

FIRST DIVISION

[G.R. No. 125451, January 20, 2000]

**MARCIANA MUÑOZ, PETITIONER, VS. THE HONORABLE COURT
OF APPEALS AND OFELIA SANTOS, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for the review of the Court of Appeals decision dated January 9, 1996 affirming the conviction of petitioner Marciana Muñoz for the crime of theft, and sentencing her to suffer imprisonment of eight (8) years and one (1) day of *prision mayor* as minimum to ten (10) years and one (1) day of *prision mayor* as maximum.

Petitioner was also ordered to indemnify the complainant, Mrs. Ofelia Bernardino Santos in the amount of ₱3,000,000.00 representing the value of the three barges and ₱1,000,000.00 for reparation and consequential damages.

The facts of this case as summarized by the prosecution are as follows:

The G.S Bernardino Transportation Company, Inc. (hereinafter referred to as G.S. Bernardino) is a family corporation engaged in the business of operating barges, of which Mrs. Ofelia Bernardino-Santos is the President. G.S. Bernardino had operated three barges, namely, Bernardino XVIII, XX and XXII, which were purchased on installment from the Reparations Commission (now the Board of Liquidators) as evidenced by the Contract of Purchase on Installment.^[1]

Sometime in 1981, the aforesaid three (3) barges were stranded in Puerto Galera, Oriental Mindoro to seek cover due to typhoon, causing them to be submerged partially in the water.

Consequently, Ofelia Bernardino Santos looked for somebody who could refloat the barges. Her friend Ben Ugali introduced her to Carlos de Jesus, the operating manager of Citadel Carrier. Carlos de Jesus brought her to the office of Citadel Carrier at Lope de Vega where she was introduced to Rufina Lim, the owner, petitioner Marciana Muñoz, the latter's son Efren Muñoz and Domingo Dacuyasan. She was interviewed about the whereabouts of the barges. Mrs. Santos told them that the barges were in Puerto Galera. Marciana Muñoz, Rufina Lim and Dacuyasan promised to give Mrs. Santos a quotation of the costs of refloating, but the latter never received any quotation.

Subsequently, the three barges were lost. Upon learning this, Mrs. Santos went to the NBI Office to seek help but nothing happened as she could not give any lead as to who stole the barges.

In 1988, Mrs. Santos came to know through one Peter Rivera that the three barges were in the shipyard of petitioner Marciana Muñoz. Thereafter, she talked to some employees of Citadel Carrier.

According to Genaro Chavez, he and his four companions were hired by Vicente Mauricio, Jr. and Moriel Ordas to refloat the three (3) barges in Puerto Galera and to bring the same to Citadel Carrier in Las Piñas. They agreed to do the work for the sum of P3,000.00 each. After refloating the three (3) barges, the same were towed by a tugboat.

Mr. Carlos de Jesus, Supervisor of the shipyard, recalled that sometime in 1981, three (3) barges named "Bernardino" were brought to Citadel for repair. Mr. Dacuyasan was then ordered to repair the three barges to remove the name "Bernardino" and to change it to "Doña Marciana." At the time, Louie Muñoz and Marciana Muñoz were supplying the materials to Citadel for the repair of the barges. The repairs took six (6) months to finish. Later, Mr. de Jesus learned that the three barges were brought to Citadel upon orders of Marciana Muñoz, since she is the sister of Rufina Lim, the owner of Citadel.

One Martin Aguirre, a painter at Citadel Carrier recalled having painted three (3) barges named "Bernardino" in 1981. According to him, the name "Bernardino" was changed upon instruction of Marciana Muñoz.

Rafael Yauna, a welder at Citadel, confirmed that he had occasion to do a welding job on the three barges named Bernardino. He said that during the period of repairs, Mrs. Marciana Muñoz and Louie Muñoz visited the three barges.

Before the actual theft of the barges in Puerto Galera, Vicente Mauricio, Jr., a lubricant dealer and owner/proprietor of Petroleum Products Sales, had a chance meeting with Domingo Dacuyasan who was then the Vice-President of the Citadel Carrier and business partner of Rufina Lim. Mr. Dacuyasan informed Mauricio that his boss, Mrs. Marciana Muñoz, was looking for a person who could repair and refloat her sunken barges which were then docked at Puerto Galera and tow the same to Citadel Carrier in Las Piñas. Mauricio replied that he knows of one Mr. Moriel Ordas who could perform the job. Finally, it was agreed that Mr. Ordas would perform the job of refloating the three barges for a consideration of P100,000.00. After that, Mr. Ordas hired a group of divers to perform the refloating operation. Thereafter, the three barges were actually towed to Citadel Carrier. Mr. Ordas asked for the payment of P100,000.00 but Marciana Muñoz was not there at that time. Mr. Dacuyasan assured Mr. Ordas that he will register one of the barges in the name of Mr. Mauricio until the service fee is paid and will only transfer it back to Mrs. Marciana Muñoz after payment. Hence, one of the three barges was registered in the name of Vicente Mauricio. It was made to appear that it was constructed and built by Citadel for Vicente Mauricio, Jr.

On July 15, 1981, after the amount of P100,000.00 was fully paid to Mr. Moriel Ordas, a document of sale of the barge was executed in favor of Marciana Muñoz and the barge was named "Doña Marciana 7-11-2."

As to how the barge was actually identified, Mr. Danilo Fundales, a former yard Supervisor of Bernardino Shipping Company and G.S. Bernardino Transshipping Co., Inc. who used to supervise the three Bernardino barges, was summoned by the NBI

when the latter conducted the inspection of the barges. Mr. Fundales was able to identify positively that the "Doña Marciana 7-11-2" Vessel is the barge of the complainant which he took care of since 1967. Mr. Fundales was able to pinpoint the conversions made on the vessel, the original bottom frame and the spot wherein the name "Bernardino" was cut.

It was on the basis of the above facts that petitioner was convicted of the crime of theft and sentenced to imprisonment of eight years and one day of *prision mayor* as minimum to ten years and one day of *prision mayor* as maximum.

The issues raised by petitioner in this petition for review center on the alleged lack of evidence to prove her guilt beyond reasonable doubt.

Muñoz claims that the prosecution evidence is not only weak and contradictory but some of it actually proves her innocence. To strengthen its weak case, the prosecution allegedly resorted to falsification and other fraudulent acts. Petitioner states that the prosecution failed to prove that the three Bernardino barges actually existed at the time they were allegedly stolen. She maintains that the barges she owns are entirely different from the barges supposedly lost.

As a rule, this Court does not disturb the factual findings of the trial court or the Court of Appeals in criminal cases brought up for review. In this case, however, a careful re-examination of the evidence on record reveals the presence of substantial facts and circumstances which have been overlooked and which, if properly considered, will affect the result of the case.^[2]

The record also reveals inculpatory facts and circumstances capable of two or more explanations, one of them consistent with the guilt of the accused and the other one consistent with innocence. It is the rule in such cases that we acquit the accused on grounds of reasonable doubt. The ambivalent evidence does not fulfill the test of moral certainty. It is not sufficient to sustain a conviction.^[3]

The prosecution evidence sought to establish that five (5) workers were hired by Vicente Mauricio, Jr. and Moriel Ordas to refloat the three barges beached at Puerto Galera, Oriental Mindoro; that the barges were successfully refloated and towed from Mindoro to the Citadel Carrier Shipyard in Las Piñas, Metro Manila; that it took six months to repair the three barges and restore them to good condition; that the name "Bernardino" painted or etched on the barges was removed and replaced with the name "Doña Marciana"; that all the above acts were upon orders and instructions of Marciana Muñoz; and that it was only in 1988 when the alleged informant, Peter Rivera, told her that complainant Ofelia Bernardino Santos learned of the presence of all the three barges in the shipyard of petitioner Muñoz.

Four barges were inspected and tested against the specifications of the lost Bernardino barges. Danilo Fundales, the yard supervisor of the Bernardino Transshipping Co., was able to identify only one barge, the "Doña Marciana 7-11-2" as one of the three missing barges. Fundales testified at length with the use of photographs, specifications, and other particularizations gathered from his records and memory. He identified conversions made on the barge, the bottom frame, and pointed to the spot where the name "Bernardino" had been cut out and replaced with "Doña Marciana 7-11-2." None of the three other "Doña Marciana" barges could

be identified as one of the remaining lost barges.

The decision of the trial court^[4] shows that neither "Doña Marciana II" nor "Doña Marciana III" were identified to be among the missing vessels. The two other Bernardino barges continue to be missing up to the present.

Even as the trial court ruled that the other Doña Marciana barges were different from those allegedly lost, it convicted petitioner Muñoz for the theft of all the three Bernardino barges. The one missing barge allegedly traced to petitioner Muñoz was "Doña Marciana 7-11-2" also known as "MONIVIC."

The trial court stated:

With the exception of the first barge named MONIVIC, the other two barges mentioned by the accused are different from those owned by the Bernardino Shipping which were unlawfully stolen at Puerto Galera, Oriental Mindoro, sometime in the year 1981.^[5]

Notwithstanding the lack of clear evidence that would link Marciana Muñoz to the two other missing barges, the trial court nevertheless ruled that it "is convinced that accused Marciana Muñoz is the principal accused responsible for the theft of the three (3) barges."

A prosecution witness testified that they refloated three barges. The trial court gave credence to the testimony about how three barges were towed to Citadel in Las Piñas, how the barges were repaired and rehabilitated over a six month period, how the welding jobs on three barges were accomplished and other details such as removing the name "Bernardino" from the vessels and replacing it with "Doña Marciana."

The witnesses were describing their regular jobs and how they performed them. However, that they were acting under orders and instructions from Marciana Muñoz is shaky and doubtful considering that evidence of this nature can easily be fabricated and coached for incorporation into testimony about regular jobs, which cannot be overthrown. The alleged fact that they were acting under instructions coming from Marciana Muñoz is not clear, neither was it proved.

Parenthetically, the Citadel Shipyard stopped operations and was dissolved in 1986. The witnesses were former workers who lost their jobs at the time.

The evidence to the effect that petitioner Muñoz was taking part in the operations of the ship repair firm is of dubious validity. Marciana Muñoz had no participation in the ownership and management of Citadel. She did not own a single share of Citadel. Her only identification with Citadel is that its President, Rufina Lim, is her sister. There is no plausibility to the proposition that a 61-year old woman, operating and managing several businesses in realty, shipping, and other lines, would be giving orders to salvage workers, sending instructions or telling the welder, the painter, and other workers how to do their jobs, instead of only asking Rufina Lim or any Citadel manager what results she wanted.

One witness, Rafael Yauna, a welder who used to work for Citadel stated that when he was doing welding jobs on the three barges, Marciana Muñoz and her son Louie

Muñoz, were visiting and guarding the three barges during the period of repairs. When asked in court to point to his alleged visitors while he was working, Yauna could not identify the 61-year old woman executive. Neither could he identify Louie Muñoz. He pointed to entirely different persons.^[6]

Two out of the three missing barges which were alleged by prosecution witnesses to be possessions of Marciana Muñoz were not traced to her or found among the only four barges she owned. The lower court convicted her for the theft of all three barges, although the measurement of "Doña Marciana 7-11-2" coincided with the specifications of only one lost barge. Her being found guilty for the theft of two other barges still unaccounted for was based on mere inferences.

Further, the trial court ruled that Marciana Muñoz should have asked her sister Rufina Lim or employees of the latter to deny the truth of the testimonies of the prosecution witnesses regarding the refloating of the three barges, their being towed and repaired, and the changing of their names to "Doña Marciana." The lower court held that the failure of Rufina Lim or her employees to deny these is tantamount to an admission by petitioner Muñoz.^[7]

Actually, Marciana Muñoz herself denied that she stole any barge. The sworn statement of complainant Ofelia B. Santos appended to her complaint alleges that Marciana Muñoz and her two sons, Efren and Louie, personally went to Puerto Galera in connection with the refloating operations. Asked about this alleged presence, petitioner testified that from birth, she has never been to Puerto Galera nor has she ever gone to Mindoro. She also added that she did not steal any barge.

The only crime that could possibly be traced to petitioner is the theft of the barge now called "Doña Marciana 7-11-2." This would be an inference from her actual possession of apparently stolen property.

Who were the principal parties in the alleged asportation of the barge now called "Doña Marciana 7-11-2?" The Court of Appeals summarized the testimony of the principal character, Vicente Mauricio, Jr., as follows:

10. That before the x x x incident happened in Puerto Galera in February of 1981, x x x Mauricio, Jr., a lubricating dealer and owner/proprietor of Petroleum Products Sales, had a chance meeting with Mr. x x x Dacuyasan who was then the Vice-President of the Citadel Carrier and business partner of Mrs. x x x Lim, owner of the Citadel and sister of accused Mrs. Muñoz, x x x Mr. Dacuyasan informed Mr. Mauricio that his boss, Mrs. x x x Muñoz, was looking for a person who could repair, refloat and tow her sunken barges which were then docked at Puerto Galera x x x to Citadel at Las Piñas. Vicente Mauricio, Jr. replied that he knows of one Mr. Moriel Ordas who could perform the job. Finally, it was agreed that Mr. Ordas would perform the job of re-floating the three (3) barges for a consideration of ₱100,000.00, x x x Mr. Ordas hired a group of divers to perform the towing operation. Thereafter, the three (3) barges were actually towed to Citadel Carrier and Mr. Ordas asked for the payment of ₱100,000.00 for their job, x x x but Mr. Dacuyasan told Mr. Ordas that Mrs. Muñoz was x x x out of town and that he would be paid later. Because of the non-payment of the agreed consideration, Mr. Ordas got mad but Mr. Dacuyasan mollified him, telling him not to worry x x x