impressed with merit.

It is well-settled that acquittal in a criminal case does not bar continuation of the civil case connected therewith where (i) the acquittal is based on reasonable doubt; (ii) the decision contains a declaration that the liability of the accused is not criminal but only civil; or (iii) the civil liability is not derived from or based on the criminal act of which the accused is acquitted (*Sadio vs. RTC of Antique*, Br. 10, 201 SCRA 744). The first exception is obtaining in the case at bench.

The lower court acquitted appellee on reasonable doubt, which is one that a reasonable man might entertain after a fair review and consideration of the evidence (*F. B. Moreno, Philippine Law Black Dictionary*, 3rd edition, p. 791). The basis of appellee's acquittal was discussed by the lower court in the assailed decision, to wit:

"The two (2) key witnesses for the prosecution – Mr. Alvin Miranda and Raymond Garcia, who work as audio- visual technician and sub-contractor respectively, and who happened to be working then at the Plenary Hall of the PICC in the late afternoon of June 19, 1997, which they later changed to June 18, 1997, testified that they saw the accused entering the Sound Control Room at the third floor through the window. But neither Mr. Miranda nor Mr. Garcia actually saw the accused removed or took any audio-visual and electronic equipment from the Sound Control Room.

x x x

Verily, the testimonies of the two (2) key witnesses of the prosecution on the alleged 'taking' by the accused of the equipment from the Sound Control Room which were purportedly missing were hollowed and cast serious doubt to their credibility. Moreover, the equipment allegedly lost or rather taken by the accused were bulky and most of it were rack mounted as may be gleaned from (Exhibit 'D') the Electro Systems Report on the nomenclature and description of the missing sound/visual equipment. Assuming that the accused removed each component from the racks on which they were mounted before placing them inside the black bag and rice sack adverted to by witness Raymond Garcia, at least he would have needed the use of some kind of tools to swiftly disassemble them from the racks. x x x.

x x x

Thus, doubts pervades (sic) as to how the accused was able to place his entire loot in a rice sack and in a bag. Or did he probably left (sic) the bag and the rice sack outside and swiftly carried (sic) or brought (sic) out unnoticed piece by piece or in bulk the component and equipment from the Sound Control Room to a concealed nook somewhere in the PICC premises? How could the accused possibly have done that – to easily dismantle or disassemble from the racks the components and equipment if it was already dark as it was already about 7:30 p.m., according to witness Garcia, when he allegedly entered the Sound Control Room assuming that the said room was not illuminated? The mind of the court cannot rest easy on these questions."

The trial court's doubt on the guilt of appellee, which prompted it to absolve him from criminal liability, did not automatically extinguish his civil liability. This is so because "(i)n case of acquittal, unless there is a clear showing that the act from which the civil liability might arise did not exist, the judgment shall make a finding on the civil liability of the accused in favor of the offended party" (Sec. 2, Rule 120, Rules of Criminal Procedure).

Appellee was acquitted for failure of the prosecution to prove beyond reasonable doubt the second element of the offense, *i.e.*, unlawful taking. But nowhere in the assailed decision is there a declaration that the asportation did not happen.

Curiously, appellee admitted in his sworn statement dated June 21, 1997 (Exh. "G")