

THIRD DIVISION

[G.R. No. 155339, March 03, 2008]

**ROSE AOAS Petitioner, vs. PEOPLE OF THE PHILIPPINES,
Respondent.**

D E C I S I O N

NACHURA, J.:

This is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals, dated February 22, 2002, in CA-G.R. CR No. 22439 affirming the conviction of petitioner of the crime of theft, and the Resolution^[2] dated September 3, 2002 denying the motion for reconsideration thereof.

The Information reads as follows:

That on or about the 15th day of October, 1992 in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, with intent to gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away, eighteen (18) sacks of red and white beans, all valued at P24,720.00 belonging to NATY MADON-EP, to the damage and prejudice of the owner thereof in the aforementioned amount of TWENTY-FOUR THOUSAND SEVEN HUNDRED TWENTY PESOS (P24,720.00), Philippine Currency.

When arraigned, petitioner pleaded not guilty.

The prosecution presented two witnesses: private complainant and *barangay tanod* Gregorio Garcia. As summarized by the Court of Appeals, the evidence for the prosecution are as follows:

Private complainant Naty Madon-ep testified that she is a businesswoman engaged in the buy and sell of assorted seeds such as white beans, red beans, black beans, mongo beans, peas, peanuts and *malagkit* rice. She owns four (4) stalls in the city market of Baguio. One of these stalls is located at no.1, mongo section. The other three stalls namely: Stalls, A, B, and C are located at the muslim section of the said city market. Stalls A and B with mezzanines are adjacent to each other. Upon the other hand, stall C which has also a second floor is located at the back of the stall owned by Laila Saguid. She uses the mezzanines of stalls A, B and C as storeroom/bodega for sacks of beans. The ground floor of stall B was being occupied/rented by Henry Saguid. As to stall A, she occupied a portion of the ground floor thereof together with Miling and Janet Gavino who were engaged in the buy and sell of gold and broken jewelry. Adjacent to her stall is the stall of the accused-appellant which has also a

mezzanine, and used by the accused-appellant as her business store for selling and buying gold and broken jewelry. Sometime in 1992, the accused-appellant removed the partition wall separating the mezzanines without her consent, claiming that she would convert her own mezzanine floor to a restaurant. Despite demand to restore the said partition wall, the accused-appellant refused. On October 16, 1992, when she arrived at her stall at the mongo section, she noticed that there were red and white beans scattered in front of the stall of the accused-appellant and at the parking space of the rice section. When she reported the matter to the authorities, it was discovered that there were also scattered beans inside the ground floor and mezzanine of the stall of the accused-appellant. Later, she found out that her 18 sacks of beans stored at the mezzanine of her stall A, worth P24,000.00, more or less, were missing. Upon inquiry from the persons in the city market she was informed by a certain Gregorio Garcia that the accused-appellant was the culprit.

Gregorio Garcia testified that he is a *barangay tanod* assigned at the rice section of the city market of Baguio. On October 2, 1992, at around 8:30-9:00 in the evening, he saw the accused-appellant together with her two daughters at the end of the rice section leading towards the buko section. The accused-appellant told him that they were going to fix their stall. Thereafter, he saw the accused-appellant open the door of her stall and bring out one sack of beans and loaded the same inside the jeep with the help of its driver. On October 12, 1992, at around 8:00 in the evening, while he was 10 meters away behind the jeep, he again saw the accused-appellant, together with Brenda Sabado, bringing out five sacks of beans from her stall and likewise loaded them in a vehicle with the assistance of a male driver. Thereafter, the accused-appellant and Sabado boarded the jeep and left, but before leaving, Sabado gave him P15.00 for his coffee. On October 15, 1992 at about 8:30-9:00 in the evening, he again met the accused-appellant in front of the Dimalanta Grocery, which is located at the right side of the rice section of the city market. The accused-appellant asked him if he saw a jeepney, to which he answered "no." He then went and stayed at the side of the Dimalanta Grocery and took a cup of coffee, while the accused-appellant walked towards the direction of Tiong San Bazaar. After he finished his coffee and while walking towards the rice section opposite the bakery, he saw a jeep leaving loaded with sacks of beans. Inside the said jeep he saw the accused-appellant seated at the back thereof and another female companion seated in front with the driver. He knew that the sacks loaded in the jeep were sacks of beans because he was just thirty (30) meters away and the place was heavily lighted. He knew the size of the beans sacks.^[3]

For the defense, petitioner and witness Imelda Bautista presented their evidence, as follows:

[Rose Aoas] testified that she is a businesswoman engaged in the buy and sell of gold and broken jewelry. She was occupying stall No. 9 at the muslim section of the city market of Baguio adjacent to the stalls of Anita Fermin and Janet Gavino. The second floor of her stall was being used as storage for empty bottles by her friend Imelda Bautista who was engaged

in selling mongo beans and peanut butter. While the ground floor thereof was sometimes used by said Imelda Bautista in the afternoon for storing her goods, she removes the same in the morning and sells them at her own stall. She admitted that the private complainant Naty Madon-ep has a stall adjacent to her own stall and that she removed the partition wall dividing their mezzanines thereof but with the consent of the private complainant. She removed the said partition because she intended to convert her mezzanine/second floor to a canteen but the same did not materialize. She admitted to have seen prosecution witness Gregorio Garcia thrice. First was on October 2, 1992, when she and her son dropped by the city market to check on her stall. Second, on October 12, 1992, while she was at the city market because she helped her friends Ronda Sabado and Noli Chamos transport the sacks of mongo and peanuts which the latter bought from Imelda Bautista. The third time she saw witness Gregorio Garcia was on October 15, 1992 at around 8:00 in the evening along Dimalanta, Magsaysay Avenue, while she was on her way to Helen's Restaurant located at Abanao Street to meet some of her friends.

Defense witness Imelda Bautista narrated that she was engaged in the business of selling mongo beans and peanut butter. Every afternoon she kept her goods at the ground floor of the stall of the accused-appellant located at the muslim section of the city market of Baguio. She was the one occupying the second floor/mezzanine of the stall of the accused-appellant and uses the same as her storage/storeroom for empty bottles of peanut butter. On October 12, 1992, she (witness) sold beans to Ronda Sabado, covered by an ordinary handwritten receipt.^[4]

On November 10, 1997, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered convicting accused Aoas of theft and hereby sentences her, after applying the Indeterminate Sentence Law, to suffer imprisonment from 4 years, 9 months and 10 days of prision correctional medium, as minimum, to 8 years, 8 months and 1 day of prision mayor, medium, as maximum, and to return to the complainant Madon-ep the 18 sacks of beans stolen, or to pay the value of said sacks of beans in the amount of P24,720.00 if the same can no longer be returned.

Costs against the accused.^[5]

On appeal, the Court of Appeals affirmed the RTC decision in toto.

Hence, this petition for review raising the following assignment of errors:

I. THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT SOLELY ON THE BASIS OF CIRCUMSTANTIAL EVIDENCE AND THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE SAID DECISION OF CONVICTION BY THE TRIAL COURT;

II. THE TRIAL COURT AND THE HONORABLE COURT OF APPEALS ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE

WITNESS FOR THE PROSECUTION THAN THE TESTIMONY OF THE
ACCUSED AND HER WITNESS.^[6]

Under Article 308 of the Revised Penal Code, the essential elements of the crime of theft are the following: (1) that there be a taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence or intimidation against persons or force upon things.^[7] Petitioner contends that these elements of the crime of theft were not proven and, therefore, she deserves to be acquitted.

We agree.

Considering that there is no direct evidence pointing to petitioner as the perpetrator of the crime, the trial court relied solely on circumstantial evidence. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. It is founded on experience, observed facts and coincidences establishing a connection between the known and proven facts and the facts sought to be proved. In order that conviction be had, the following must concur:

1. There is more than one circumstance;
2. The facts from which the inferences are derived are proven;
3. The combination of the circumstances is such as to produce a conviction beyond reasonable doubt.

To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proved must be consistent with one other and that each and every circumstance must be consistent with accused's guilt and inconsistent with his innocence.^[8] The circumstances must be proved, and not themselves presumed.^[9] The circumstantial evidence must exclude the possibility that some other person has committed the offense.

To the appellate court, the following make up the web of circumstantial evidence against petitioner:

First, it was established that at around 8:30-9:00 in the evening of October 15, 1992, the accused-appellant was seen within the vicinity or in front of the Dimalanta Grocery located at the right side of the rice section of the city market. The stall of the accused-appellant, as well as that of the private complainant, are within the vicinity of the city market and near the rice section. **Second**, the accused-appellant asked the prosecution witness Garcia regarding the whereabouts of a certain jeepney. Thereafter, the accused-appellant was seen seated inside the back portion of a jeepney which was loaded with sacks of beans leaving the said city market. **Third**, at about 5:00 in the morning of October 16,