

EIGHTH DIVISION

[CA-G.R. CR NO. 35198, March 19, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RHODA MARSON Y OFREDO, ACCUSED-APPELLANT.

DECISION

REYES, JR., J.C., J.:

On appeal is the Decision dated August 29, 2012 of the Regional Trial Court (RTC), Branch 87 of Quezon City, in Crim. Case No. Q-11-173110^[1] which found Rhoda Marson y Ofredo (appellant) guilty of Theft and which sentenced her to an indeterminate penalty of four (4) years, nine (9) months and ten (10) days of prision correctional as minimum to twenty (20) years of reclusion temporal.

The Information in Crim. Case No. Q-11-173110 dated November 9, 2011, charged appellant of Theft, as follows:

"That on or about the 1st day of November 2011, in Quezon City, Philippines, the said accused, with intent to gain and without the knowledge and consent of the owner thereof, did then and

there, wilfully, unlawfully and feloniously, take, steal and carry away:

1. One (1) Diamond ring \$ 10,000

2. US dollar bills \$ 20

or in the total amount of P430,860.00, Philippine Currency, belonging to Elenita Alvero y Kalaw, to the damage and prejudice of the said offended party in the aforementioned amount.

Contrary to law." (Records, p. 3).

The appellant pleaded "not guilty." (Records, p. 37).

Trial ensued and the prosecution presented the testimonies of Agnes Roa (Roa) appellant's employer, and Roa's cousin (Elenita Alvero), owner of the missing items.

According to the prosecution: Alvero, a *balikbayan* and visitor at the Roa residence, asked herein appellant, a helper in the house of Roa, on November 1, 2011 at around noon, to clean her (Alvero's) bedroom. While appellant cleaned the room, Alvero went to the living room to read the newspaper. Alvero returned to the bedroom to rest soon after appellant finished cleaning. Around 1:30 p.m., appellant asked permission to leave the house to go to Cavite, promising to return the same day. A few minutes after appellant left, Alvero realized that her rings, which were placed on top of a dresser inside her room, were missing. One of the rings costs less

than US\$5,000.00 which she bought in New York while the other was given to her by her mother and had seven diamonds. They tried looking for the rings to no avail. They also could not contact appellant who returned only on November 3 to get her things. (TSN, Agnes Roa, March 13, 2012, pp. 3-10; Elenita Alvero, May 15, 2012, pp. 3-17).

The appellant took the witness and in her defense denied the the allegations against her. According to her, she was cooking around 10 a.m. of November 1, 2011, when Jessica, another helper told her to take a bath, saying that Jessica will cook instead. She denied cleaning Alvero's room saying that it was Jessica who was inside the room when appellant finished taking a bath. She averred that she was not able to return until November 3, as it was raining hard on November 2 and her aunt asked her to accompany her to the cemetery. (TSN, July 30, 2012, pp. 6-11, 14).

On August 29, 2012, the RTC rendered the herein assailed Decision in Crim. Case No. Q-11-173110 which disposed:

"WHEREFORE, finding the accused Rhoda Marson y Ofredo GUILTY beyond reasonable doubt of the crime of Theft defined and penalized under Article 308 in relations to Article 309 of the Revised Penal Code, she is hereby sentenced to an indeterminate penalty of four (4) years, nine (9) months and ten (10) days of prision correctional as minimum to twenty (20) years of reclusion temporal, there being no mitigating or aggravating circumstances.

Accused is likewise ordered to pay private complainant Elenita Alvero y Kalaw the amount of Two Hundred Four Thousand Seven Hundred Eighty-Five Pesos and Sixty-Nine Centavos (P204,785.69) as civil indemnity.

SO ORDERED." (Rollo, pp. 41-42).

The RTC held the prosecution was able to prove that appellant was guilty of theft for the loss of Alvero's ring worth US\$4,804.92. Pertinent portions of the Decision read:

"The accused was positively identified by complainant Elenita Alvero y Kalaw as the only person who entered her room on November 1, 2011 at around 12:00 to 12:15 in the afternoon in order to clean it. The other maid was doing gardening chores outside the house. There was no instance that she saw Jessica, also a maid of Agnes Roa, entered (sic) her room. While accused is cleaning the room, she went to the living room but she still saw her rings placed on top of the dresser. It was only when accused left that she noticed her rings already missing.

...

There was no indication that prosecution witness Elenita Alvero had any motive to testify falsely against the accused. Her testimony is truthful even with the gruelling cross-examination, she did not falter but rather stand (sic) pat on her testimony that the accused is the perpetrator." (Rollo, p. 40).

The appellant is now before the Court claiming that:

THE COURT A QUO GRAVELY ERRED IN FINDING [HER] THE ACCUSED-APPELLANT RHODA MARSON GUILTY OF THEFT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT. (Rollo, p. 18).

The appellant avers that there are several vital circumstances in this case which were misapprehended by the lower court that entitles her to an acquittal. Her conviction was based on circumstantial evidence: that as a house helper of Roa, she had access to Alvero's room, and; that after the discovery of the loss of Alvero's jewelry, she (appellant) left Roa's residence. These circumstances are insufficient because appellant is not the only stay-in helper of Roa and there was no showing that said room was ever locked at any instance to prevent the other helpers from entering it. The house had four entrances and Alvero did not have her eyes on appellant the whole time she cleaned the room. Her departure after the discovery of the loss of the valuables also cannot be considered as flight as she had earlier asked permission from Roa that she would visit her aunt. Alvero claimed that she noticed that her two rings were missing at around 12 noon yet she did not do anything about it. Thus, appellant was still able to ask permission from Roa to leave by 1:30 in the afternoon. It was only on November 4 that Roa and Alvero went to the police to report to supposed theft. (Rollo, pp. 23-26).

The appellant avers that it was the other maid, Jessica who pointed to her as the perpetrator of theft. It is possible however that it was Jessica who actually stole the rings as she also had access to Alvero's room. While the trial court gave weight to Jessica's Sworn Statement, the prosecution did not present her in court. The failure to present her in court weakens the prosecution's case as her testimony is very crucial. (Rollo, pp. 27-29).

The People through the Office of the Solicitor General meanwhile asserts that the circumstances, which the prosecution had proven, constitute an unbroken chain of events which leads to the fair and reasonable conclusion that appellant, to the exclusion of others, was the author of the crime of theft. (Rollo, p. 62).

The Court finds MERIT in the appeal.

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."

Its elements are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things. (*People v. Bayon*, 622 SCRA 702, 710 [2010]).

Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. (*People v. Anabe*, 630 SCRA 10, 28 [2010]). Corpus delicti in theft meanwhile has two elements: (1) that the property was lost by the owner, and (2) that it was lost by felonious taking. (*Gulmatico v. People*, 536 SCRA 82, 92 [2007]).