

## SECOND DIVISION

[ G.R. No. 207175, November 26, 2014 ]

### EDUARDO MAGSUMBOL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

#### DECISION

##### MENDOZA, J.:

This is a petition for review on *certiorari* seeking to reverse and set aside the December 14, 2012 Decision<sup>[1]</sup> and the May 6, 2013 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 34431 filed by Eduardo Magsumbol (*Magsumbol*), questioning his conviction for Theft.

##### The Facts

Petitioner Magsumbol, together with Erasmo Magsino (*Magsino*), Apolonio Inanoria (*Inanoria*), and Bonifacio Ramirez (*Ramirez*), was charged with the crime of Theft in the Information, dated August 30, 2002, filed before the Regional Trial Court of Lucena City, Branch 55 (RTC) and docketed as Criminal Case No. 2002-1017. The Information indicting Magsumbol and his co-accused reads:

That on or about the 1<sup>st</sup> day of February 2002, at Barangay Kinatihan I, in the Municipality of Candelaria, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with seven (7) John Does whose true names and real identities are still unknown and whose physical descriptions were not made known by available witnesses, and who are all still at large, and mutually helping one another, with intent to gain and without the consent of the owner, Menandro Avanzado, did then and there willfully, unlawfully and feloniously cut, take, steal and carry away with them thirty three (33) coconut trees from the coconut plantation of the said owner, valued at FORTY FOUR THOUSAND FOUR HUNDRED PESOS (P44,400.00), Philippine currency, belonging to said Menandro Avanzado, to his damage and prejudice in the aforesaid amount.<sup>[3]</sup>

Culled from the testimonies of prosecution witnesses Ernesto Caringal (*Caringal*), private complainant Engr. Menandro Avanzado (*Menandro*), and SPO1 Florentino Manalo (*SPO1 Manalo*), it appears that at around 11:00 o'clock in the morning of February 1, 2002, Caringal, the overseer of a one-hectare unregistered parcel of land located in Candelaria, Quezon, and co-owned by Menandro, saw the four accused, along with seven others, cutting down the coconut trees on the said property. Later, the men turned the felled trees into coco lumber. Caringal did not attempt to stop the men from cutting down the coconut trees because he was

outnumbered. Instead, Caringal left the site and proceeded to San Pablo City to inform Menandro about the incident.

On February 3, 2002, Menandro and Caringal reported the incident to the police. Thereafter, the two, accompanied by SPO1 Manalo, went to the coconut plantation only to discover that about thirty three (33) coconut trees (*subject trees*) had been cut down. The coco lumber were no longer in the area. They took photographs of the stumps left by the men.

The defense, on the other hand, presented Atanacio Avanzado (*Atanacio*), accused Ramirez, petitioner Magsumbol, Barangay Captain Pedro Arguelles (*Brgy. Captain Arguelles*) and accused Inanoria, to substantiate its claim of innocence for all the accused.

Atanacio testified that he authorized his brothers-in-law, Magsino and Magsumbol, to cut down the coconut trees within the boundary of his property, which was adjacent to the land co-owned by Menandro. Atanacio admitted that he had never set foot on his property for about 20 years already and that he was not present when the cutting incident happened.

Defense witness Brgy. Captain Arguelles testified that on January 28, 2002, Magsumbol, Magsino, Ramirez, and Inanoria came to his office seeking permission to cut down the coconut trees planted on the land of Atanacio.

All the accused vehemently denied the charges against them. Ramirez and Magsumbol claimed that only the coconut trees which stood within the land owned by Atanacio, a relative of the private complainant, were cut down on that morning of February 1, 2002. Ramirez added that he was a coco lumber trader and that Atanacio offered to sell the coconut trees planted on his lot. Magsumbol claimed that he took no part in the felling of the coconut trees but merely supervised the same. He claimed that he did not receive any remuneration for the service he rendered or a share from the proceeds of the coco lumbers sale. Inanoria likewise denied participation in the cutting down of the coconut trees but confirmed the presence of Magsumbol and Magsino at the site to supervise the accomplishment of the work being done thereat. Inanoria corroborated the narration of Magsumbol and Ramirez that all the felled trees were planted inside the lot owned by Atanacio. Inanoria intimated that Menandro included him in the complaint for theft due to his refusal to accede to latter's request for him to testify against his co-accused in relation to the present criminal charge.<sup>[4]</sup>

#### *Ruling of the RTC*

On March 15, 2011, the RTC rendered its decision<sup>[5]</sup> stating that the prosecution was able to establish with certitude the guilt of all the accused for the crime of simple theft. The RTC rejected the defense of denial invoked by the accused in the face of positive identification by Caringal pointing to them as the perpetrators of the crime. It did not believe the testimony of Atanacio and even branded him as biased witness on account of his relationship with accused Magsino and Magsumbol. The trial court adjudged:

WHEREFORE, judgment is hereby rendered finding all the accused Erasmo Magsino, Apolonio Inanoria, Eduardo Magsumbol and Bonifacio Ramirez guilty as charged and applying the Indeterminate sentence law, the court hereby sentences them to suffer an imprisonment of 2 years, 4 months and 1 day of Prison Correccional as minimum to 6 years and 1 day of Prison Mayor as maximum.

The accused are likewise directed to pay jointly and severally Engr. Menandro Avanzado and the other heirs of Norberto Avanzado the sum of P13,200.00 representing the value of the 33 coconut trees they have cut and sold to accused Ramirez.

SO ORDERED.

Aggrieved, the accused appealed from the March 15, 2011 judgment of the RTC before the CA insisting that the prosecution evidence did not meet the quantum of proof necessary to warrant their conviction of the crime charged. They posited that the RTC erred in failing to appreciate the lack of criminal intent on their part to commit the crime of simple theft. They claimed that not a scintilla of evidence was presented to prove the element of intent to gain.<sup>[6]</sup>

#### *Ruling of the CA*

In its assailed Decision, dated December 14, 2012, the CA sustained the findings of facts and conclusions of law by the RTC and upheld the judgment of conviction rendered against the accused. The CA was of the view, however, that the crime committed in this case would not fall under the general definition of theft under Article 308 of the Revised Penal Code (RPC), but rather under paragraph (2) of the same provision which penalizes *theft of damaged property*. The CA ruled that the RTC was correct in giving full faith and credence to the testimony of Caringal who was not shown to have been motivated by any ill will to testify falsely against the accused. It agreed with the RTC that Atanacio's testimony should not be given any evidentiary weight in view of his relationship with Magsino and Magsumbol, which provided sufficient reason for him to suppress or pervert the truth. Anent the element of intent to gain, the CA stated that the mere fact that the accused cut the coconut trees on Menandro's land and made them into coco lumber, gave rise to the presumption that it was done with intent to gain. The *fallo* reads:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated March 15, 2011, of the Regional Trial Court, Branch 55, Lucena City is AFFIRMED with MODIFICATION in that the accused-appellants Erasmo Magsino, Apolonio Inanoria, Eduardo Magsumbol and Bonifacio Ramirez are sentenced to suffer imprisonment of two (2) years, four (4) months and one (1) day as minimum, to seven (7) years, four (4) months and one (1) day, as maximum; and to pay jointly and severally private complainant Menandro Avanzado the amount of Thirteen Thousand Two Hundred Pesos (P13,200.00).

SO ORDERED.<sup>[7]</sup>

The accused moved for reconsideration of the December 14, 2012 Decision but their motion was denied by the CA on May 6, 2013.

**Issues:**

Bewailing his conviction, Magsumbol filed the present petition before this Court and imputes to the CA the following

**ERRORS:**

**THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW WHEN IT FOUND THE ACCUSED GUILTY OF THE CRIME OF THEFT UNDER ARTICLE 308 OF THE REVISED PENAL CODE, IN THAT:**

**I**

**NO COMPETENT EVIDENCE WAS ADDUCED BY THE PROSECUTION TO PROVE THAT THE COCONUT TREES THAT WERE CUT WERE BEYOND THE PROPERTY OWNED BY ATANACIO AVANZADO; and**

**II**

**MALICE AND INTENT TO GAIN, AS ELEMENTS OF THE CRIME OF THEFT, ARE NOT PRESENT IN THE CASE AT HAND.**<sup>[8]</sup>

**The Court's Ruling**

The petition is impressed with merit.

It is a time-honored rule that the assessment of the trial court with regard to the credibility of witnesses deserves the utmost respect, if not finality, for the reason that the trial judge has the prerogative, denied to appellate judges, of observing the demeanor of the declarants in the course of their testimonies. Though it is true that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal, this rule, however, is not a hard and fast one. The exception is observed if there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have cast doubt on the guilt of the accused.<sup>[9]</sup> The said exception apparently exists in the case at bench.

It is the statutory definition that generally furnishes the elements of each crime under the RPC, while the elements in turn unravel the particular requisite acts of execution and accompanying criminal intent. In the case at bench, petitioner Magsumbol and his co-accused were convicted by the CA of the crime of theft of damaged property under paragraph (2) of Article 308 of the RPC which provides: