



Republic of the Philippines
Supreme Court
Manila

MisDCCBAt
MISABEL DOMINGO C. BATTUNGLE
Division Clerk of Court
Third Division

MAY 07 2021

THIRD DIVISION

RICARDO ALBOTRA,

G.R. No. 221602

Petitioner,

Present:

- versus -

LEONEN, *J.*,
Chairperson,
HERNANDO,
CARANDANG,*
LOPEZ,* *and*
ROSARIO, *JJ.*

PEOPLE OF THE PHILIPPINES,

Promulgated:
November 16, 2020

Respondent.

MisDCCBAt

X-----X

DECISION

HERNANDO, *J.*:

Petitioner Ricardo Albotra (Albotra) assails the February 28, 2012 Decision¹ of the Court of Appeals (CA) in CA-G.R. CEB CR No. 00804 and its subsequent October 5, 2015 Resolution² which affirmed the April 24, 2007 Decision³ of the Regional Trial Court (RTC), Branch 39 of Sogod, Southern Leyte finding him guilty beyond reasonable doubt of the crime of Theft.

Albotra was charged with the crime of Robbery in an Information⁴ which alleges:

The undersigned Ombudsman Investigator, Office of the Deputy Ombudsman for the Military, accuses SPO1 RICARDO ALBOTRA of

* Designated as additional members per raffle dated November 11, 2020 vice *J. Inting* who recused due to the participation of *J. Socorro B. Inting* in the Court of Appeals, and *J. Delos Santos* who recused in view of having penned the assailed Decision of the Court of Appeals, respectively.

¹ *CA rollo*, pp. 115-132; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Myra V. Garcia-Fernandez and Abraham B. Borreta.

² *Id.* at 161-163; penned by Associate Justice Edgardo L. Delos Santos (now a member of this Court) and concurred in by Associate Justices Pamela Ann Abeilla Maxino and Edward B. Contreras.

³ Records, pp. 395-409; penned by Judge Rolando M. Gonzalez.

⁴ *Id.* pp. 1-2.

ROBBERY (Violation of Art. 294 of the Revised Penal Code), committed as follows:

That on or about June 22, 2000, in Sogod, Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused SPO1 RICARDO ALBOTRA, a public officer, being then a member of the Philippine National Police, with intent to gain and by means of violence upon Delfin Ramos, did then and there, willfully, unlawfully and feloniously, take, rob, divest and carry away a bag owned by said Delfin Ramos containing a sum of money in the amount of Four Thousand Pesos (P4,000.00), Philippine Currency, belonging to Ricardo Olita to the damage and prejudice of the offended parties.

CONTRARY TO LAW.⁵

Albotra filed a Motion to Quash⁶ but it was denied by the RTC.⁷ During his arraignment, Albotra pleaded not guilty to the crime charged.⁸

Version of the Prosecution:

The prosecution presented the testimonies of Delfin Ramos (Ramos), Ricardo Olita (Olita), and Roberto Mercado (Mercado).⁹ The prosecution's evidence is summarized as follows:

On June 22, 2000, at around 6:00 a.m., Olita gave Ramos P4,000.00 cash to buy motorcycle parts. Ramos placed the money inside his black bag together with one pair of pants and a shirt. He then proceeded to Sogod, Southern Leyte.¹⁰

Upon his arrival in Sogod, Southern Leyte at about 8:00 a.m., Ramos dropped by the store of Diego de los Santos (Diego), who invited him inside his house for coffee. Upon entering the house, Ramos placed his bag on top of the washing machine near the kitchen door. Shortly thereafter, while Diego, Ramos, and Mercado were having coffee, Albotra entered the house and grabbed the bag of Ramos which contained the P4,000.00 cash and other personal items. Ramos immediately stood up and attempted to retrieve his bag but Albotra was already gone with the bag.¹¹

Diego and Mercado corroborated Ramos' testimony during trial.¹²

On September 13, 2000, Ramos and Olita filed a complaint for Robbery against Albotra before the Office of the Deputy Ombudsman for the Military.¹³

Version of the Defense:

The defense presented the testimonies of Police Chief Superintendent Miguel

⁵ Id. at 1.

⁶ Id. at 45.

⁷ Id. at 51-52.

⁸ Id. at 53.

⁹ *CA rollo*, p. 117.

¹⁰ Id. at 116-117.

¹¹ Id. at 118.

¹² Id.

¹³ Id.

Buron (PCS Buron) and Albotra himself.¹⁴ The defense's evidence is summarized as follows:

Albotra was a member of the Philippine National Police assigned at the Southern Leyte Provincial Office. On June 22, 2000, at about 6:00 a.m., he was in Barangay Zone 5, Sogod, Southern Leyte conducting an anti-illegal gambling campaign against a certain Quintin, an alleged distributor of *masiao* tips. Albotra saw Quintin divide the alleged *masiao* tips for distribution by Diego. A certain financier, Alex Lim, knew Diego as a general coordinator of *masiao* tips. After sensing the presence of Albotra, Quintin left his bag and ran inside Diego's house. Albotra tried to pursue Quintin but Diego did not allow him to enter the house despite identifying himself as a police officer. Albotra then called the Chief of Police who instructed him to bring the bag to the police station and to have the incident duly recorded.¹⁵

Upon opening the bag at the police station, they found *masiao* tips and a list of names of persons to whom the tips were to be distributed. Thereafter, the incident was recorded in a police report. The Illegal Gambling case that was later filed before the Municipal Circuit Trial Court of Sogod was dismissed however.¹⁶

Albotra testified that he turned over the bag which contained the *masiao* tips to the Sogod Police Station. He claimed that the bag was not presented in court because it can no longer be located by the evidence custodian.¹⁷

Ruling of the Regional Trial Court:

On April 24, 2007, the RTC found Albotra guilty for the crime of Theft instead of Robbery since the element of violence against or intimidation of persons was absent. The trial court held that since the crime of Theft is necessarily included in the crime of Robbery, Albotra can be convicted of the former notwithstanding that he was charged with the latter offense.¹⁸

The dispositive portion of the Decision reads:

WHEREFORE, finding the accused SPO1 RICARDO ALBOTRA GUILTY beyond reasonable doubt of the crime of Theft (Snatching) as proven and not the crime of Robbery as alleged in the information, judgment is hereby rendered:

1. Sentencing him to an indeterminate penalty of three (3) months of arresto mayor as minimum to two (2) years, eleven (11) months and ten (10) days of prision correccional as maximum;
2. Ordering him to pay the offended party Ricardo Olita the amount of Php 4,000.00 which is the value of the money stolen, and to pay the costs of the suit.

¹⁴ Id. at 119.

¹⁵ Id.

¹⁶ Id. at 119-120.

¹⁷ *Rollo*, p. 125.

¹⁸ Records, p. 408.

SO ORDERED.¹⁹

On September 1, 2007, Albotra filed a Motion for New Trial²⁰ but it was denied by the RTC in its November 26, 2007 Resolution.²¹

Thereafter, Albotra filed a Notice of Appeal²² which was given due course by the trial court.

Ruling of the Court of Appeals:

In its February 28, 2012 Decision, the appellate court affirmed the judgment of conviction for Theft by the RTC and dismissed Albotra's appeal, as follows:

WHEREFORE, the appeal is DISMISSED. The Decision dated 24 April 2007 of Regional Trial Court, Branch 39, Sogod, Southern Leyte, in Criminal Case No. R-238, is AFFIRMED.

SO ORDERED.²³

Dissatisfied with the CA's Decision, Albotra filed this Petition.

Issue

Whether or not Albotra is guilty of Theft.

Albotra argues that both the trial court and the appellate court committed serious error in the evaluation and appreciation of the evidence against him. He claims that the RTC disregarded the declaration of falsehood and contradictory statements made by the prosecution witnesses. Albotra insists that the testimonies of the prosecution witnesses lack credibility. He also claims that the courts below erroneously disregarded the absence of the elements of intent to gain and unlawful taking considering that he only followed the orders of his superior to bring the bag into custody. In fine, Albotra argues that the RTC and the CA committed grave error in finding him guilty beyond reasonable doubt of the crime of Theft.²⁴

Our Ruling

After a careful review of the records of the case, the Court finds the petition unmeritorious there being no compelling reason to reverse the CA's Decision which affirmed the RTC's judgment of conviction of Albotra for the crime of Theft. Both the RTC and the CA correctly found that all the elements of the crime of Theft had been sufficiently established by the prosecution.

Article 308 of the Revised Penal Code (RPC) provides:

¹⁹ Id. at 409.

²⁰ Id. at 410-412.

²¹ Id. at 423-424.

²² Id. at 425.

²³ CA *rollo*, p. 131.

²⁴ *Rollo*, pp. 24-48.

ARTICLE 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.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;

2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and

3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

“The essential elements of Theft are: (1) taking of personal property; (2) the property taken belongs to another; (3) the taking was done without the owner's consent; (4) there was intent to gain; and (5) the taking was done without violence against or intimidation of the person or force upon things.”²⁵

In this case, the prosecution satisfactorily proved that Albotra took the bag belonging to Ramos without the latter's consent and with intent to gain. The taking was done without the use of violence against or intimidation of persons or force upon things, thereby removing the act from the coverage of the crime of Robbery.

We uphold the findings of the trial court that the testimonies of the prosecution witnesses are credible. “It is settled that the RTC's findings on the credibility of witnesses and their testimonies are entitled great weight and respect and the same should not be overturned on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances which would have materially affected the outcome of the case.”²⁶ Questions on the credibility of witnesses are best addressed to the trial court due to its unique position to observe the witnesses' deportment and demeanor on the stand while testifying. Where the trial court's findings have been affirmed by the appellate court, as in this case, these are generally binding and conclusive upon the Court.

In this case, both the trial court and the appellate court found that Ramos convincingly testified that he saw Albotra enter Diego's house, grab his bag, and hurriedly leave with said bag.²⁷ Moreover, Diego and Mercado, both of whom had witnessed the incident, corroborated Ramos' testimony. They both positively identified Albotra as the person who unceremoniously took the bag.

²⁵ *Ligtas v. People*, 766 Phil. 750, 782-783 (2015).

²⁶ *People v. Avelino, Jr.*, G.R. No. 231358, July 8, 2019.

²⁷ *CA rollo*, p. 129.

The Court is convinced that there was unlawful taking of personal property. The Court finds no reason to doubt the findings of both the RTC and CA, especially since no evidence was presented to show that Ramos had any ill motive to falsely charge Albotra with the crime of Theft.

The trial court correctly held that the alleged police operation against Illegal Gambling was not satisfactorily established and could not stand against the prosecution's evidence. We quote herein the pertinent ruling of the trial court:

The defense failed to present the bag containing the alleged masiao tips as well as the records of the complaint against John Doe which are the *corpus delicti* in the alleged apprehension of one Quintin.

Whatever excuses had been asserted for their [non-presentation], the same cannot be countenanced by this court considering that under the rules it will only admit evidence that has been formally offered.

x x x x

Thus, this alleged incident being concocted by Albotra is entirely dichotomous or different from the complaint for Robbery filed against him and could not stand on the same footing with the other incident which is this instant case.

Therefore, it was incumbent upon him to refute the facts and circumstances related by Delfin Ramos and his witnesses and not to detract from them by making a different story of his own, which is quite weak not having been corroborated by credible evidence in support of the same.²⁸

We also agree with the ratiocination of the appellate court, *viz.*:

There is a presumption of regular performance of official duty only when there is nothing on record that would arouse suspicions of irregularity.

In this case, the acts of accused-appellant were proved irregular. Hence, the legal presumption of regularity in the performance of official duty does not lie. Accused-appellant testified: on the date in question, he caught Quintin counting and distributing masiao tips; he was able to get the bag containing masiao tips from Quintin, but the latter was able to escape; he turned over the bag containing masiao tips and the list of names to the Sogod Police Station on 22 June 2000 at 6:30 a.m; he filed a case for illegal gambling against an unidentified person but the same was dismissed.

While accused-appellant claims [that] he filed a case for illegal gambling against a person but the same was dismissed, no proof (aside from his self-serving testimony) was adduced in this regard. Moreover, accused-appellant did not produce the bag and masiao tips he allegedly confiscated from Quintin, which are the *corpus delicti* of the crime committed by Quintin.²⁹

²⁸ Records, p. 404.

²⁹ CA *rollo*, pp. 129-130.

Moreover, the alleged inconsistencies and contradictions in the testimonies of the prosecution witnesses do not relate to the essential elements of the crime of Theft but only to minor and inconsequential details. In *People v. Chan*,³⁰ we have previously held that:

Discrepancies or inconsistencies in the testimonies of the witnesses pertaining to minor details, not touching upon the central fact of the crime, do not impair the credibility of the witnesses; on the contrary, they even tend to strengthen the credibility of the witnesses since they discount the possibility of witnesses being rehearsed.

In this case, the alleged inconsistencies in the testimonies pertained to the ownership of the stolen bag, the location of the same when it was taken, the intricacies of the confrontation between Albotra and Ramos, all of which are minor details that have no bearing on the elements of the crime. As to the contention regarding the amount stolen which concededly has a bearing on the penalty to be imposed, we find no reason to deviate from the findings of both the trial court and the appellate court that Ramos lost ₱4,000.00.

Finally, Albotra's contention that the prosecution failed to establish the element of intent to gain in the taking of the bag is without merit. Since intent to gain is an internal act, it is presumed from the unlawful taking of the bag in question.

All told, based on the evidence on record, the Court affirms the Decision of the appellate court that sustained Albotra's conviction for Theft. However, with the advent of Republic Act No. 10951,³¹ there is a need to modify the penalty imposed. As amended, Article 309, Paragraph (5), now reads:

Art. 309. *Penalties.* – Any person guilty of theft shall be punished by:

x x x x

5. *Arresto mayor* to its full extent, if such value is over Five hundred pesos (₱500.00) but does not exceed Five thousand pesos (₱5,000.00).

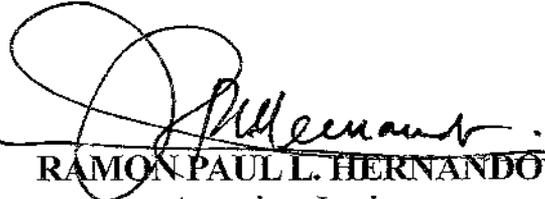
Since the amount proved to be stolen was ₱4,000.00, Albotra should be accordingly sentenced to suffer the penalty of four months of *arresto mayor*. Moreover, he should pay interest at the rate of six percent (6%) per *annum* on the amount due from date of finality of this Decision until full payment.

WHEREFORE, the Petition is **DENIED**. The February 28, 2012 Decision and the October 5, 2015 Resolution of the Court of Appeals in CA-G.R. CEB CR No. 00804 are **AFFIRMED with MODIFICATION** that petitioner Ricardo Albotra is sentenced to suffer the penalty of four (4) months of *arresto mayor* and to return the amount of ₱4,000.00 with legal interest of six percent (6%) per *annum* from date of finality of this Decision until fully paid.

³⁰ G.R. No. 226836, December 5, 2018.

³¹ An Act Adjusting the Amount or the Value of the Property and Damage on which the Penalty is Based, and the Fines Imposed under the Revised Penal Code, Amending for the Purpose Act No. 3815, otherwise known as the "Revised Penal Code," as amended. Approved: August 29, 2017.

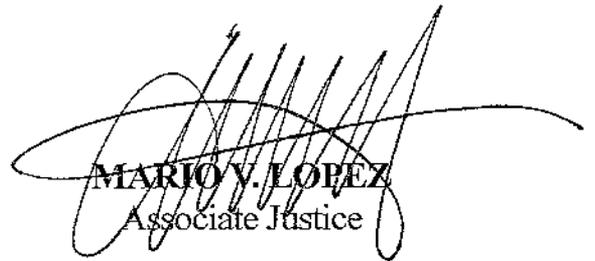
SO ORDERED.

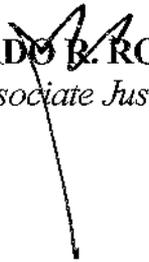

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


MARVIC M. V. F. LEONEN
Associate Justice
Chairperson


ROSMARI D. CARANDANG
Associate Justice


MARIO V. LOPEZ
Associate Justice


RICARDO B. ROSARIO
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.



MARVIC M. V. F. LEONEN

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.



DIOSDADO M. PERALTA

Chief Justice

CERTIFIED TRUE COPY

Misdebat
MISAEAL DOMINGO C. BATTUNGAL
Division Clerk of Court
Third Division

MAY 07 2021