Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

RYAN VIRAY,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 205180

Present:

VELASCO, JR., *J.*, Chairperson,
ABAD,
PEREZ,*
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

November 11, 2013

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D E C I S I O N

VELASCO, JR., *J.*:

This is a Petition for Review on Certiorari under Rule 45 to reverse and set aside the August 31, 2012 Decision[1] and January 7, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 33076, which affirmed with modification the Decision of the Regional Trial Court of Cavite City, Branch 16 (RTC), in Criminal Case No. 66-07.

The factual backdrop of this case is as follows:

An Information for **qualified theft** was filed against petitioner Ryan Viray before the RTC, which reads:

> That on or about 19 October 2006, in the City of Cavite, Republic of the Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, then being employed as a helper of ZENAIDA VEDUA y SOSA with intent to gain and **with grave abuse of confidence**, did then and there, willfully, unlawfully and feloniously steal, take and carry away several pieces of jewelry, One (1) Gameboy, One (1) CD player, One (1) Nokia cellphone and a jacket with a total value of P297,800.00 belonging to the said Zenaida S. Vedua, without the latter's consent and to her damage and prejudice in the aforestated amount of P297,800.00.
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> CONTRARY TO LAW.[3]

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* Additional member per raffle dated March 18, 2013.

[1] *Rollo*, pp. 83-98. Penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta.

[2] Id. at 39-40; 108-109.

[3] Id. at 10, 26-27, 39-41, 61, 84.

When arraigned, the accused pleaded "not guilty."[4] At the pre-trial, the defense proposed the stipulation, and the prosecution admitted, that the accused was employed as a dog caretaker of private complainant ZenaidaVedua (Vedua) and **was never allowed to enter the house** and he worked daily from 5:00 to 9:00 in the morning.[5]

During trial, the prosecution presented evidence to prove the following:

Private complainant Vedua maintains seventy-five (75) dogs at her compound in Caridad, Cavite City.[6] To assist her in feeding the dogs and cleaning their cages, private complainant employed the accused who would report for work from 6:00 a.m. to 5:30 p.m.[7] On October 19, 2006, at around 6:30 in the morning, accused arrived for work. Half an hour later or at 7 o'clock, private complainant left for Batangas. Before leaving, **she locked the doors of her house**, and left the accused to attend to her dogs. Later, at around 7:00 in the evening, private complainant arrived home, entering through the back door of her house. As private complainant was about to remove her earrings, she noticed that her other earrings worth PhP 25,000 were missing. She then searched for the missing earrings but could not find them.[8]

Thereafter, private complainant also discovered that her jacket inside her closet and her other pieces of jewelry (*rositas*) worth PhP 250,000 were also missing. A Gameboy (portable videogame console), a compact disc player, a Nokia cellular phone and a Nike Air Cap were likewise missing. The total value of the missing items supposedly amounted to PhP 297,800. Private complainant immediately checked her premises and discovered that **the main doors of her house were destroyed**.[9] A plastic bag was also found on top of her stereo, which was located near the bedroom. The plastic bag contained a t-shirt and a pair of shorts later found to belong to accused.[10]

Witness Nimfa Sarad, the laundrywoman of Vedua's neighbor, testified seeing Viray at Vedua's house at 6:00 a.m. By 11:00 a.m., she went out on an errand and saw Viray with an unidentified male companion leaving Vedua's house with a big sack.[11]

Another witness, Leon Young, who prepares official/business letters for Vedua, testified that he went to Vedua's house between 10:00 and 11:00 am of October 19, 2006 to retrieve a diskette and saw petitioner with a male companion descending the stairs of Vedua's house. He alleged that since he knew Viray as an employee of private complainant, he simply asked where

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[4] Id. at 11, 27.
[5] Id. at 40.
[6] Id. at 27, 41, 62-63. 84.
[7] Id. at 11, 27-28, 41, 63, 84.
[8] Id. at 11, 28, 42, 63, 84.
[9] Id. at 11, 64, 85.
[10] Id. at 11, 64, 85.
[11] Id. at 11-12, 29, 43, 65, 85.

Vedua was. When he was told that Vedua was in Batangas, he left and went back three days after, only to be told about the robbery.[12]

Prosecution witness Beverly Calagos, Vedua's stay-out laundrywoman, testified that on October 19, 2006, she reported for work at 5:00 a.m. Her employer left for Batangas at 7:00 am leaving her and petitioner Viray to go about their chores. She went home around 8:30 a.m. leaving petitioner alone in Vedua's house. Meanwhile, petitioner never reported for work after that day.[13]

For his defense, Viray averred that he did not report for work on the alleged date of the incident as he was then down with the flu. His mother even called up Vedua at 5:30 a.m. to inform his employer of his intended absence. Around midnight of October 20, 2006, Vedua called Viray's mother to report the loss of some valuables in her house and alleged that Viray is responsible for it. Petitioner's sister and aunt corroborated his version as regards the fact that he did not go to work on October 19, 2006 and stayed home sick.[14]

After the parties rested their respective cases, the trial court rendered a Decision dated December 5, 2009,[15] holding that the offense charged should have been **robbery** and not qualified theft as there was an actual breaking of the screen door and the main door to gain entry into the house.[16] Similarly, Viray cannot be properly charged with qualified theft since he was not a domestic servant but more of a laborer paid on a daily basis for feeding the dogs of the complainant.[17]

In this light, the trial court found that there is sufficient circumstantial evidence to conclude that Viray was the one responsible for the taking of valuables belonging to Vedua.[18] Hence, the RTC found petitioner Viray **guilty** beyond reasonable doubt of **robbery** and sentenced him, thus:

> WHEREFORE, in view of the foregoing considerations, the Court finds the accused RYAN VIRAY *GUILTY* beyond reasonable doubt for the crime of robbery and hereby sentences him to suffer the indeterminate imprisonment ranging from FOUR (4) years, TWO (2) months and ONE (1) day of *prision correccional*, as minimum, to EIGHT (8) years of *prision mayor*, as maximum.
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> SO ORDERED.[19]

Aggrieved, petitioner elevated the case to the CA.

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[12] Id. at 12, 29, 44, 64, 85.
[13] Id. at 12, 29-30, 45-46, 65
[14] Id. at 12-13, 30, 46-49, 65, 85-86.
[15] Id. at 39-56.
[16] Id. at 50-51.
[17] Id. at 51.
[18] Id. at 5-56.
[19] Id. at 13, 27, 56, 62, 86-87.

The appellate court found that the Information filed against Viray shows that the prosecution failed to allege one of the essential elements of the crime of robbery, which is "the use of force upon things." Thus, to convict him of robbery, a crime not necessarily included in a case of qualified theft, would violate the constitutional mandate that an accused must be informed of the nature and cause of the accusation against him.[20]

Nonetheless, the CA held that a conviction of the accused for qualified theft is warranted considering that Viray enjoyed Vedua's confidence, being the caretaker of the latter's pets. Viray committed a grave abuse of this confidence when, having access to the outside premises of private complainant's house, he forced open the doors of the same house and stole the latter's personal belongings.[21] In its assailed Decision, the appellate court, thus, modified the ruling of the trial court holding that the accused is liable for the crime of **qualified theft**.

As to the penalty imposed, considering that there was no independent estimate of the value of the stolen properties, the CA prescribed the penalty under Article 309(6)[22] in relation to Article 310[23] of the Revised Penal Code (RPC).[24] The dispositive portion of the assailed Decision reads, viz:

> WHEREFORE, premises considered, the instant appeal is PARTLY GRANTED. The appealed *Decision* of the court a *quo* is hereby AFFIRMED with MODIFICATION that the accused-appellant be convicted for the crime of QUALIFIED THEFT and is hereby sentenced to suffer indeterminate imprisonment of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum. The appellant is also ordered to return the pieces of jewelry and other personal belongings taken from private complainant. Should restitution be no longer possible, the accused appellant must pay the equivalent value of the unreturned items.
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> SO ORDERED.[25]

When the appellate court, in the adverted Resolution of January 7, 2013,[26] denied his motion for reconsideration,[27] Viray interposed the present petition asserting that the CA committed a reversible error in finding him guilty. Petitioner harps on the supposed inconsistencies of the testimonies of the prosecution witnesses in advancing his position that the evidence presented against him fall short of the quantum of evidence necessary to convict him of qualified theft.[28]

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[20] Id. at 90.
[21] Id. at 92.
[22] *Arresto mayor* in its minimum and medium periods, if such value does not exceed 5 pesos.
[23] Art. 310. Qualified theft.—The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article x x x.
[24] *Rollo*, pp. 95-96.
[25] Id. at 14, 96-97.
[26] Id. at 107-109.
[27] Id. at 99-105.
[28] Id. at 15-19.

In the meantime, in its Comment[29] on the present petition, respondent People of the Philippines asserts that the alleged inconsistencies in the testimonies of the prosecution witnesses are so insignificant and do not affect the credibility and weight of their affirmation that petitioner was at the crime scene when the crime was committed.[30] In fact, these minor inconsistencies tend to strengthen the testimonies because they discount the possibility that they were fabricated.[31] What is more, so respondent contends, these positive testimonies outweigh petitioner's defense of denial and alibi.[32]

In resolving the present petition, We must reiterate the hornbook rule that this court is not a trier of facts, and the factual findings of the trial court, when sustained by the appellate court, are binding in the absence of any indication that both courts misapprehended any fact that could change the disposition of the controversy.[33]

In the present controversy, while the CA modified the decision of the trial court by convicting petitioner of qualified theft rather than robbery, the facts as found by the court *a quo* were the same facts used by the CA in holding that all the elements of qualified theft through grave abuse of confidence were present. It is not, therefore, incumbent upon this Court to recalibrate the evidence presented by the parties during trial.

Be that as it may, We find it necessary to modify the conclusion derived by the appellate court from the given facts regarding the crime for which petitioner must be held accountable.

Art. 308 in relation to Art. 310 of the RPC describes the felony of qualified theft:

> 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.
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> x x x x
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> Art. 310. *Qualified Theft.* – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, **or with grave abuse of confidence**, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation, fish taken from a fishpond or fishery or property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis supplied.)

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[29] Id. at 116-125.
[30] Id. at 121-122.
[31] Id. at 122.
[32] Id. at 123.
[33] *People v. Domingo*, G.R. No. 184958, September 17, 2009, 600 SCRA 280, 288; *Gerasta v. People*, G.R. No. 176981, December 24, 2008, 575 SCRA 503, 512; *People v. Lantano*, G.R. No. 176734, January 28, 2008, 542 SCRA 640, 651-652.

The crime charged against petitioner is theft qualified by grave abuse of confidence. In this mode of qualified theft, this Court has stated that the following elements must be satisfied before the accused may be convicted of the crime charged:

1. Taking of personal property;
2. That the said property belongs to another;
3. That the said taking be done with intent to gain;
4. That it be done without the owner's consent;
5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; and
6. That it be done with grave abuse of confidence.[34]

As pointed out by both the RTC and the CA, the prosecution had proved the existence of the first four elements enumerated above beyond reasonable doubt.

First, it was proved that the subjects of the offense were all personal or movable properties, consisting as they were of jewelry, clothing, cellular phone, a media player and a gaming device. *Second*, these properties belong to private complainant Vedua. *Third*, circumstantial evidence places petitioner in the scene of the crime during the day of the incident, as numerous witnesses saw him in Vedua's house and his clothes were found inside the house. He was thereafter seen carrying a heavy-looking sack as he was leaving private complainant's house. All these circumstances portray a chain of events that leads to a fair and reasonable conclusion that petitioner took the personal properties with intent to gain, especially considering that, *fourth*, Vedua had not consented to the removal and/or taking of these properties.

With regard to the fifth and sixths elements, however, the RTC and the CA diverge in their respective Decisions.

The RTC found that the taking committed by petitioner was not qualified by grave abuse of confidence, rather it was qualified by the use of force upon things. The trial court held that there was no confidence reposed by the private complainant on Viray that the latter could have abused. In fact, Vedua made sure that she locked the door before leaving. Hence, Viray was compelled to use force to gain entry into Vedua's house thereby committing the crime of robbery, not theft.

The CA, on the other hand, opined that the breaking of the screen and the door could not be appreciated to qualify petitioner's crime to robbery as such use of force was not alleged in the Information. Rather, this breaking of the door, the CA added, is an indication of petitioner's abuse of the confidence given by private complainant. The CA held that "[Viray] enjoyed the confidence of the private complainant, being the caretaker of the latter's

[34] *People v. Puig*, G.R. Nos. 173654-765, August 28, 2008, 563 SCRA 564.

pets. He was given access to the outside premises of private complainant's house which he gravely abused when he forced open the doors of the same house and stole the latter's belongings."[35] Committing grave abuse of confidence in the taking of the properties, petitioner was found by the CA to be liable for qualified theft.

This Court is inclined to agree with the CA that the taking committed by petitioner cannot be qualified by the breaking of the door, as it was not alleged in the Information. However, we disagree from its finding that the same breaking of the door constitutes the qualifying element of grave abuse of confidence to sentence petitioner Viray to suffer the penalty for qualified theft. Instead, We are one with the RTC that private complainant did not repose on Viray "confidence" that the latter could have abused to commit qualified theft.

The very fact that petitioner "forced open" the main door and screen because he was denied access to private complainant's house negates the presence of such confidence in him by private complainant. Without ready access to the interior of the house and the properties that were the subject of the taking, it cannot be said that private complaint had a "firm trust" on petitioner or that she "relied on his discretion"[36] and that the same trust reposed on him facilitated Viray's taking of the personal properties justifying his conviction of qualified theft.

To warrant the conviction and, hence, imposition of the penalty for qualified theft, there must be an allegation in the information and proof that there existed between the offended party and the accused such high degree of confidence[37]or that the stolen goods have been entrusted to the custody or vigilance of the accused.[38] In other words, where the accused had never been vested physical access to,[39] or material possession of, the stolen goods, it may not be said that he or she exploited such access or material possession thereby committing such grave abuse of confidence in taking the property. Thus, in *People v. Maglaya*,[40] this Court refused to impose the penalty prescribed for qualified theft when the accused was not given material possession or access to the property:

> Although appellant had taken advantage of his position in committing the crime aforementioned, **We do not believe he had acted with grave abuse of confidence and can be convicted of qualified theft, because his employer had never given him the possession of the machines involved in the present case or allowed him to take hold of them, and it does not appear that the former had any special confidence in him**. Indeed, the delivery of the machines to the prospective customers was entrusted, not to appellant, but to another employee.

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[35] *Rollo*, p. 92.

[36] BLACK'S LAW DICTIONARY, 9th ed., for the iPhone/iPad/iPod touch. Version 2.1.1 (B12136), p. 339.

[37] *People v. Koc Song*, 63 Phil. 369 (1936).

[38] *People v. Maglaya*, No. L-29243, November 28, 1969, 30 SCRA 606.

[39] See *People v. Anabe*, G.R. No. 179033, September 6, 2010, 630 SCRA 10.

[40] Supra note 38.

> Inasmuch as the aggregate value of the machines stolen by appellant herein is P13,390.00, the crime committed falls under Art. 308, in relation to the first subdivision of Art.309 of the Revised Penal Code, which prescribes the penalty of prisión mayor in its minimum and medium periods. No modifying circumstance having attended the commission of the offense, said penalty should be meted out in its medium period, or from 7 years, 4 months and 1 day to 8 years and 8 months of prisión mayor. The penalty imposed in the decision appealed from is below this range. (Emphasis and underscoring supplied.)

The allegation in the information that the offender is a laborer of the offended party does not by itself, without more, create the relation of confidence and intimacy required by law for the imposition of the penalty prescribed for qualified theft.[41] Hence, the conclusion reached by the appellate court that petitioner committed qualified theft because he "enjoyed the confidence of the private complainant, being the caretaker of the latter's pets" is without legal basis. The offended party's very own admission that the accused was never allowed to enter the house[42] where the stolen properties were kept refutes the existence of the high degree of confidence that the offender could have allegedly abused by "forc[ing] open the doors of the same house."[43]

Without the circumstance of a grave abuse of confidence and considering that the use of force in breaking the door was not alleged in the Information, petitioner can only be held accountable for the crime of **simple theft** under Art. 308 in relation to Art. 309 of the RPC.

As for the penalty, We note with approval the observation made by the appellate court that the amount of the property taken was **not** established by an independent and reliable estimate. Thus, the Court may fix the value of the property taken based on the attendant circumstances of the case or impose the minimum penalty under Art. 309 of the RPC.[44] In this case, We agree with the observation made by the appellate court in accordance with the rule that "if there is no available evidence to prove the value of the stolen property or that the prosecution failed to prove it, the corresponding penalty to be imposed on the accused-appellant should be the minimum penalty corresponding to theft involving the value of P5.00."[45] Accordingly, We impose the prescribed penalty under Art. 309(6) of the RPC, which is *arresto mayor* in its minimum and medium periods. The circumstance of the breaking of the door, even if proven during trial, cannot be considered as a generic aggravating circumstance as it was not alleged in the Information.[46] Thus, the Court finds that the penalty prescribed should be imposed in its

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[41] Reyes, Luis B., THE REVISED PENAL CODE: CRIMINAL LAW 710 (15th ed., 2001).
[42] *Rollo*, p. 40.
[43] Id. at 92.
[44] See *People v. Dator*, G.R. No. 136142, October 24, 2000, 344 SCRA 222; see also *Lozano v. People*, G.R. No. 165582, July 9, 2010.
[45] *People v. Dator*, id. at 236.
[46] *People v. Perreras*, G.R. No. 139622, July 31, 2001, 362 SCRA 202; *People v. Legaspi*, G.R. Nos. 136164-65, April 20, 2001.

medium period, that is to say, from two (2) months and one (1) day to three (3) months of *arresto mayor*.

Lastly, We delete the order for the reparation of the stolen property. Art. 2199 of the Civil Code is clear that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him, as he has duly proved." Since, as aforesaid, the testimony of the private complainant is not sufficient to establish the value of the property taken, nor may the courts take judicial notice of such testimony, We cannot award the reparation of the stolen goods.[47]

WHEREFORE, the CA Decision of August 31, 2012 in CA-G.R. CR No. 33076 is **AFFIRMED** with **MODIFICATION**. Petitioner Ryan Viray is found **GUILTY** beyond reasonable doubt of **SIMPLE THEFT** and is sentenced to suffer the penalty of imprisonment for two (2) months and one (1) day to three (3) months of *arresto mayor*. Further, for want of convincing proof as to the value of the property stolen, the order for reparation is hereby **DELETED**.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

[47] *Francisco v. People*, 478 Phil. 167 (2004).

WE CONCUR:

ROBERTO A. ABAD
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR 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