

SECOND DIVISION

[G.R. No. 148859, September 24, 2002]

HERMINIGILDO LUCAS, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

HERMINIGILDO LUCAS was charged with theft before the Regional Trial Court of Binangonan, Br. 69, Rizal, together with Wilfredo Navarro and Enrique Lovena. The Information^[1] alleged that on or about 8 June 1990 the three (3) accused, conspiring, confederating and mutually helping one another, with intent to gain, willfully, unlawfully and feloniously stole and carried away one stereo component, a 14-inch colored TV, an electric fan, twenty-three (23) pieces of cassette tapes, one (1) box of car toys, four (4) pieces of Pyrex crystal bowls, cash of P20,000.00 and jewelry worth P10,000.00, valued at P100,000.00 all belonging to Luisito Tuazon.

Petitioner Herminigildo Lucas and his co-accused Wilfredo Navarro pleaded not guilty. Their co-accused Enrique Lovena remains at large.

Private complainant Luisito Tuazon testified that on 8 June 1990 he arrived home from work at around six o'clock in the morning to find the door of his house ajar. He was residing at Barrio Tagpos, Binangonan, Rizal. No one else was at home since his wife was in Singapore and his children were with his relatives. His television set and stereo component were missing, as well as an electric fan, kitchen utensils, cassette tapes and toys, cash in the amount of P20,000.00 and jewelry of his wife worth P10,000.00.^[2]

Patrolman Edgardo Fuentes responded to Luisito's call for help. Pat. Fuentes testified that in the early morning of 8 June 1990 a certain Tuazon arrived at the police outpost in Tayuman and asked for help concerning a burglary in his house. He conducted an investigation of the house and its surroundings and recovered an empty bag where the cash and jewelry were placed. He returned to the outpost but was asked to come back by the same Tuazon who had found some of the stolen items outside a neighbor's house.^[3] These were the television set, the stereo component, electric fan, toy cars and cassette tapes.

At around two o'clock in the morning of 8 June 1990 Shirley Blanquisco a niece of Luisito Tuazon and her boyfriend were inside the *balutan* factory which was just beside Luisito's house. While Shirley and the boyfriend were talking, they heard a sound coming from the house of her uncle Luisito. They peeped through a window and saw the three (3) accused coming out of the front door. Herminigildo Lucas was carrying an electric fan while Wilfredo Navarro and Enrique Lovena each carried a box. Shirley knew who they were as they bought salted eggs from her and she had seen them pass by her house before. She could see them clearly as there was a light above the front door of the house when they passed. Immediately after the

incident, she went home but was not able to tell her uncle what she had seen until much later.^[4]

Reynaldo Raymundo corroborated Shirley Blanquisco's testimony. He said that at around the same time and in the same place, he was on his way home to Angono, Rizal, and was waiting for a ride. He felt like urinating so he relieved himself. While doing so, he saw the three (3) accused coming out of a house, one of them carrying an electric fan and the other two (2) were carrying one box each. He could see the three (3) very well since the street was lighted and they were only some thirty (30) meters away from him. The thieves loaded the articles onto a passing tricycle which then drove away.^[5]

Petitioner Lucas and his co-accused Navarro put up the defense of alibi and denial. Lucas claimed that at around the time the theft took place, he was sound asleep in his home in Tagpos, Binangonan, Rizal, although he worked as a jeepney driver for his employer in Project 4, Quezon City. At around four o'clock every morning he would leave his house for Quezon City to get the vehicle from his employer and ply his route from five o'clock in the morning to eight o'clock in the evening. He would return home at around nine o'clock in the evening. On 7 June 1990 he followed this routine. Upon returning home in the evening, he had dinner and afterwards watched television. He went to sleep at around ten o'clock in the evening and did not wake up until four o'clock the following morning.^[6] His wife Violeta Lucas also took the witness stand and confirmed his testimony.^[7]

The trial court found Lucas and Navarro guilty as charged and sentenced them to imprisonment ranging from four (4) years, two (2) months and one (1) day of *prision correccional* as minimum, to ten (10) years of *prision mayor* as maximum, and to pay the costs. The court also ordered them to jointly and severally return the amount of P30,000.00 corresponding to cash and the value of the jewelry taken.^[8] As basis for the penalty imposed, the trial court considered only the P30,000.00 representing the cash and the value of the jewelry which were unrecovered. In the opinion of the trial court, Luisito's allegation that the stolen items were valued at P100,000.00 was inconclusive since there was no documentary nor oral evidence presented to establish the actual value of all the things stolen.^[9]

The two (2) accused went to the Court of Appeals which affirmed their conviction and even raised the period of their imprisonment to from six (6) years of *prision correccional* as minimum to seventeen (17) years of reclusion temporal as maximum.^[10] The appellate court based the penalty on private complainant's claim that the things stolen were valued at P100,000.00. It cited Art. 309, par. (1), of The Revised Penal Code which provides that when the value of the stolen article exceeds P200,000.00, *prision mayor* in its minimum and medium periods shall be imposed in the maximum, plus one (1) year for every P10,000.00 in excess thereof but the total penalty shall not exceed twenty (20) years of reclusion temporal.^[11]

Petitioner Lucas first alleges that it was impossible for conspiracy to have existed among the accused. He claims he did not know his co-accused Navarro and Lovena; neither did they know him on or before 8 June 1990. Petitioner raises the possibility that he could have been mistaken for David Quiozon, a defense witness for co-accused Navarro, and who was with Navarro from around 9:00 o'clock to 10:00 o'clock in the evening on 7 June 1990 drinking beer at a store near the place where

the crime was committed.^[12] Lucas and Quiozon allegedly resembled each other as they both had similar physical appearance with seven (7) upper teeth missing.^[13]

The finding of conspiracy is further alleged to be without basis because the testimony of prosecution witnesses Shirley and Raymundo that all of the accused placed the stolen items in a tricycle and boarded the same vehicle in leaving the scene of the crime, negates the declaration of complainant Tuazon and Pat. Fuentes that the stolen items were recovered under a bougainvillea plant at a neighbor's house. Petitioner explains that the alleged stolen items could not have been asported from the house of complainant and placed under the bougainvillea plant and at the same time loaded into a tricycle as testified to by Blanquisco and Raymundo.

Conspiracy need not be proved by direct evidence of a prior agreement to commit the crime. It may be deduced from the concerted acts of the accused, indubitably demonstrating their unity of purpose, intent and sentiment in committing the crime. Thus, it is not required that the accused were acquainted with one another or that there was an agreement for an appreciable period prior to the occurrence. It is enough that the accused acted in concert at the time of the commission of the offense and that they had the same purpose or common design, and that they were united in its execution.^[14]

In the case before us, Lucas, Navarro and Lovena demonstrated their agreement to commit the theft by their unified acts of taking Luisito Tuazon's personal belongings away from his home and boarding a tricycle together to leave the *locus criminis*. Conspiracy can be inferred from their actions.

There is likewise no merit in the argument that the testimonies of the prosecution witnesses negate the conspiracy. For purposes of clarification, Blanquisco only testified that she saw the three (3) accused coming out of Tuazon's house carrying an electric fan and two (2) boxes. She did not see the accused load those things into a tricycle and make their getaway. Raymundo corroborated Blanquisco's testimony as he too saw the accused coming out of a house carrying the things mentioned, and in addition, saw the accused carry the things onto a tricycle and drive away. On the other hand, Luisito Tuazon and Pat. Fuentes recovered the television set, stereo component, toy cars, cassette tapes and electric fan.

Petitioner also assails the credibility of prosecution witness Shirley Blanquisco. He claims that being a niece of the complainant, Blanquisco has a personal motive in testifying against him. He pointed out inconsistencies in her testimony that allegedly show that she was brazenly lying. First, she claimed that, at the time of the incident, complainant's wife and children were present in the house. This was belied by complainant Tuazon's testimony that his wife was in Singapore and his children were staying with relatives. Second, she declared during the trial that she told complainant about the alleged burglary as early as eight o'clock in the morning of 8 June 1990. However, in complainant's sworn statement, he stated that as of eleven o'clock in the morning he had as yet no knowledge of the identities of the persons responsible for the theft. Further, Blanquisco stated in her *Sinumpaang Salaysay* that it was her father to whom she first disclosed the incident that transpired in the evening of 8 June 1990.

In petitioner's opinion, the better and only witness to the crime is the child Jasmin Jamin. Pat. Fuentes named Jasmin Jamin as a witness in his *Sinumpaang Salaysay*