

THIRD DIVISION

[G.R. No. 143561, June 06, 2001]

**JONATHAN D. CARIAGA, PETITIONER, VS. COURT OF APPEALS,
PEOPLE OF THE PHILIPPINES AND DAVAO LIGHT AND POWER
CO., RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

This is a petition for review on *certiorari* seeking the reversal of the decision^[1] of the Court of Appeals in CA-G.R. No. 13363 entitled *People v. Jonathan Cariaga*, promulgated on April 24, 1995 affirming the decision of the Regional Trial Court of Davao City, Branch 11,^[2] which convicted petitioner Jonathan Cariaga of the crime of Qualified Theft.

In an amended Information^[3] dated October 3, 1989, petitioner was charged with qualified theft as follows:

"That sometime during the period from October, 1988 to January, 1989, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being then an employee of Davao Light & Power Co. Inc., Davao City, and as such has access to the said company, with intent to gain, with grave abuse of confidence and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away electrical equipment, supplies and materials totaling P7,038.96 belonging to Davao Light & Power Company, to the damage and prejudice of the said company, in the aforesaid amount of P7,038.96.

Contrary to law."

The factual background of this case as summarized by the trial court and adopted by the Court of Appeals is as follows:

"Luis Miguel Aboitiz, employed at the time of the incident in question and for sometime prior thereto as Systems Analyst of the Davao Light & Power Company, Inc. (DLPC), whose duty was to devise systems, procedures or controls to promote efficiency, prevent losses due to waste, pilferage or theft of company property, etc., received reports that some private electricians were engaged in the clandestine sale of DLPC materials and supplies. He initiated a covert operation with the following objectives: (1) ascertain how DLPC materials were being stolen, the frequency of the thefts, who were perpetrating the thefts; and (2)

`catch' at least one (1) DLPC employee that may be involved.

In October, 1988, he sought the assistance of Sgt. Fermin Villasis, Chief, Theft & Robbery Section, San Pedro Patrol Station, Davao METRODISCOM. He also hired one Florencio Siton, a welder by occupation and a Civilian Home Defense Forces (CHDF) member, as his undercover agent under the pseudonym `Canuto Duran', an `electrician from Kabakan, Cotabato.'

`Canuto Duran' struck an acquaintance with one Ricardo Cariaga, a private electrician, at the Miguel Store, situated in front of the DLPC office along Ponciano Reyes (now Bangoy) Street, Davao City. He told Ricardo that his boss ordered him to buy electrical materials to be brought to Diwalwal, a gold panning area in Monkayo, Davao (formerly Davao del Norte).

Ricardo offered to supply `Canuto Duran' with electrical materials, saying that he has a cousin from whom he can procure the same. `Canuto' purchased small electrical wires which, according to Ricardo, came from his cousin, Jonathan Cariaga, nicknamed Totoy.

On November 17, 1988, Ricardo introduced `Canuto' to Jonathan at Miguel Store. It turned out that Jonathan was the assigned driver of DLPC Service Truck `S-143' assigned to Work Gang `Venus'. `Canuto' inquired from Jonathan if he could supply him with two (2) 15 KVA transformers. Jonathan replied that he could for P16,000. `Canuto' placed an order for the transformers. The deal did not materialize, however, as `Canuto's' boss (Miguel Aboitiz) who would provide the funds happened to be out of town. Jonathan appeared piqued. To appease him, `Canuto' assured him that they shall continue their `business' relationship. Not long after, he placed an order for a lightning arrester. Ricardo, Jonathan and `Canuto' agreed to meet at the corner of Jacinto and Arellano Streets.

Jonathan got DLPC Truck `S-143' which was inside the DLPC Compound at Ponciano Reyes Street and drove it to the designated meeting place, leaving `Canuto' and Ricardo at Miguel Store. After a while, Ricardo and `Canuto' followed. On the way, `Canuto' gave Ricardo P1,800. At the meeting place, Ricardo gave the money to Jonathan, after which the latter got a lightning arrester (Exh. M) from his truck's toolbox and handed it to Ricardo, who, in turn gave it to `Canuto'.

On January 23, 1989, Ricardo accompanied `Canuto' to Jonathan's house at Doña Pilar Village, Sasa, Davao City, to get a roll of Electrical Wire No. 2 (300 meters long) valued P5,010 (Exh. J) and 2 lightning arresters with cutout, valued P1,185.75 each, or P2,371.50 for both (Exhs. I and I-1) from Jonathan. `Canuto' paid P2,500.00 only for the items. He gave the money to Ricardo; Ricardo, in turn, gave it to Jonathan.

Siton's undercover work came to an abrupt end on February 1, 1989 when members of Sgt. Villasis' team `apprehended' `Canuto' and turned him over, including the electrical wires that he previously purchased from

Jonathan through Ricardo, to the San Pedro Patrol Station. The team was unable to arrest Ricardo as he had already left when the team arrived at his house. `Canuto Duran' `confessed' in order to persuade Ricardo - and the others who were involved - to likewise come out with the truth. Thus, when Ricardo and Sergio Jamero appeared at the San Pedro Patrol Station on the invitation of the police, they confessed to their crimes (Exhs. A and G, respectively).

Ricardo revealed that he acted as a fence for his cousin, Jonathan Cariaga and `Canuto Duran' on November 27, 1988 and again on January 23, 1989; that the items that `Canuto Duran' bought from Jonathan, thru him, were DLPC properties.

Jamero also confessed that Ricardo was his fence in disposing of DLPC electrical materials that he pilfered but the items were not sold to `Canuto Duran' but to someone else.

The recitals of Ricardo and Jamero in their sworn statements are substantially corroborated by entries in the Daily Record of Events (blotter) of the San Pedro Patrol Station (Exhs. B, B-1; C, C-1; D, D-1; E, E-1; and F, F-1).

The accused was also invited to the San Pedro Patrol Station but, according to Sgt. Villasis, he refused to give a statement.

The prosecution was unable to present Ricardo as its witness as the subpoena could not be personally served upon him as according to his wife, Antonieta Cariaga, he was in Sultan Kudarat and the date of his return to Davao City was not certain (Exhs. Y, Y-1).

Acting on the extrajudicial confessions of the suspects, the reports of Siton to the police and the bust, the team under Sgt. Villasis recovered the following items:

1. 1 pc. Lightning Arrester MEW Valve Type V (Exh. "I");
2. 1 pc. Lightning Arrester MEW Valve Type (Exh. "I-1");
3. 1 pc. Lightning Arrester MEW Thorex Type (unmarked);
4. 1 pc. Fuse Cut-out S&C Brand with Bracket (unmarked);
5. 1 pc. Fuse Cut-out with Fuse Holder, AB Chance (Exh. "M");
6. 1 roll (330 meters) Aluminum Wire No. 8 (Exh. "K");
7. 1 roll (300 meters) Aluminum Wire No. 2 (Exh. "J");
8. 1 roll (36 coils) Aluminum Wire No. 6;) One of these
9. 1 roll (74 coils) Aluminum Wire No. 8;) rolls is
10. 1 roll (41 coils) Aluminum Wire No. 2;) marked Exh.
11. 1 set bracket for cut-out.) "AA"

Sgt. Villasis testified that Exh. "U" and Exh. "AA" were the wires recovered from Siton during the bust while the rest, particularly Exhs. "I" and "I-1" "J" and "M" were recovered at Roselo Toledo's house where Siton ("Canuto Duran") brought them; x x x."^[4]

According to the trial court, "the prosecution's evidence considered as a whole is strong, clear and convincing. The statements in the extrajudicial confessions of Ricardo Cariaga (Exhs. A; O,O-1) implicative of the accused as the source of the stolen articles, corroborated by Siton's testimony and the police records (Exhs. D to F-2, inclusive) are formidable compared to the mere puny denial of the accused."

In due course, the trial court on November 18, 1991, rendered judgment, the decretal portion reading:

"WHEREFORE, the Court finds accused Jonathan Cariaga guilty beyond reasonable doubt of theft, qualified by grave abuse of confidence, under Article 310, in relation to Article 309, par. 2, of the Revised Penal Code, as charged, aggravated by the use of motor vehicle which is not offset by any mitigating circumstance. Applying the Indeterminate Sentence Law, he is sentenced to suffer an indeterminate penalty ranging from TEN (10) Years, EIGHT (8) MONTHS AND ONE (1) DAY, of prision mayor, as minimum, to EIGHTEEN (18) YEARS, TWO (2) MONTHS AND TWENTY ONE (21) DAYS of reclusion temporal, as maximum; and to pay the costs.

No civil indemnity is awarded to DLPC, the private complainant, as the items stolen were recovered. The return to DLPC of all the items recovered by the police is ordered.

SO ORDERED."^[5]

On appeal by Jonathan Cariaga, the Court of Appeals affirmed on April 24, 1995, the decision of the trial court. The Court of Appeals reasoned out that the sworn statement of Ricardo Cariaga who did not testify in open court during the criminal proceedings against petitioner is admissible in evidence and properly considered by the trial court as this was annexed as part of DLPC's position paper submitted to the National Labor Relations Commission in Case No. RAB-11-05-00308-89, a complaint filed by the accused for illegal dismissal, as an exception to the hearsay rule under Section 47, Rule 130 of the Revised Rules of Court. The Court of Appeals likewise upheld the credibility of Siton's testimony which corroborated that of Ricardo Cariaga's sworn statement.

Hence, the instant petition raising the following errors:

- "I The trial court erred in admitting in evidence the sworn statement of Ricardo Cariaga without him taking the witness stand since it violates the fundamental right of the accused to meet the witnesses against him face to face. Hence, Ricardo Cariaga's sworn statement is not admissible under Section 1(f), Rule 115 of the Revised Rules of Court for failure of the prosecution to comply with the strict requirements of said rule, to wit:
- a] Ricardo Cariaga did not orally testify in the labor case;
 - b] Inability to testify must be for a grave cause almost

- amounting to death and the prosecution must exhaust all available remedies to secure the presence of its witnesses at the trial;
- c] That the former proceeding must also be criminal in nature.
- II. The appellate court erred in holding that the lone testimony of the prosecution's alleged eyewitness who is a paid witness and whose testimony was admittedly corrected or revised on the witness stand and which materially and significantly varies with his previous sworn statement on very vital and pivotal details is sufficient to prove the guilt of the accused beyond reasonable doubt.
- III. The appellate court erred in failing to appreciate the reasonable doubt engendered by the exculpatory statements of the superiors of the accused in favor of the latter."^[6]

In his first assignment of error, petitioner argues that the sworn statement of Ricardo Cariaga who was not presented in court is inadmissible. The prosecution presented in evidence as Exh. P-2, Ricardo Cariaga's sworn statement which was attached as Annex "8-A" to DLPC's position paper in the labor case filed by Jonathan Cariaga against the latter for illegal dismissal. The trial court admitted the same in evidence despite the timely objection of the defense counsel; and the Court of Appeals upheld the admission thereof citing as basis, Section 47, Rule 130 of the Rules on Evidence and Section 1(f), Rule 115 of the Rules on Criminal Procedure.

Section 47 of Rule 130 reads:

SEC. 47. Testimony or deposition at a former proceeding. - The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him.

More specific however is the rule prescribed in Rule 115, Section 1(f) of the Rules of Court in respect of the admissibility in evidence in a criminal case of the previous testimony of unavailable witnesses which reads:

Section 1. Rights of accused at the trial. - In all criminal prosecutions, the accused shall be entitled:

- f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having had the opportunity to cross-examine him;

In *Toledo, Jr. vs. People*,^[7] this Court emphasized that "the preconditions set forth