

## THIRD DIVISION

[ G.R. No. 163437, February 13, 2008 ]

**ERNESTO PIDELI, Petitioner, vs. PEOPLE OF THE PHILIPPINES,  
Respondent.**

### D E C I S I O N

**REYES, R.T., J.:**

ON appeal via petition for review on *certiorari* under Rule 45 is the Decision<sup>[1]</sup> of the Court of Appeals (CA), affirming that<sup>[2]</sup> of the Regional Trial Court (RTC) in Baguio City, convicting petitioner Ernesto Pideli of theft in the amount of P49,500.00 belonging to his brother's business partner. The appeal zeroes in on the questions of ownership, unlawful taking and intent to gain. In short, is it *estafa* or theft?

#### The Facts

Sometime in March 1997, Placido Cancio (Placido) and Wilson Pideli (Wilson) entered into a verbal partnership agreement to subcontract a rip-rapping and spillway project at Tongcalong, Tinongdan Dalupirip Road, Itogon, Benguet. Placido and Wilson agreed to undertake the project in favor of ACL Construction (ACL), the contractor awarded the development project by the Department of Public Works and Highways.<sup>[3]</sup>

Petitioner Ernesto Pideli (petitioner), brother to Wilson and neighbor and friend to Placido, offered the duo the use of his credit line with the Mt. Trail Farm Supply and Hardware (MTFSH) in La Trinidad, Benguet. Petitioner was an employee of the Provincial Planning and Development Office of Benguet, likewise based in La Trinidad. With the said arrangement, Wilson and Placido, with the assistance of petitioner, were able to secure an assortment of construction materials for the rip-rap and spillway contract.<sup>[4]</sup>

On November 17, 1997, after the completion of the project, ACL summoned all its subcontractors to a meeting. Placido, Wilson and petitioner were in attendance. At the meeting, ACL management informed Placido and Wilson that the final payment for the work that they have done would be withheld. It was learned that they failed to settle their accountabilities with the MTFSH.<sup>[5]</sup>

Placido, Wilson and petitioner made representations with the accountable ACL personnel, a certain Boy Candido, to facilitate the release of their payment. They assured Boy that the matter of the unpaid obligations to MTFSH has been resolved. Boy acceded to the request and proceeded to release the final payment due to Placido and Wilson, amounting to P222,732.00.<sup>[6]</sup>

Consequently, Placido, Wilson and petitioner computed their expenses and arrived at

a net income of P130,000.00. Placido, as partner, claimed one-half (1/2) or P65,000.00 of the net amount as his share in the project. Petitioner, however, advised the two to first settle their accountabilities for the construction materials taken from the hardware store. Placido and Wilson did as told and entrusted the full amount to petitioner, with express instructions to pay MTFSH and deliver the remaining balance to them.<sup>[7]</sup>

The following day, or on November 18, 1997, Placido attempted but failed to contact petitioner. He had hoped to obtain his share of the partnership income. Placido got hold of petitioner the next morning. Unexpectedly, petitioner informed Placido that nothing was left of the proceeds after paying off the supplier.<sup>[8]</sup> Despite repeated demands, petitioner refused to give Placido his share in the net income of the contract.<sup>[9]</sup>

Alarmed over the sudden turn of events, Placido lodged a complaint for theft against petitioner Ernesto Pideli. Eventually, an Information bearing the following allegations was instituted against petitioner:

The undersigned accuses ERNESTO PIDELE (*sic*) of the crime of THEFT, committed as follows:

That on or about the 17<sup>th</sup> day of November, 1977, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain (*sic*) and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away, cash money in the amount of P65,000.00, belonging to PLACIDO CANSIO (*sic*) y TALUKTOK, to the damage and prejudice of the owner thereof in the aforementioned amount of SIXTY-FIVE THOUSAND PESOS (P65,000.00), Philippine Currency.

CONTRARY TO LAW.<sup>[10]</sup>

Upon arraignment, petitioner pleaded "not guilty" to the charge. Then, trial on the merits ensued.

The evidence for the People portraying the foregoing facts was supplied by private complainant Placido, the lone prosecution witness.

Petitioner's defense founded on denial is summarized by the trial court as follows:

Ernesto Pideli, 43 years old, married, government employee and a resident of Km. 4, La Trinidad, Benguet. He is a government employee at the Provincial Planning and Development Office, Capitol, La Trinidad, Benguet. He was first employed at the Provincial Engineer's Office on April 11, 1978. Sometime in 1980, he was appointed as Project Development Officer of the Provincial Planning and Development Office and continuously up to the present.

Wilson Pideli is his brother. In 1997, his brother Wilson had a construction project along Tinongdan, Itogon, Benguet. His brother asked him if he knows of a hardware which can extend him credit for

construction materials. He approached the manager of Mt. Trail Farm Supply and Hardware, Mrs. Editha Paayas, who then said that they could extend credit to his brother. As of 1997, his brother owed the hardware the amount of P279,000.00 for the construction materials supplied by the hardware, namely: reinforcement bars, cement, tire wires and other construction materials. This amount was paid to the hardware by installment. The first installment was paid in June 1997 when the main contractor paid his brother. His brother gave him P179,000.00 at his residence and he was the one who paid the hardware which issued him a receipt (Exhibit 1-C). After the project was completed, his brother gave him P100,000.00 on November 18, 1997 while he, his brother and Placido Cancio were at the Rose Bowl Restaurant. He went to the hardware but the manager was not there. One of the staff then informed him that the manager will still have to compute the interest of their loan credit and so he deposited P75,000.00 which was covered by a receipt (Exhibit 1-B). Their account was finally computed in December 1997 and so he paid their balance of P25,000.00. All in all, he paid the hardware the amount of P279,000.00.

When his brother tendered to him the P100,000.00 at the Rose Bowl Restaurant, Placido Cancio was also there discussing the expenses. The money which his brother got from the main contractor, Boy Cupido, the partner of the late Engineer Lestino, was being held by his brother and not Placido Cancio.

The total cost of the materials taken by his brother from the Mt. Trail Farm Supply is P279,000.00. On June 10, 1997, he paid the initial payment of P179,000.00 covered by Exhibit 1-C issued by the sales boy Cris. The second partial payment was made on November 18, 1997 in the amount of P75,000.00 covered by Exhibit 1-B issued by Mrs. Editha Paayas. The last time that he paid was on December 18, 1997 in the amount of P25,000.00. This was not yet the full payment because according to Mrs. Paayas she still has to compute for the interest. (TSN, May 2, 2000, pp. 19-20). Aside from the amount of P279,000.00 representing the materials taken by his brother, he still has an outstanding account with Mt. Trail Farm Supply charged in his name. This is the reason why in the receipt it was noted as part payment (TSN, May 2, 2000, p. 21).

On cross-examination, Ernesto Pideli said that he was never a partner of his brother. It was only in 1997 that his brother sought his assistance to look for a hardware where he can buy construction materials on credit. All materials ordered by Wilson for the project were placed in his account because it was easier for the hardware to contact him at their office which is nearer. After the project in Itogon, Wilson stopped his construction project. He denies having taken the P65,000.00. He does not also know where the amount went (TSN, May 2, 2000, p. 18).

On redirect, he said that when he tendered the first payment of P179,000.00, a statement of account was prepared by the salesboy of Mt. Trail Farm Supply and Hardware (Exhibit 1-D). He was furnished a copy of the statement of account. After the first and second payment,

other materials were obtained by his brother, this is the reason why they still have a balance of P20,000.00 to be settled within the hardware.<sup>[11]</sup>  
(Underscoring supplied)

### **RTC and CA Dispositions**

On March 13, 2001, the RTC handed down a judgment of conviction, disposing in this wise:

WHEREFORE, the guilt of the accused having been proven beyond reasonable doubt, judgment is hereby rendered CONVICTING the accused of the crime of theft and hereby sentences him after applying the Indeterminate Sentence Law, to suffer imprisonment from 4 years of *prision correccional* medium as minimum, to 12 years of *prision mayor* maximum as maximum (applying Art. 309(1) of the Revised Penal Code) and to reimburse the private complainant the amount of P49,500.00 plus interest thereon at the rate of 6% per annum from date of filing of the complaint up to the time it is actually paid.

Costs against the accused.

SO ORDERED.<sup>[12]</sup>

In convicting petitioner of theft, the trial court ratiocinated:

x x x Upon evaluation of the testimonies of the witnesses, the court finds the lone testimony of the private complainant more credible than the testimony of the defense witnesses. The testimony of the private complainant is positive and credible, sufficient to sustain a conviction even in the absence of corroboration. The testimony of defense witness Wilson Pideli was glaringly inconsistent and contradictory on material points. At the initial stages of his (Wilson Pideli) testimony on direct examination, he categorically stated that it was he and his laborers who implemented the project (rip rap project along Dalupirip Road, Itogon, Benguet) awarded to him by ACL Construction. The private complainant had no participation in the project (TSN, October 18, 1999, pp. 9-10). Later, in his narration of what actually transpired between him, his brother Ernesto Pideli and private complainant at the Rose Bowl Restaurant on November 17, 1997, he said that after computing their expenses, he entrusted to the private complainant the following amounts: 1. P15,000.00 to be given by the private complainant to the laborers who excavated for the project; 2. P500.00 to be given by the private complainant to Mr. Apse as payment for the cement test; 3. P10,500.00 because he (private complainant) was pestering him (TSN, October 18, 1999, pp. 14-16). The question is, if the private complainant had no real participation in the project subject of this case, why would Wilson Pideli be entrusting such amounts to the former. If really private complainant has no involvement whatsoever in the project, why was he present at the: 1. Mido Restaurant where Josephine Bentes was disbursing final payments to the subcontractors of the project, and 2. At the Rose Bowl Restaurant when the Pideli brothers were computing the expenses incurred in the project and also presenting his list of expenses (Exhibit B, Exhibit 2). Later, in his testimony on direct, Wilson Pideli said

that when he started the project, private complainant asked him to join him and he (Wilson Pideli) agreed provided the private complainant share in the expenses. Private complainant did not, however, share in the expenses nor did he provide any equipment (TSN, October 18, 1999; p. 13) yet he entrusted the aforementioned amounts to Cancio. On cross-examination, Wilson Pideli admitted that he gave private complainant P10,500.00 despite the fact that he did not share in the expenses for the implementation of the project (TSN, November 22, 1999, pp. 5-6). Such act is abnormal and contrary to human behavior and experience. The only plausible and logical conclusion is, private complainant and Wilson Pideli were partners in a joint venture. Just as private complainant did, in fact, stated, he was the one who provided the laborers and some equipments used in the project. Thus, it is only logical that the money for the payment of the wages and the cement test were entrusted to him because it was his responsibility/obligation to pay them and not because they were his neighbors as the defense would like this court to believe. The reason propounded by Wilson Pideli to explain his actuations is too flimsy for this court to believe. Furthermore, Wilson Pideli admitted on cross that while the case was filed by private complainant against his brother Ernesto Pideli, he submitted an affidavit with the Office of the City Prosecutor of Baguio City. In Paragraph 1 of the said affidavit which was read into the records of the case, he (Wilson Pideli) alleged that "Placido Cancio was his companion in the project at Dalupirip Road, Itogon, Benguet which he subcontracted for ACL Construction." When asked by the Public Prosecutor what he meant by his statement, Wilson Pideli categorically admitted that Placido Cancio (the private complainant) is his partner in the endeavor along Dalupirip Road, Itogon, Benguet (TSN, November 22, 1999, p. 8). The testimony of Wilson Pideli, instead of being corroborative, in effect, weakened the cause of the defense. The rule is that witnesses are to be weighed, not numbered. It has not been uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness (*People v. Gondora*, 265 SCRA 408). Truth is established not by the number of witnesses but by the quality of their testimonies (*People v. Ferrer*, 255 SCRA 190).

It is unfortunate that the evidence on record does not disclose the agreement between the private complainant and Wilson Pideli with regards to the sharing of the capital (expenses) and profits on the project. Article 1790 of the Civil Code, however, provides: "Unless there is stipulation to the contrary, the partners shall contribute equal shares to the capital of the partnership." Paragraph 1 of Article 1797 of the same code further provides: "The losses and profits shall be distributed in conformity with the agreement. If only the share of each partner in the profits has been agreed upon, the share of each in the losses shall be in the same proportion." Thus, it is safe for the court to conclude that as a partner in the joint venture, Placido Cancio is entitled to 1/2 share in the net proceeds, i.e.  $P130,000.00 \div 2 = P65,000.00$ .

The accused insists that private complainant and his brother were not partners in the subcontract project. According to him, he merely acted as guarantor of his brother so the latter can withdraw construction materials on credit from the Mt. Trail Farm Supply and Hardware. As the guarantor,