

## **FIRST DIVISION**

**[ CA-G.R. CR No. 34392, May 08, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER  
BALUYOT Y BUNOS, ACCUSED-APPELLANT.**

### **DECISION**

**BARRIOS, M. M., J.:**

This is an appeal from the Decision dated 10 June 2011<sup>[1]</sup> of the Regional Trial Court, Branch 92, Quezon City where the dispositive portion reads:

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*"WHEREFORE, IN THE LIGHT OF THE FOREGOING PREMISES, judgment is hereby rendered finding herein accused ELMER BALUYOT Y BUNOS, guilty of the offense charged and he is hereby sentenced to suffer an Indeterminate Penalty of TWELVE (12) years and ONE (1) day of Reclusion Temporal as minimum to FOURTEEN (14) years of Reclusion Temporal, as maximum. The period of detention shall be credited in favor of the accused in the service of this sentence.*

The Jail Warden is hereby ordered to commit the accused to the Bureau of Corrections upon receipt of this Judgment, whether or not an appeal shall be made by the accused, pursuant to the SC Circular.

*SO ORDERED."*

### **THE FACTS**

In an Information<sup>[2]</sup> dated 07 August 2007, accused-appellant Elmer Baluyot y Bunos was charged for violation of R.A. No. 7832, otherwise known as "The Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994" as follows:

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*"That on or about the 5th day of August 2007, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with five (5) other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another with intent of (sic) gain, did then and there willfully, unlawfully and feloniously cut, take/steal and carried (sic) away the fiber optic cable/line use (sic) for telecom along Commonwealth Avenue near AMA Computer, Brgy. Old Balara, this City, without its previous authority or consent, to the damage and prejudice of MERALCO represented by Nestor Carlos y Manuel in the amount of Php6, 670.50 Philippine Currency.*

*CONTRARY TO LAW."*

When arraigned,<sup>[3]</sup> accused-appellant pleaded not guilty to the charge. Thereafter, trial on the merits ensued.

The prosecution's evidence shows that at around 8:30 in the evening of 05 August 2007, Michael C. Lucero - a resident of Liwanag St., Old Balara, Quezon City - noticed that his telephone lost its dial tone. He went to a neighbor's store to make a call, but learned that the latter's telephone also went dead.

While Lucero was still at his neighbor's store, he saw accused-appellant with five (5) other individuals dragging an estimated fifty (50) meters of fiber optic cable wire in front of AMA Computer College. Richard Tumambac - an operator of an internet shop in the same area - testified that at about the same time, the internet connection in his shop went dead. He went around the immediate vicinity to look for the cause and later saw six (6) malefactors cutting the telephone cable wire a short distance away from his shop.

Both Lucero and Tumambac reported the matter to the Barangay Office at Old Balara, Quezon City. Two (2) group were formed to apprehend the thieves at the site, but the malefactors were no longer there. They received information that the suspects moved towards a vacant lot at the back of Diliman Preparatory School. True enough, accused-appellant and his cohorts were there while handling the fiber optic cable wire. However, only accused-appellant was apprehended and the fiber optic cable loot was recovered. The other suspects scampered away but were later on apprehended. However, they turned out to be minors, and so were turned over to the Department of Social Welfare and Development.

Only accused-appellant was booked for violating R.A. No. 7832. MERALCO's security officer - Nestor Carlos - identified the recovered fiber optic cable wire as belonging to MERALCO which is specifically used for computers and telephones of all franchised areas interconnected thereat, and not used for transmitting electricity from power plants.<sup>[4]</sup>

In his defense, accused-appellant averred that at about 8:30 to 9:00 in the evening of 05 August 2007, he was at home cleaning the house. He heard a commotion and went outside where he saw several individuals being chased by barangay officials. At that point, however, he was apprehended and forcibly taken to the barangay hall. Thereat, his hand was beaten with a wooden club which forced him to admit the wrongdoing.

After trial, accused-appellant was found guilty as charged. Hence, this appeal raising the following assignment of errors:

**I.**

**THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT.**

**II.**

**THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT THE OBJECT OF THE ALLEGED CRIME IS NOT INCLUDED IN R.A. NO. 7832.**

**III.**

**THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR AN ACT WHICH IS NOT ALLEGED IN THE INFORMATION.**

**IV.**

**THE TRIAL COURT GRAVELY ERRED IN ORDERING THE REOPENING OF THE CASE WITHOUT PRIOR HEARING, AND GIVING WEIGHT AND CREDENCE TO THE STATEMENTS OF THE WITNESSES THEREAT, WHO DID NOT TAKE THEIR OATH (sic), AND WHO WERE NOT SUBJECTED TO CROSS EXAMINATION.**

**V.**

**THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE FAILURE TO ESTABLISH THE IDENTITY OF THE OBJECT OF THE OFFENSE.**

**VI.**

**THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION WITNESSES' INCONSISTENT TESTIMONIES.**

**VII.**

**THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THE ILLEGALITY OF THE ACCUSED-APPELLANT'S ARREST.**

**OUR RULING**

At the onset, it must be stressed that Republic Act No. 7832 is entitled "An Act Penalizing the Pilferage of Electricity and Theft of Electric Power Transmission Lines/Materials, Rationalizing System Losses By Phasing Out Pilferage Losses as a Component Thereof, and For Other Purposes." It is basically the law that penalizes pilferage of electric power and theft of transmission lines or materials. Said law was also enacted to protect honest electricity users from the burden of paying the cost of pilfered electricity being passed on to them, and penalize pilferers of electricity and thieves of electrical lines or materials.

Section 3 (b) of R.A. No. 7832 specifically defines electrical transmission lines or materials as "electric power transmission steel towers, woodpoles, cables, wires, insulators, line hardware, electrical conductors and other related items with a minimum voltage of sixty-nine kilovolts (69 kv) x x x." Thus, the clear intent of the law is to punish pilferers of electricity and thieves of electrical lines or materials, and therefore, limits the application of R.A. No. 7832 to the unlawful taking of electrical transmission lines or materials, and thus excluding other kinds of cables or wires that do not transmit electricity.

In the case before Us, the wires stolen by accused-appellant were not the big electric power transmission wires, but rather the fiber optic cable wire owned and used by MERALCO for its own telecommunication purposes. In short, the stolen wire do not come within the ambit of R.A. No. 7832; hence, accused-appellant cannot be prosecuted and convicted under said law.