Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ENGR. ANTHONY V. ZAPANTA,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 170863

Present:

CARPIO, *J.*, Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

MAR 20 2013

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DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioner Engr. Anthony V. Zapanta, challenging the June 27, 2005 decision[2] and the November 24, 2005 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CR No. 28369. The CA decision affirmed the January 12, 2004 decision[4] of the Regional Trial Court (*RTC*) of Baguio City, Branch 3, in Criminal Case No. 20109-R, convicting the petitioner of the crime of qualified theft. The CA resolution denied the petitioner's motion for reconsideration.

The Factual Antecedents

An April 26, 2002 Information filed with the RTC charged the petitioner, together with Concordio O. Loyao, Jr., with the crime of qualified theft, committed as follows:

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1 Under Rule 45 of the Rules of Court; *rollo*, pp. 13-71.

2 Penned by Associate Justice Roberto A. Barrios, and concurred in by Associate Justices Amelita G. Tolentino and Vicente S. E. Veloso; id. at 76-83.

3 Id. at 85-86.

4 Id. at 154-163.

> That sometime in the month of October, 2001, in the City of Baguio, Philippines, and within the jurisdiction of [the] Honorable Court, xxx accused ANTHONY V. ZAPANTA, being then the Project Manager of the Porta Vaga Building Construction, a project being undertaken then by the Construction Firm, ANMAR, Inc. under sub-contract with A. Mojica Construction and General Services, with the duty to manage and implement the fabrication and erection of the structural steel framing of the Porta Varga building including the receipt, audit and checking of all construction materials delivered at the job site – a position of full trust and confidence, and CONCORDIO O. LOYAO, JR., alias "JUN", a telescopic crane operator of ANMAR, Inc., conspiring, confederating, and mutually aiding one another, with grave abuse of confidence and with intent of gain, did then and there willfully, unlawfully and feloniously take, steal and carry away from the Porta Vaga project site along Session road, Baguio City, wide flange steel beams of different sizes with a total value of ₱2,269,731.69 without the knowledge and consent of the owner ANMAR, Inc., represented by its General Manager LORNA LEVA MARIGONDON, to the damage and prejudice of ANMAR, Inc., in the aforementioned sum of ₱2,269,731.69, Philippine Currency.[5]

Arraigned on November 12, 2002, the petitioner entered a plea of "not guilty."[6] Loyao remains at-large.

In the ensuing trial, the prosecution offered in evidence the oral testimonies of Danilo Bernardo, Edgardo Cano, Roberto Buen, Efren Marcelo, private complainant Engr. Lorna Marigondon, and Apolinaria de Jesus,[7] as well as documentary evidence consisting of a security logbook entry, delivery receipts, photographs, letters, and sworn affidavits. The prosecution's pieces of evidence, taken together, established the facts recited below.

In 2001, A. Mojica Construction and General Services (*AMCGS*) undertook the Porta Vaga building construction in Session Road, Baguio City. AMCGS subcontracted the fabrication and erection of the building's structural and steel framing to Anmar, owned by the Marigondon family. Anmar ordered its construction materials from Linton Commercial in Pasig City. It hired Junio Trucking to deliver the construction materials to its project site in Baguio City. It assigned the petitioner as project manager with general managerial duties, including the receiving, custody, and checking of all building construction materials.[8]

On two occasions in October 2001, the petitioner instructed Bernardo, Junio Trucking's truck driver, and about 10 Anmar welders, including Cano and Buen, to unload about 10 to 15 pieces of 20 feet long wide flange steel beams at Anmar's alleged new contract project along Marcos Highway, Baguio City. Sometime in November 2001, the petitioner again instructed

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5 Id. at 154-155.
6 Id. at 21.
7 Ibid.
8 Id. at 203-204.

Bernardo and several welders, including Cano and Buen, to unload about 5 to 16 pieces of 5 meters and 40 feet long wide flange steel beams along Marcos Highway, as well as on Mabini Street, Baguio City.[9]

Sometime in January 2002, Engr. Nella Aquino, AMCGS' project manager, informed Engr. Marigondon that several wide flange steel beams had been returned to Anmar's warehouse on October 12, 19, and 26, 2001, as reflected in the security guard's logbook. Engr. Marigondon contacted the petitioner to explain the return, but the latter simply denied that the reported return took place. Engr. Marigondon requested Marcelo, her warehouseman, to conduct an inventory of the construction materials at the project site. Marcelo learned from Cano that several wide flange steel beams had been unloaded along Marcos Highway. There, Marcelo found and took pictures of some of the missing steel beams. He reported the matter to the Baguio City police headquarters and contacted Anmar to send a truck to retrieve the steel beams, but the truck came weeks later and, by then, the steel beams could no longer be found. The stolen steel beams amounted to ₱2,269,731.69.[10]

In his defense, the petitioner vehemently denied the charge against him. He claimed that AMCGS, not Anmar, employed him, and his plan to build his own company had been Engr. Marigondon's motive in falsely accusing him of stealing construction materials.[11]

The RTC's Ruling

In its January 12, 2004 decision,[12] the RTC convicted the petitioner of qualified theft. It gave credence to the prosecution witnesses' straightforward and consistent testimonies and rejected the petitioner's bare denial. It sentenced the petitioner to suffer the penalty of imprisonment from 10 years and 3 months, as minimum, to 20 years, as maximum, to indemnify Anmar ₱2,269,731.69, with legal interest from November 2001 until full payment, and to pay Engr. Marigondon ₱100,000.00 as moral damages.

The CA's Ruling

On appeal, the petitioner assailed the inconsistencies in the prosecution witnesses' statements, and reiterated his status as an AMCGS employee.[13]

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9 Id. at 204-206.
10 Id. at 207-208.
11 Id. at 160.
12 *Supra* note 4.
13 *Rollo*, p. 167.

In its June 27, 2005 decision,[14] the CA brushed aside the petitioner's arguments and affirmed the RTC's decision convicting the petitioner of qualified theft. It found that the prosecution witnesses' testimonies deserve full credence in the absence of any improper motive to testify falsely against the petitioner. It noted that the petitioner admitted his status as Anmar's employee and his receipt of salary from Anmar, not AMCGS. It rejected the petitioner's defense of denial for being self-serving. It, however, deleted the award of moral damages to Engr. Marigondon for lack of justification.

When the CA denied[15] the motion for reconsideration[16] that followed, the petitioner filed the present Rule 45 petition.

The Petition

The petitioner submits that, while the information charged him for acts committed "*sometime in the month of October, 2001*," he was convicted for acts not covered by the information, *i.e.*, November 2001, thus depriving him of his constitutional right to be informed of the nature and cause of the accusation against him. He further argues that the prosecution failed to establish the fact of the loss of the steel beams since the *corpus delicti* was never identified and offered in evidence.

The Case for the Respondent

The respondent People of the Philippines, through the Office of the Solicitor General, counters that the issues raised by the petitioner in the petition pertain to the correctness of the calibration of the evidence by the RTC, as affirmed by the CA, which are issues of fact, not of law, and beyond the ambit of a Rule 45 petition. In any case, the respondent contends that the evidence on record indubitably shows the petitioner's liability for qualified theft.

The Issue

The case presents to us the issue of whether the CA committed a reversible error in affirming the RTC's decision convicting the petitioner of the crime of qualified theft.

Our Ruling

The petition lacks merit.

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14 *Supra* note 2.
15 *Supra* note 3.
16 *Rollo*, pp. 176-179.

Sufficiency of the allegation of date of the commission of the crime

Section 6, Rule 110 of the Rules of Criminal Procedure, which lays down the guidelines in determining the sufficiency of a complaint or information, provides:

> Section 6. *Sufficiency of complaint or information*. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; **the approximate date of the commission of the offense;** and the place where the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information. (italics supplied; emphasis ours)

As to the sufficiency of the allegation of the date of the commission of the offense, Section 11, Rule 110 of the Rules of Criminal Procedure adds:

> Section 11. *Date of commission of the offense*. - It is not necessary to state in the complaint or information the precise date the offense was committed **except when it is a material ingredient of the offense.** The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. [italics supplied; emphasis ours]

Conformably with these provisions, when the date given in the complaint is not of the essence of the offense, it need not be proven as alleged; thus, the complaint will be sustained if the proof shows that the offense was committed at any date within the period of the statute of limitations and before the commencement of the action.

In this case, the petitioner had been fully apprised of the charge of qualified theft since the information stated the approximate date of the commission of the offense through the words "*sometime in the month of October, 2001*." The petitioner could reasonably deduce the nature of the criminal act with which he was charged from a reading of the contents of the information, as well as gather by such reading whatever he needed to know about the charge to enable him to prepare his defense.

We stress that the information did not have to state the precise date when the offense was committed, as to be inclusive of the month of "November 2001" since the date was not a material element of the offense. As such, the offense of qualified theft could be alleged to be committed on a date ***as near as possible*** to the actual date of its

commission.[17] Clearly, the month of November is the month right after October.

The crime of qualified theft was committed with grave abuse of discretion

The elements of qualified theft, punishable under Article 310 in relation to Articles 308 and 309 of the Revised Penal Code (*RPC*), are: (a) the taking of personal property; (b) the said property belongs to another; (c) the said taking be done with intent to gain; (d) it be done without the owner's consent; (e) it be accomplished without the use of violence or intimidation against persons, nor of force upon things; and (f) it be done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.[18]

All these elements are present in this case. The prosecution's evidence proved, through the prosecution's eyewitnesses, that upon the petitioner's instruction, several pieces of wide flange steel beams had been delivered, twice in October 2001 and once in November 2001, along Marcos Highway and Mabini Street, Baguio City; the petitioner betrayed the trust and confidence reposed on him when he, as project manager, repeatedly took construction materials from the project site, without the authority and consent of Engr. Marigondon, the owner of the construction materials.

Corpus delicti is the fact of the commission of the crime

The petitioner argues that his conviction was improper because the alleged stolen beams or *corpus delicti* had not been established. He asserts that the failure to present the alleged stolen beams in court was fatal to the prosecution's cause.

The petitioner's argument fails to persuade us.

"*Corpus delicti* refers to the fact of the commission of the crime charged or to the body or substance of the crime. In its legal sense, it does not refer to the ransom money in the crime of kidnapping for ransom or to the body of the person murdered" or, in this case, to the stolen steel beams. "Since the *corpus delicti* is the fact of the commission of the crime, this Court has ruled that even a single witness' uncorroborated testimony, if credible, may suffice to prove it and warrant a conviction therefor. *Corpus*

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[17] See *People v. Dion*, G.R. No. 181035, July 4, 2011, 653 SCRA 117, 131. See also *People v. Ching*, G.R. No. 177150, November 22, 2007, 538 SCRA 117, 129; *People v. Domingo*, G.R. No. 177744, November 23, 2007, 538 SCRA 733, 738; and *People v. Ibañez*, G.R. No. 174656, May 11, 2007, 523 SCRA 136, 142.

[18] *Matrido v. People*, G.R. No. 179061, July 13, 2009, 592 SCRA 534, 541.

delicti may even be established by circumstantial evidence."[19] "[I]n theft, *corpus delicti* has two elements, namely: (1) that the property was lost by the owner, and (2) that it was lost by felonious taking."[20]

In this case, the testimonial and documentary evidence on record fully established the *corpus delicti*. The positive testimonies of the prosecution witnesses, particularly Bernardo, Cano and Buen, stating that the petitioner directed them to unload the steel beams along Marcos Highway and Mabini Street on the pretext of a new Anmar project, were crucial to the petitioner's conviction. The security logbook entry, delivery receipts and photographs proved the existence and the unloading of the steel beams to a different location other than the project site.

Proper Penalty

The RTC, as affirmed by the CA, sentenced the petitioner to suffer the penalty of imprisonment from 10 years and three months, as minimum, to 20 years, as maximum, and to indemnify Anmar ₱2,269,731.69, with legal interest from November 2001 until full payment. Apparently, the RTC erred in failing to specify the appropriate name of the penalty imposed on the petitioner.

We reiterate the rule that it is necessary for the courts to employ the proper legal terminology in the imposition of penalties because of the substantial difference in their corresponding legal effects and accessory penalties. The appropriate name of the penalty must be specified as under the scheme of penalties in the RPC, the principal penalty for a felony has its own specific duration and corresponding accessory penalties.[21] Thus, the courts must employ the proper nomenclature specified in the RPC, such as "*reclusion perpetua*" not "life imprisonment," or "*ten days of arresto menor*" not "ten days of imprisonment." In qualified theft, the appropriate penalty is *reclusion perpetua* based on Article 310 of the RPC which provides that "[t]he crime of [qualified] theft shall be punished by the penalties next higher by two degrees than those respectively specified in [Article 309]."[22]

To compute the penalty, we begin with the value of the stolen steel beams, which is ₱2,269,731.69. Based on Article 309 of the RPC, since the value of the items exceeds ₱22,000.00, the basic penalty is *prision mayor* in

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[19] *Villarin v. People*, G.R. No. 175289, August 31, 2011, 656 SCRA 500, 520-521; and *Rimorin, Jr. v. People*, 450 Phil. 465, 474-475 (2003). Italics supplied.

[20] *Gulmatico v. People*, G.R. No. 146296, October 15, 2007, 536 SCRA 82, 92; citation omitted, italics supplied. See also *Tan v. People*, 372 Phil. 93, 105 (1999).

[21] *People v. Latupan*, 412 Phil. 477, 489 (2001); *Austria v. Court of Appeals*, 339 Phil. 486, 495-496 (1997).

[22] *People v. Mirto*, G.R. No. 193479, October 19, 2011, 659 SCRA 796, 814; *Astudillo v.* People, 538 Phil. 786, 815 (2006); and *People v. Mercado*, 445 Phil. 813, 828 (2003).

its minimum and medium periods, to be imposed in the maximum period, which is eight years, eight months and one day to 10 years of *prision mayor*.

To determine the additional years of imprisonment, we deduct ₱22,000.00 from ₱2,269,731.69, which gives us ₱2,247,731.69. This resulting figure should then be divided by ₱10,000.00, disregarding any amount less than ₱10,000.00. We now have 224 years that should be added to the basic penalty. However, the imposable penalty for simple theft should not exceed a total of 20 years. Therefore, had petitioner committed simple theft, the penalty would be 20 years of *reclusion temporal.* As the penalty for qualified theft is two degrees higher, the correct imposable penalty is *reclusion perpetua*.

The petitioner should thus be convicted of qualified theft with the corresponding penalty of *reclusion perpetua*.

WHEREFORE, we hereby **DENY** the appeal. The June 27, 2005 decision and the November 24, 2005 resolution of the Court of Appeals in CA-G.R. CR No. 28369 are **AFFIRMED** with **MODIFICATION**. Petitioner Engr. Anthony V. Zapanta is sentenced to suffer the penalty of *reclusion perpetua*. Costs against the petitioner.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice