



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

KYLE ANTHONY ZABALA,
Petitioner,

G.R. No. 210760

Present:

- versus -

VELASCO, JR., J., Chairperson,
PERALTA,
VILLARAMA, JR.,
REYES, and
LEONEN,* JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

January 26, 2015 ^

X-----*Justice Sison*-----X

DECISION

VELASCO, JR., J.:

The Case

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking the reversal of the July 15, 2013 Decision of the Court of Appeals (CA) and its January 8, 2014 Resolution in CA-G.R. CR No. 34428, entitled *People of the Philippines v. Kyle Anthony Zabala*. The assailed CA Decision affirmed the July 7, 2011 Judgment in Crim. Case No. 1676-M-2008 of the Regional Trial Court (RTC), Branch 22, Malolos City, finding petitioner guilty beyond reasonable doubt of the crime of theft, punishable under Articles 308 and 309 of the Revised Penal Code. The assailed Resolution, meanwhile, denied petitioner's Motion for Reconsideration.

The Facts

An Information was filed against petitioner Kyle Anthony Zabala (Zabala) before the RTC, Branch 22, Malolos City, charging him with theft, the pertinent text of which states:

That on or about the 18th day of June 2007 in San Jose del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with

* Additional member per raffle dated September 10, 2014.



intent to gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away with him, one envelope containing cash amounting to SIXTY EIGHT THOUSAND PESOS (PhP68,000.00) belonging to Randolph V. Alas, to the damage and prejudice of the said owner in the amount of PhP68,000.00.

Contrary to law.¹

When arraigned, petitioner pleaded “not guilty.” Trial on the merits ensued. During the trial, the prosecution presented the testimonies of the complaining witness, Randolph Alas (Alas), and petitioner’s alleged former girlfriend, Marlyn Piñon (Piñon). On the other hand, the defense presented the testimonies of petitioner and of one Muriel John Ganas (Ganas), his alleged companion on the day that the incident took place.²

Version of the Prosecution

The evidence for the prosecution tends to establish that Zabala is a jeepney driver who earns Two Hundred Pesos (₱200) to Four Hundred Pesos (₱400) per day on an alternate day basis. Complainant Alas, meanwhile, works at the Manila City Hall. It is through this job that he was able to save the Sixty-Eight Thousand Pesos (₱68,000) stolen by Zabala.³ Piñon, on the other hand, had been the girlfriend of Zabala for about five months when the incident pertinent to this case occurred.

Alas testified that he and Zabala were neighbors in San Jose Del Monte City, Bulacan. As neighbors, he had treated Zabala as his *kumpare* and would often invite the latter to drinking sessions inside his house. At times, he would also call Zabala to repair his vehicle, because Zabala is also a mechanic. He would allow Zabala to follow him to his bedroom to get cash whenever spare parts are to be bought for the repair of his vehicle.⁴

Alas further testified that on June 18, 2007, at about 4:00 in the morning, he left his house to go to work. When he returned from work, at around 11:00 in the evening, he discovered that his money amounting to Sixty Eight Thousand Pesos (₱68,000), which he kept in an envelope inside his closet, was missing.⁵ During that time, there were only five (5) persons living in their house: Alas, his parents, his nine (9) year-old son, and his aunt. He asked his parents and aunt if they knew where he kept his money, but they did not know.⁶

Witness Piñon, on the other hand, testified that in the early morning of June 18, 2007, she and Zabala, her boyfriend at the time, were together at a store owned by the latter, which was six to seven steps away from the

¹ *Rollo*, p. 28.

² *Id.* at 76.

³ *Id.* at 78.

⁴ *Id.*

⁵ *Id.* at 80.

⁶ *Id.* at 12.

complainant's house. She then saw Zabala climb the fence and scale the tree in front of the complainant's house, and enter the house. When he returned, she noticed that he had a bulge in his pocket, which she later found to be a plentiful sum of money. Zabala then brought her home, and agreed to meet her again at about 10:00 in the morning. They then went to Greenhills, where Zabala bought two Nokia mobile phones, which cost about Eight Thousand Five Hundred Pesos (₱8,500).⁷

Version of the Defense

For his defense, Zabala testified that in the early morning of June 17, 2007, he was driving his passenger jeepney, together with his friend, witness Ganas. They parted ways at around 6:00 in the morning of the following day. During the whole time they were together, they did not drop by the house of the private complainant. Neither did he have the time to meet Marilyn Piñon, of whom he regarded only as an acquaintance and not his girlfriend.⁸

Witness Ganas corroborated the declaration of Zabala. He testified that he was with petitioner, acting as the conductor, while petitioner was plying the route of his driven jeepney. He had known petitioner since his childhood, and was his good friend.⁹

Ruling of the RTC

On July 7, 2011, the RTC rendered its Judgment convicting petitioner of the offense charged. The dispositive portion of the RTC Decision reads:

WHEREFORE, finding guilt of the accused beyond reasonable doubt, judgment is hereby rendered in Criminal Case No. 1676-M-2008 CONVICTING accused KYLE ANTHONY ZABALA with the crime of theft defined and penalized under the provisions of Article 308 and 309 of the Revised Penal Code and is hereby [sentenced] to suffer imprisonment of, applying the Indeterminate Sentence Law, the MINIMUM penalty of *prision correccional* which is 6 years, to a MAXIMUM penalty of *prision mayor* in its maximum period [of] 8 years.

Accused Zabala is likewise ordered to indemnify and pay the amount of sixty eight thousand pesos (Php68,000.00) to complaining witness Randolph V. Alas by way of reparation of the damage caused on him.

Furnish both the public prosecutor and defense counsel of this judgment including the accused.¹⁰

⁷ Id. at 79.

⁸ Id. at 55.

⁹ Id. at 31.

¹⁰ Id. at 70-71. Penned by Pairing Judge Albert R. Fonacier.

Aggrieved by the Judgment, petitioner appealed to the CA, attributing to the lower court the following errors: (1) there was a grave error in not giving credence to petitioner's version; (2) petitioner was convicted of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt; and (3) petitioner cannot be convicted based on circumstantial evidence.

Ruling of the CA

In its presently assailed Decision promulgated on July 15, 2013, the CA denied the appeal and affirmed the decision of the trial court, but with modification as to the penalty to be imposed upon petitioner. The CA ruled that the prosecution was able to prove beyond reasonable doubt the guilt of the appellant through circumstantial evidence.

Citing *People v. Modesto*,¹¹ the CA said:

x x x [T]he doctrine on circumstantial evidence has been recognized as part of the legal tradition when it was declared that "a rule of ancient respectability so molded into tradition is that circumstantial evidence suffices to convict only if the following requisites concur: first, there is more than one circumstance; second, the facts from which the inferences are derived are proven; and finally, the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."¹²

The CA then found that the series of circumstances present in this case supports a conviction, and constitutes the basis for a reasonable inference of the existence of the facts thereby sought to be proved.¹³

Rejecting the defense of petitioner, the CA ruled that he offered no evidence other than an alibi to exculpate him from the crime charged. It then cited the rule that alibi is a weak defense, and cannot prevail over the positive testimony of a truthful witness.¹⁴

The CA disposed of petitioner's appeal as follows:

WHEREFORE, premises considered, the appeal is DENIED. The assailed decision is AFFIRMED with MODIFICATION. As modified, accused-appellant is sentenced to six (6) years of prison correccional as minimum to twelve (12) years, eight (8) months and eight (8) days of reclusion temporal as maximum.

Accused Zabala is likewise [ordered to] indemnify and pay the amount of Sixty Eight Thousand Pesos (Php68,000.00) to complaining

¹¹ No. L-25484, September 21, 1968, 25 SCRA 36.

¹² *Rollo*, p. 35.

¹³ *Id.*

¹⁴ *Id.* at 36.

witness Randolph V. Alas by way of reparation of the damage caused on him.¹⁵

Petitioner moved for reconsideration, but in its assailed Resolution dated January 8, 2014, the CA denied it.

Thus, the present recourse before this Court. Petitioner now argues that there is no sufficient evidence on record to support his conviction for the charge of theft.

In its Comment, respondent People insists that the prosecution was able to establish petitioner's guilt beyond a reasonable doubt. It argues that the CA correctly ruled that the series of circumstances presented before the trial court is sufficient to support a conviction.¹⁶

The Issues

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE PETITIONER'S CONVICTION BY GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION WITNESSES' TESTIMONIES.

II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT DESPITE THE FACT THAT THE EVIDENCE ON RECORD FAILED TO SUPPORT A CONVICTION.¹⁷

In fine, petitioner alleges that the evidence presented before the trial court is insufficient to convict him of the offense charged.

The Court's Ruling

We reverse the findings of the RTC and the CA. We agree with petitioner, and find that the evidence presented below does not constitute proof beyond a reasonable doubt, sufficient to convict petitioner of theft. Thus, he must be acquitted.

Discussion

Given that the case for the prosecution is largely based on circumstantial evidence, a short discussion on the sufficiency of circumstantial evidence to convict an accused is in order.

¹⁵ Id. at 40-41. Penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Ricardo R. Rosario and Stephen C. Cruz.

¹⁶ Id. at 112.

¹⁷ Id. at 14.

Circumstantial evidence as basis for conviction

It is a settled rule that circumstantial evidence is sufficient to support a conviction, and that direct evidence is not always necessary. This is but a recognition of the reality that in certain instances, due to the inherent attempt to conceal a crime, it is not always possible to obtain direct evidence. In *Bacolod v. People*, this Court had the occasion to say:

The lack or absence of direct evidence does not necessarily mean that the guilt of the accused cannot be proved by evidence other than direct evidence. Direct evidence is not the sole means of establishing guilt beyond reasonable doubt, because circumstantial evidence, if sufficient, can supplant the absence of direct evidence. The crime charged may also be proved by circumstantial evidence, sometimes referred to as indirect or presumptive evidence. Circumstantial evidence has been defined as that which “goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue.”¹⁸

The Rules of Court itself recognizes that circumstantial evidence is sufficient for conviction, under certain circumstances:

Sec. 4. *Circumstantial evidence, when sufficient.* – Circumstantial evidence is sufficient for conviction if:

- (1) There is more than one circumstance;
- (2) The facts from which the inferences are derived are proven;
- (3) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.

Moreover, in *Lozano v. People*, this Court clarified the application of the circumstantial evidence rule:

To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a **fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial evidence must exclude the possibility that some other person has committed the crime.**¹⁹ (emphasis in the original)

The prosecution failed to establish, by circumstantial evidence, that petitioner is guilty of theft

Unfortunately, in the case at bar, this Court finds that the prosecution failed to present sufficient circumstantial evidence to convict the petitioner of the offense charged. We find that the pieces of evidence presented before the trial court fail to provide a sufficient combination of circumstances, as to produce a conviction beyond reasonable doubt.

¹⁸ G.R. No. 206236, July 15, 2013, 701 SCRA 229, 233.

¹⁹ G.R. No. 165582, July 9, 2010, 624 SCRA 597, 608.

To recall, the evidence of the prosecution purports to establish the following narrative: *first*, that the complaining witness Alas hides ₱68,000 in cash in his closet inside their house; *second*, that petitioner is aware that Alas hides money in his bedroom closet; *third*, that on the night of the incident, petitioner was with his then girlfriend, witness Piñon; *fourth*, that petitioner climbed through the fence of Alas's house, and was able to successfully gain entrance to his house; *fifth*, that petitioner later went out of the house with a bulge in his pockets; and *sixth*, that later that day, petitioner and Piñon went shopping for a cellphone.

The foregoing narration—based on the testimonies of the two witnesses of the prosecution, even if given full faith and credit and considered as established facts—fails to establish that petitioner committed the crime of theft. If at all, it may possibly constitute evidence that petitioner committed an offense, but not necessarily theft.

In the case before the Court, the evidence presented by the prosecution fails to establish the *corpus delicti* of theft. In *Tan v. People*, this Court said:

Corpus delicti means the “body or substance of the crime, and, in its primary sense, refers to the fact that the crime has been actually committed.” The “essential elements of theft are (1) the taking of personal property; (2) the property belongs to another; (3) the taking away was done with intent of gain; (4) the taking away was done without the consent of the owner; and (5) the taking away is accomplished without violence or intimidation against persons or force upon things.” In 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

First, nobody saw Zabala enter the bedroom of Alas, where the money amounting to ₱68,000 was allegedly kept and hidden. It is interesting to note that while Alas testified that there were other persons living in that house, i.e. his family members, the prosecution failed to put any of them on the witness stand, to testify that they saw or heard something out of the ordinary at the time the incident allegedly took place, or to explain why nobody else was able to notice that the theft took place while Alas was absent. Witness Piñon, meanwhile, merely testified that she saw Zabala scale the fence of Alas' house and enter it. She did not actually see Zabala enter the room of Alas, where the money was hidden.

Second, the evidence presented below is insufficient to determine without a reasonable doubt that the ₱68,000 in cash was lost due to felonious taking, and, more importantly, that it was petitioner who committed the felonious taking. Even if believed in its entirety, the testimony of witness Piñon does not show that when petitioner left the house of Alas, he was carrying the ₱68,000 in cash which was supposedly lost. All that Piñon saw was the bulge in petitioner's pockets. Piñon's testimony can

²⁰ G.R. No. 134298, August 26, 1999, 313 SCRA 220, 231.

considered as evidence to prove that when petitioner entered the house of Alas, he did so because of his intent to commit asportation.


Third, Piñon's testimony fails to establish that Alas' pocket indeed contained the stolen money, as she never actually saw what was inside the pocket of Zabala. While she testified that later that day, they went to buy 2 cellphones amounting to ₱8,500, she failed to testify whether the money that Zabala used in paying for the cellphone was retrieved from the very same bulging pocket which she saw earlier in the day, which would have led to the conclusion that Zabala's pocket contained money. Failing this, what is left is the fact that Piñon saw a bulge in Zabala's pocket, and there is no evidence whatsoever to prove that his pocket in fact was used to hide the money that he allegedly stole. The trial and appellate courts committed error in accepting as fact that Zabala's pocket contained money, when there is a dearth of evidence to support such allegation.

And *fourth*, the rule in circumstantial evidence cases is that the evidence must exclude the possibility that some other person committed the crime.²¹ In the case here, however, the prosecution failed to prove, or even allege, that it was impossible for some other person to have committed the crime of theft against Alas. The prosecution failed to adduce evidence that at the time the theft was committed, there was no other person inside the house of Alas, or that no other person could have taken the money from the closet of Alas. Alas himself admitted that there were other residents in the house, but these persons were never presented to prove their whereabouts at the time the incident took place. This failure of the prosecution leads the Court to no other conclusion but that they failed to establish that culpability could only belong to Zabala, and not to some other person.

Given the foregoing discussion, We find that petitioner was wrongfully convicted of theft. In the absence of proof beyond a reasonable doubt, the presumption of innocence must be upheld, and thus, petitioner should be acquitted.

WHEREFORE, this petition is **GRANTED**. Accordingly, the July 15, 2013 Decision of the Court of Appeals and its January 8, 2014 Resolution in CA-G.R. CR No. 34428 are hereby **REVERSED** and **SET ASIDE**. Petitioner Kyle Anthony Zabala is **ACQUITTED** of the offense of theft, on account of reasonable doubt. No costs.


SO ORDERED.




PRESBITERO J. VELASCO, JR.
Associate Justice

²¹ *People v. Anabe*, G.R. No. 179033, September 6, 2010, 630 SCRA 10.

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice

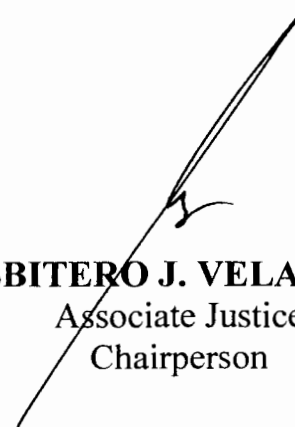

MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice


MARVIC M.V.F. LEONEN
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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify 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