

## FIRST DIVISION

[ G.R. No. 128095, January 19, 2001 ]

**MANUEL HUANG CHUA, AND NELSON (NESTOR) DAGANON GO,  
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND THE  
COURT OF APPEALS, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

#### The Case

The case is an appeal *via certiorari* from the decision of the Court of Appeals<sup>[1]</sup> modifying that of the Regional Trial Court, Branch 172, Valenzuela, Metro Manila,<sup>[2]</sup> which acquitted Paquito Lu Andaliza but affirmed the conviction of petitioner Manuel Huang Chua and sentenced them to an indeterminate imprisonment of ten (10) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, for two (2) counts of attempted qualified theft, and affirmed the conviction of petitioner Nelson (Nestor) Daganon Go and sentenced him to an indeterminate imprisonment of six (6) years of *prision correccional*, as minimum, to fifteen (15) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, for three (3) counts of attempted theft.

#### The Facts

Accused Paquito Andalaza and petitioner Manuel Huang Chua (hereafter "Paquito" and "Manuel") were employees of Clothman Knitting Corporation (hereafter "Clothman"). Paquito was a collector and caretaker of Clothman for about eight (8) months before he was dismissed. Manuel was over-all checker and caretaker of Clothman for almost a year before he was discharged. Petitioner Nelson (Nestor) Go Daganon (hereafter "Nestor") was a contractor/buyer of scrap materials from Clothman.<sup>[3]</sup>

We state the facts as appreciated by the trial court and the Court of Appeals:<sup>[4]</sup>

On October 16, 1989, at around 10:30 a.m., prosecution witness Nixon Uy Lee, Division Manager of Clothman (hereafter "Mr. Lee") was in his office when the company security guard, a certain Macaraeg Policarpio reported that a truck owned by Nestor was about to leave the compound. Apparently, the truck was only supposed to contain scrap materials such as plastic cones. However, upon inspection, the truck was loaded with finished materials, which were not authorized to be brought out by the truck.<sup>[5]</sup>

Mr. Lee discovered that the truck was loaded with finished fabric and cones of yarn valued at one hundred five thousand pesos (P105,000.00).<sup>[6]</sup> An inventory of the

items found in the truck was prepared. An employee of Nestor drove the truck. He was also inside the truck.<sup>[7]</sup>

Mr. Lee asked Nestor why he was bringing finished products out of the compound. Nestor answered that Paquito and Manuel talked him into it and that they agreed that after the goods were sold, the three of them would share in the proceeds. When the truck was apprehended and while Mr. Lee was inspecting the same, Manuel and Paquito were supposedly in the compound, but not near the truck. When Mr. Lee confronted Manuel and Paquito, they disavowed any involvement in the incident.<sup>[8]</sup>

To legitimize the transport of the goods out of the compound, a gate pass was given to the guard. The gate pass was issued by Annabelle Go, Executive Secretary of Clothman. It was signed by Manuel, authorizing the release of the goods and by Nestor as bearer of the goods.

All of these happened in the morning to mid-afternoon as the taking of the inventory took two hours and the truck was allowed to leave the compound at two o'clock p.m. It was only between the hours of nine to nine-thirty p.m. when the matter was reported to the police.<sup>[9]</sup> To explain the delay in reporting the incident, the prosecution stated that Mr. Lee and Nestor both had previous engagements they had to attend to in the afternoon.<sup>[10]</sup>

Prosecution witness Maria Susan Chua, Officer In-Charge of Personnel (hereafter "Ms. Chua") testified that during the early morning of October 16, 1989, security guard Macaraeg Policarpio reported to her that the day before, which was a Sunday, he saw Manuel and Paquito in the company's yarn warehouse putting fabrics inside sacks. On account of the report, she instructed the security guard to closely supervise Manuel and Paquito as it was not their job to put fabrics inside sacks. According to Ms. Chua, she was with security guard Policarpio Macaraeg when they reported the matter of the intercepted truck to Mr. Lee. Ms. Chua also helped prepare the inventory of the truck's contents on October 16, 1989.<sup>[11]</sup>

Patrolman Arnold Alabastro testified that Paquito, Manuel and Nestor admitted to him their involvement in the crime. However, even the prosecution admits that such "admissions" were made before they were apprised of their constitutional rights.<sup>[12]</sup>

On October 17, 1989, Assistant Provincial Prosecutor Miguel C. Reyes of Bulacan filed an information with the Regional Trial Court, Valenzuela, Metro Manila, for attempted qualified theft against Paquito and petitioners Manuel and Nestor. We quote:

"That on or about the 16th day of October, 1989, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then employed as overseers/employees and contractor, respectively of Clothman Knitting, and as such have access to its goods and merchandise, conspiring, confederating together and helping each other, did then and there willfully, unlawfully and feloniously, with intent of gain and grave abuse of confidence and without the knowledge and consent of the owner thereof, commence the commission of the crime of qualified theft directly by overt

acts, that is by taking away and removing eight (8) bundles in sack of clothing materials/finished products and rolls of thread amounting to P105,000.00 from the bodega of the Clothman Knitting and stealthily loaded the same in the truck, and if the said accused did not accomplish their unlawful purpose, that is, to steal, take and carry away the said eight (8) bundles in sacks of clothing material/finished product and rolls of thread, it was not because of their own voluntary desistance, but because of the timely discovery of the said attempt by the security guard of the company.

Contrary to law." [13]

On November 20, 1989, upon arraignment, Paquito, Manuel and Nestor all pleaded "not guilty" to the offense charged.[14] Trial ensued.

#### The Decision of the Regional Trial Court

On July 17, 1991, the trial court rendered a decision finding accused Paquito, Manuel and Nestor guilty, in this wise:

"WHEREFORE, in view of the foregoing, the Court finds Manuel Huang Chua and Paquito Lu Andaliza guilty beyond reasonable doubt of the crime of Attempted Qualified Theft and hereby sentences them to suffer the indeterminate penalty of imprisonment of TEN (10) YEARS as minimum to TWENTY (20) YEARS as maximum (2 counts each), with all the accessory penalties provided by law, and to pay the costs. The Court finds Nestor Go guilty beyond reasonable doubt of Attempted Theft and hereby sentences him to suffer the indeterminate penalty of imprisonment of SIX (6) YEARS as minimum to FIFTEEN (15) YEARS FOUR (4) MONTHS and ONE (1) DAY as maximum (three (3) counts) with all the accessory penalties provided by law and to pay the costs. Due to the recovery of the materials, no civil indemnity is awarded.

SO ORDERED." [15]

In finding Paquito, Nestor and Manuel guilty, the trial court was persuaded by the following: (1) **Mr. Lee's written statement given to the police**. The trial court reasoned that since the statement was given on the evening of the same day that the incident occurred, there was no time to fabricate a story. Furthermore, since it was given during an unholy hour of the night, at eleven thirty in the evening, it stands to reason that Mr. Lee was truly aggrieved; (2) **The inventory prepared by Mr. Lee and Ms. Chua** which the court considered as corroborative; and (3) **The pictures of the items supposedly unloaded from the intercepted truck** were likewise considered; and (4) **Pat. Alabastro's testimony that Nelson admitted to him Manuel's participation in the crime** was persuasive of the fact of the guilt of the accused.[16]

In due time, Manuel and Nestor appealed to the Court of Appeals.[17]

#### The Decision of the Court of Appeals

Rejecting the appeal of petitioners Manuel and Nestor, the Court of Appeals held that

the testimonies of the prosecution witnesses positively identifying Nestor on board the truck loaded with finished fabrics were enough to uphold his conviction. The Court of Appeals applied the oft-quoted rule that positive testimony prevails over a defense of *alibi*.<sup>[18]</sup>

Affirming Manuel's conviction, the Court of Appeals relied on the gate pass issued by Annabelle Go. The Court of Appeals reasoned that it was part of Manuel's job as a trusted employee to check and inspect outgoing vehicles, and that notwithstanding the fact that Manuel "must have known that there were indeed fabrics mixed with scrap items" inside the truck, he still requested Annabelle Go to issue a gate pass to clear its exit. To the Court of Appeals, such evinced Manuel's "common agreement" with Nestor to commit the thwarted theft.<sup>[19]</sup>

Acquitting Paquito, the Court of Appeals declared that there was "no evidence linking (him) to the crime charged."<sup>[20]</sup>

On August 7, 1996, the Court of Appeals promulgated its decision, thus:

"WHEREFORE, the judgment appealed from is MODIFIED in that appellant Paquito Lu Andaliza is ACQUITTED of the offense charged. The rest of said judgment is AFFIRMED. Costs against appellants Manuel Huang Chua and Nelson (Nestor) Daganon Go.

"SO ORDERED."<sup>[21]</sup>

On August 29, 1996, petitioners filed with the Court of Appeals a motion for reconsideration of the above quoted decision<sup>[22]</sup> with the Court of Appeals.<sup>[23]</sup>

On February 12, 1997, the Court of Appeals denied petitioners' motion for reconsideration for lack of merit.<sup>[24]</sup>

Hence, this appeal.<sup>[25]</sup>

#### The Court's Ruling

The question is one of law -- whether the prosecution met the quantum of proof necessary to establish the petitioners' guilt beyond reasonable doubt. We rule in the negative. Hence, we resolve to acquit petitioners of the charges against them.

In this jurisdiction, the main consideration is not whether the Court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. To justify a conviction, there must be moral certainty of guilt.<sup>[26]</sup> In this case, such moral certainty was not established for reasons we shall discuss *in seriatim*.

**First**, the written statement that Mr. Lee gave to the police on October 16, 1989, with respect to Manuel and Paquito's participation in the crime and the testimony of Ms. Chua<sup>[27]</sup> were hearsay and had no probative value. Mr. Lee and Ms. Chua merely narrated what the security guard Macaraeg Policarpio reported to them. A witness is competent to testify only to those facts which he knows of his personal knowledge; that is, which is derived from his own perception.<sup>[28]</sup> There is no