

## ELEVENTH DIVISION

[ CA-G.R. CR No. 36439, March 09, 2015 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RAFAEL DELA CRUZ Y MERCADO, ACCUSED-APPELLANT.**

### DECISION

**LIBREA-LEAGOGO, C.C., J.:**

Before this Court is an appeal from the Decision<sup>[1]</sup> dated 21 July 2011 of the Regional Trial Court, Third Judicial Region, Branch 83, City of Malolos, Bulacan in Criminal Case No. 472-M-2011, the dispositive portion of which reads:

*"WHEREFORE, premises considered, judgment is hereby rendered finding the accused Rafael M. Dela Cruz GUILTY beyond reasonable doubt of the crime of theft penalized under the provisions of Art. 308 in relation to Art. 309 of the Revised Penal Code and sentences him to suffer an indeterminate prison term of six (6) years of prision correccional as minimum to seventeen (17) years of prision mayor as maximum.*

*Further, accused Rafael M. Dela Cruz is ordered to pay the private complainant, Globe Telecom Inc. the amount of P112,000.00 as actual damages, with subsidiary imprisonment in case of insolvency.*

*SO ORDERED.*"<sup>[2]</sup>

Accused-appellant filed his Brief<sup>[3]</sup> dated 08 September 2014. Plaintiff-appellee also filed its Brief<sup>[4]</sup> dated 05 January 2015. Accused-appellant filed a Manifestation<sup>[5]</sup> dated 28 January 2015 that he is dispensing with the filing of a reply brief. Thus, the appeal is submitted for decision.

### **FACTUAL ANTECEDENTS**

Accused Rafael Dela Cruz y Mercado was charged with the crime of theft penalized under Art. 308 in relation to Art. 309 of the Revised Penal Code, in an Information<sup>[6]</sup> dated 16 February 2011, docketed as *Criminal Case No. 472-M-2011* filed with the Regional Trial Court, Third Judicial Region, Malolos City, Bulacan, and raffled off to Branch 83, the accusatory portion of which reads:

*"That on or about the 7th day of February, 2011, in the (M)unicipality of Balagtas, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in (conspiracy with) alias Marlon, alias Jay-R and alias Ogie, whose identities are still unknown and whose preliminary investigation has not yet been terminated by this office, did then and there willfully, unlawfully and feloniously, with intent to gain, take, steal and carry away with them*

*fifty(-)six (56) meters of cable wires amounting to P112,000.00 belonging to Globe Telecom, Inc., without the knowledge and consent of said owner, to the damage and prejudice of Globe Telecom(,) Inc., in the aforestated amount of P112,000.00.*

*Contrary to law.*<sup>[7]</sup>

When arraigned on 21 March 2011, accused with the assistance of counsel *de officio* Atty. Aileen P. Raterta ("Atty. Raterta," for brevity),<sup>[8]</sup> entered a plea of guilty.<sup>[9]</sup>

However, the Public Attorney's Office filed an Entry of Appearance with Motion to Withdraw Plea of Guilty<sup>[10]</sup> dated 29 March 2011, which averred that: on 21 March 2011, accused, assisted by counsel *de officio*, pleaded guilty to the offense charged against him; thereafter, his relatives approached defense counsel Atty. Garnet Eneli Mae M. Arcega ("Atty. Arcega," for brevity), and sought advice regarding the consequences of the plea, which were allegedly not understood by him; he informed Atty. Arcega that at the time of arraignment, he was suffering from emotional problems considering that his mother just passed away and he was in jail; he did not understand the consequences of his plea; he did not do the offense charged against him; and prayed that the former plea of guilty be withdrawn.

The prosecution filed its Comment<sup>[11]</sup> dated 08 July 2011 which averred that: the trial court and the *de officio* counsel took efforts to determine the voluntariness of accused's plea and his understanding of its consequences; the trial court asked the accused thrice regarding his plea and he thrice confirmed his voluntary plea of guilty; when accused pleaded guilty, he admitted the commission of the offense charged in the Information, including the civil aspect of the case; and as such, the trial court can already impose the appropriate penalty without need of reception of evidence from the parties.

In the Order<sup>[12]</sup> dated 20 July 2011, the trial court denied the Motion to Withdraw Plea of Guilty and set the promulgation of judgment. Accused filed a Manifestation with Motion for Reconsideration (of the Order Dated 20 July 2011)<sup>[13]</sup> dated 26 July 2011.

The assailed Decision<sup>[14]</sup> dated 21 July 2011 was promulgated,<sup>[15]</sup> finding accused guilty of the crime of theft penalized under Art. 308 in relation to Art. 309 of the RPC, the decretal portion of which was earlier quoted.<sup>[16]</sup> A Motion to Modify Decision Dated 21 July 2011<sup>[17]</sup> dated 23 September 2011 was filed by Atty. Arcega, praying that Decision be corrected by removing the name of Atty. Arcega as the counsel who assisted him during arraignment.

Accused filed a Notice of Appeal<sup>[18]</sup> dated 23 September 2011, which was granted in an Order<sup>[19]</sup> dated 07 March 2014.

Hence, this appeal.

## **RULING**

Accused-appellant assigns the following errors, *viz*:

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE PENALTY OF SIX (6) YEARS OF PRISION CORRECCIONAL AS MINIMUM TO SEVENTEEN (17) YEARS OF PRISION MAYOR AS MAXIMUM DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE VALUE OF THE ITEMS ALLEGEDLY STOLEN.

II

THE TRIAL COURT GRAVELY ERRED IN HOLDING THE ACCUSED-APPELLANT LIABLE FOR ACTUAL DAMAGES DESPITE THE PROSECUTION'S FAILURE TO SHOW COMPETENT PROOF OF THE ACTUAL AMOUNT OF LOSS.<sup>[20]</sup>

Accused-appellant contends, *inter alia*, that: the trial court overlooked certain factual circumstances that could lead to a different result; while it is true that he pleaded guilty to the crime charged, the trial court's hasty conclusion making him liable for the alleged value of the missing items is misplaced, citing the case of *Ryan Viray v. People of the Philippines*; in said case, the penalty of *arresto mayor* in its minimum and medium periods was imposed; as the prosecution failed to adduce any evidence to prove the value of the alleged stolen item, the trial court should have applied the said case; the *onus probandi* in establishing the guilt of an accused lies with the prosecution; the burden must be discharged by it on the strength of its own evidence and not on the weakness of the evidence for the defense or lack of it; the award of actual damages amounting to Php112,000.00 is not warranted; actual damages must not only be capable of proof but must actually be proved with a reasonable degree of certainty; and private complainant did not submit any documentary proof, like receipts, to support their claim for actual damages to prove the monetary value of the alleged stolen cable wires.

Plaintiff-appellee ripostes, *inter alia*, that: accused-appellant was properly convicted of theft under Art. 308 of the RPC; all the elements of theft were established when accused-appellant pleaded guilty to the Information; a plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense charged in the information without the introduction of further evidence, the defendant himself having supplied the necessary proof of his plea of guilty; accused-appellant had voluntarily pleaded guilty to willfully, unlawfully and feloniously, with intent to gain, taking, stealing, and carrying away fifty-six (56) meters of cable wires amounting to Php112,000.00 belonging to private complainant, without the latter's knowledge and consent; the value of the thing taken, Php112,000.00, was included in the Information; this plea was providently made and accepted; accused-appellant was duly assisted by counsel, the Information was read and explained to him in a language he knew, and the trial court asked him three (3) times regarding his plea, which he thrice confirmed; the trial court had complied with his duty to be extra solicitous in seeing to it that an accused who pleaded guilty understood fully the meaning of his plea and the import of inevitable conviction; and the trial court correctly imposed the penalty of six (6) years of *prision correccional*, as minimum, to seventeen (17) of *prision mayor*, as maximum.

The appeal is bereft of merit.

In this case, accused-appellant was charged with the crime of theft of fifty-six (56) meters of cable wires amounting to Php112,000.00.<sup>[21]</sup>

Article 308 of the Revised Penal Code provides:

**"ART. 308.** *Who are liable for theft.— Theft is committed by any person who, with intent to gain but without violence, against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.*

x x x x"

For theft to be committed in this case, the following elements must be shown to exist: (1) the taking by (accused-appellant) (2) of (private complainant)'s personal property (3) with intent to gain (4) without the consent of (private complainant) (5) accomplished without the use of violence against or intimidation of persons or the use of force upon things.<sup>[22]</sup>

Here, all of the elements of the crime of theft were alleged in the Information, viz: "xxx accused, xxx, did then and there willfully, unlawfully and feloniously, with intent to gain, take, steal and carry away with them fifty(-)six (56) meters of cable wires amounting to P112,000.00 belonging to Globe Telecom, Inc., without the knowledge and consent of said owner, to the damage and prejudice of Globe Telecom(,) Inc., in the aforestated amount of P112,000.00."<sup>[23]</sup>

When arraigned on 21 March 2011, the Information was read and explained in the vernacular (Tagalog), a language known to accused-appellant.<sup>[24]</sup> An arraignment is not a mere formality but a substantial component of our criminal justice system wherein the constitutional right of the accused "to be informed of the nature and cause of the accusation against him" is protected.<sup>[25]</sup> Thus, accused-appellant was duly informed of the nature and cause of the accusation against him since the said Information was read and explained in the language he knew.

With the assistance of counsel *de officio* Atty. Raterta,<sup>[26]</sup> accused-appellant entered a plea of guilty<sup>[27]</sup> to the crime of theft of fifty-six (56) meters of cable wires in the amount of Php112,000.00, as alleged in the Information. As clearly stated in the Order dated 21 March 2011, "xxx the Court appointed Atty. Aileen P. Raterta as counsel *de officio* for purposes of arraignment only. Thereafter, Atty. Aileen P. Raterta have (sic) explained to him his rights as well as the legal consequences of his plead, (sic) accused Rafael Dela Cruz y Mercado, and duly assisted by Atty. Aileen P. Raterta, entered the plea of GUILTY to the offense charged as contained in the (I)nformation after the same was read and explained to him in the vernacular (Tagalog), a language known to the accused."<sup>[28]</sup>

Accused-appellant voluntarily and with full comprehension pleaded guilty to committing the non-capital offense of theft of fifty-six (56) meters of cable wires worth Php112,000.00. Section 4, Rule 116 of the Revised Rules of Criminal Procedure provides:

**"SEC. 4.** *Plea of guilty to non-capital offense; reception of evidence, discretionary.— When the accused pleads guilty to a non-capital offense,*

*the court may receive evidence from the parties to determine the penalty to be imposed.”*

(W)hen the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed. While the present Rules of Court makes it mandatory for the court, when the accused pleads guilty to a capital offense, to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime after the entry of plea of guilty, that is not so in non-capital offenses. In the latter, the reception of evidence is discretionary with the court. It cannot then be said that the trial court erred when it failed to require the prosecution to present evidence in order to have some basis for the decision.<sup>[29]</sup>

Here, the trial court did not err in denying the accused-appellant's Motion to Withdraw Plea of Guilty.<sup>[30]</sup> It has been held that *“xxx kung papayagan ang nasasakdal na bawiin ang kanyang tugon ay nakasalalay sa matalinong kagustuhan ng Hukuman. At ang kapasyahan ukol sa pagbawi ng tugon ay hindi karaniwang binabago ng mas mataas na Hukuman kapag walang naipakitang masidhing pagkakamali o abuso ang Mababang Hukuman. xxx Ang Saligang-Batas na umiiral sa lipunang ating ginagalawan ay mahigpit na ipinag-babawal ang pagtatangi-tangi ”*<sup>[31]</sup>

In fact, the trial court was solicitous when it asked accused-appellant three times regarding his plea of guilty, and three times the latter confirmed the same.<sup>[32]</sup> As keenly pointed out by the trial court, viz: *“xxx **thrice** did the (C)ourt ask the accused and **thrice** did the accused confirm his voluntary plea of guilty. As a matter of fact, the (c)ourt, and the accused's counsel, xxx took efforts to determine the voluntariness of accused's plea as the practice of this (C)ourt where (sic) the Presiding Judge, prior to arraignment, would always ask accused's counsel if the accused have (sic) been apprised of the nature and effect of accused's plea. In this particular case, when asked by the (C)ourt, accused's counsel answered in the affirmative. Consequently, it cannot be gainsaid that accused and counsel did not know the consequence of his voluntary plea of guilt.”*<sup>[33]</sup> (Emphasis supplied)

There is no hard and fast rule as to how a judge may conduct a “searching inquiry” as to the number and character of questions he may ask the accused, or as to the earnestness with which he may conduct it, since each case must be measured according to its individual merit.<sup>[34]</sup> The records show that during the arraignment, the Information was read to accused-appellant in Tagalog, a language known to him.<sup>[35]</sup> He was assisted by counsel *de officio* Atty. Raterta.<sup>[36]</sup> After he entered a plea of guilty, the trial court asked him three times regarding his plea of guilty to which he thrice confirmed.<sup>[37]</sup> Thus, the trial court undertook efforts to determine that the accused-appellant, in pleading guilty, did so voluntarily, - meaning, he was not coerced or threatened to physical harm, or placed under a state of duress.<sup>[38]</sup> A plea of guilty knowingly and voluntarily made constitutes evidence of guilt.<sup>[39]</sup>

Accused-appellant posits that since the prosecution allegedly failed to establish the value of the fifty-six (56) meters of cable wires that were stolen, the trial court should have applied the case of *Ryan Viray v. People of the Philippines*.<sup>[40]</sup>