



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

**JOEL YONGCO and JULIETO
LAÑOJAN,**

Petitioners,

G.R. No. 209373

Present:

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

X-----X

ANECITO TANGIAN, JR.,
Petitioner,

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

G.R. No. 209414

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

X-----X

Promulgated:

July 30, 2014

Wifredo P. Velasco

DECISION

VELASCO, JR., J.:

The Case

This treats of the consolidated Petitions for Review on Certiorari under Rule 45 in relation to Rule 125 of the Rules of Court, assailing the Decision¹ and Resolution of the Court of Appeals (CA) in CA-G.R. CR No. 00549-MIN, dated January 21, 2013 and September 10, 2013, respectively. Said rulings affirmed the Regional Trial Court (RTC) Decision convicting petitioners of qualified theft.

The Facts

Petitioners Joel Yongco, Julieto Lañojan, and Anecito Tangian, Jr. were employees of the City Government of Iligan. Tangian worked as a

* Acting member per Special Order No. 1691 dated May 22, 2014.

¹ Penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob.

garbage truck driver for the city, while Yongco and Lañojan were security guards assigned to protect the premises of the City Engineer's Office (CEO). On November 14, 2005, an Information was filed before the RTC, Branch 5 in Iligan City, Lanao del Norte charging the three with Qualified Theft. The information docketed as Crim. Case No. 12092 reads:

That on or about April 16, 2005, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then regular and casual employees of the City government as drivers and helpers respectively, of a garbage truck with Plate No. 496, conspiring and confederating together and mutually helping each other, with grave abuse of confidence reposed upon them by the city government, and with intent to gain, did then and there willfully, unlawfully and feloniously take, steal and carry away the following articles, to wit: one (1) unit transmission, boom, differential of Tamaraw and I-beam of Nissan with a total value of P40,000.00, belonging to the City government of Iligan, represented by Atty. Rommel Abragan of the City Legal Office, Iligan City, without the consent and against the will of the said owner in the aforesaid sum of P40,000.00, Philippine Currency.²

During the arraignment held on February 16, 2006, accused petitioners entered a plea of not guilty to the offense charged. Pre-trial was then conducted and closed on July 25, 2006. Thereafter, trial on the merits ensued.

Version of the Prosecution

The prosecution presented as one of its witnesses a casual employee of the city government, Pablo Salosod, who testified that on April 16, 2005 at around 1:30 a.m., while attending a wake at the Cosmopolitan Funeral Parlor, he was fetched and requested by petitioner Tangian to accompany him to the CEO. At the office garage, Salosod and his fellow garbage collectors were allegedly directed by petitioners Tangian and Yongco to load car parts that petitioners considered as waste items, the subject items of the theft, on the truck driven by Tangian. They then drove to Tominobo, Iligan City where the materials were unloaded in front of Delfin Junk Store, and before the truck left the shop, Salosod allegedly saw petitioner Lañojan giving a thumbs-up sign to Tangian. On the way back, Tangian allegedly confessed to Salosod that it was Lañojan who requested that the items be brought at the junk shop. Another employee, Rommel Ocaonilla, corroborated the testimony of Salosod.

Prosecution witness Oliveros Garcia meanwhile testified witnessing the unloading of the items in front of the junk store, after which, Lañojan covered the items up with a sack. The following morning, he allegedly saw Lañojan's brother-in-law, who coincidentally works at the shop, take the items inside.

² *Rollo* (G.R. No. 209373), p. 12.

Witnesses Dioscoro Galorio and Atty. Ulysses Lagcao, employee and consultant of the city government, respectively, testified that they conducted investigations relative to the incident and found out that the items stolen consisted of one Nissan transmission, one unit boom, one Nissan I-beam, and one differential of Tamaraw, with total valuation of PhP 12,000. Upon their investigation, they recommended to the city legal officer the filing of the present criminal case against the three petitioners.

Version of the Defense

In defense, petitioners testified in their behalves. Their testimony is summarized by the CA in the Decision now on appeal in the following wise:

Joel Yongco, 34, single, x x x and a casual employee, testified that, on August 9, 2004, he was issued a Job Order and detailed at the Civil Security Unit (CSU). He was assigned to guard the building installation of the CEO. On April 15, 2005, he was on duty with his companion, one Mr. Quintana. They relieved Lañojan and one Mr. Enumerables. Lañojan gave him (Yongco) four gate passes and said that the area would have to be cleared because the “Bacod” Iligan vehicle would be arriving. Yongco read the entries on one of [the] gate passes. They read: “Loaded assorted scraps with remark to be thrown at the dump site.” At the bottom of the gate pass was the “note” of Engineer Cabahug with the signatures of the guards, Lañojan and Enumerables. From 5:00 PM to 12:00 midnight on April 15, 2005, there was only one shipment of scrap iron to the dump site. The dump truck driven by Tangian entered the CEO premises at around 11:00 o’clock in the evening of the same date. Tangian went to the yard where the scrap iron were situated and asked Yongco to accompany and help him. Tangian gathered the scrap materials and the four of them (Tangian, Yongco, and the 2 helpers of Tangian) loaded the said scrap to the dump truck. At around 12:45 P.M., after loading the items, Tangian drove away without giving a gate pass to the guards on duty. Yongco did not ask Tangian for a gate pass because Yongco had one companion in the guard house to get the gate pass.

Julieto Lañojan, 48, who was working in the CSU division for 20 years and assigned to guard the CEO, testified that he was not on duty on April 15 and 16, 2005; he was on duty on April 14, 2005 at 7:00 A.M. up to April 15, 2005 of the same time. When Yongco and Quintana relieved him on April 15, 2005 at 7:00 in the morning, he gave the four gate passes which were used to ship out assorted scrap irons to them to be kept for the file. Engineer Cabahug was the one who directed the removal of the scrap iron because the area of the CEO would have to be cleared since new trucks for the government were coming. His house, which was along the national highway, was about 40-50 meters away from Delfin Junk Store. He knew Oliveros Garcia who was a kagawad of Tominobo, Iligan City. Aside from that, Garcia had filed an ejectment case against him (Lañojan), which was still pending in court.

x x x x

Anecito Tangian, Jr., 59, garbage truck driver at the City Engineer’s Office for 16 years, testified that his highest level of educational attainment was Grade I. It was his tour of duty on April 15, 2005 at 9:00 o’clock in the evening up to April 16, 2005 at 6:00 o’clock in

the morning. At around 5:30 in the morning of April 15, 2005, Lañojan asked him to load scrap materials onto the garbage truck and to bring them to the Delfin Junk Store in Tominobo. He asked Lañojan if there were any problems about the loading of the said items. Lañojan answered that there were no problems about the loading of the same, that the City Garbage would have to be cleared considering that “BACOD” trucks would be arriving at that area. He followed Lañojan because the latter was the guard at the City Garage. When he arrived for duty at the City Garage at around 9:00 in the evening, Yongco asked him if Lañojan already informed him about the loading of the items. After that he checked up the garbage truck while Yongco and the two helpers were loading the items. He did not know how many items were loaded because he only helped the three of them during the loading of the differential. After loading the scrap materials, Tangian and the two helpers drove away from the City Garage. They dropped by the Cosmo Funeral Homes for more than an hour before they proceeded to Tominobo. When they reached Delfin Junk Store, Lañojan gave a thumbs-up sign to Tangian, which meant okay. He then left and started his work collecting garbage.³

Ruling of the Regional Trial Court

On April 11, 2008, the RTC held petitioners liable for qualified theft via conspiracy. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Court finds the accused Julieto Lañojan, Anecito Tangian, Jr., and Joel Yongco GUILTY beyond reasonable doubt of the crime of Qualified Theft defined and penalized under Article 310 in relation to Article 309 of the Revised Penal Code, and the said accused are hereby sentenced to a penalty of imprisonment of six (6) years, eight (8) months and twenty (20) days of *prision correccional* maximum as the minimum term, to ten (10) years and eight (8) months of *prision mayor* maximum, as the maximum term, of their indeterminate sentence including the accessory penalties thereof.

SO ORDERED.⁴

Aggrieved, petitioners, in their appeal, prayed that the CA reverse the RTC Decision. Petitioner Tangian reiterated in his Brief that he should not be considered as a conspirator since he merely innocently obeyed Lañojan’s instructions on the assumption that the latter was his superior and that Lañojan was authorized to get rid of the scrap materials in the CEO premises and that he had no criminal intent whatsoever.

In their joint brief, Yongco and Lañojan also disclaimed the existence of a conspiracy. Yongco, in his defense, argued that Tangian and his two other helpers asked for his assistance which he extended in good faith, in view of Lañojan’s statement earlier that day that the office garage has to be cleared. Lañojan, on the other hand, insisted that he cannot be considered as a conspirator since he was not present at the time of taking, and that the mere giving of a thumbs-up sign to Tangian when the latter delivered the materials to the junk shop does not amount to conspiracy.

³ Id. at 15-17.

⁴ Id. at 108-109.

Ruling of the Court of Appeals

On January 21, 2013, the CA issued the assailed Decision denying petitioners' appeals. In affirming the RTC Decision *in toto*, the CA ruled that there was indeed conspiracy because Tangian could not have taken out the items without a gate pass, but with the security guard Yongco's participation, he was able to do just that. The CA also ruled that it is implausible that Tangian would just leave the items in front of the junk shop unattended. Thus, the appellate court appreciated the testimonies of the prosecution witnesses that Lañojan's presence was not merely coincidental and that his thumbs-up and his subsequent act of covering the materials with sacks indicate that the plan was for him to receive the said items. Petitioners, via motion for reconsideration, sought the CA's reversal of the Decision only for the appellate court to deny the same through its challenged Resolution dated September 10, 2013.

Not contented with the adverted Decision of the CA as reiterated in the Resolution, petitioners Yongco and Lañojan jointly filed a Petition for Review on Certiorari while petitioner Tangian separately filed his own. The two petitions were later consolidated by this Court for resolution herein.

The Issue

As with most criminal cases, the main issue in the instant case is whether or not the CA erred in sustaining petitioners' conviction. Central to resolving this issue is determining whether or not there indeed existed conspiracy between petitioners in committing the offense charged.

The Court's Ruling

The petitions are bereft of merit.

Article 310, in relation to Art. 308, of the Revised Penal Code (RPC) defines Qualified Theft, thusly:

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.

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 objects 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.

X X X X

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 a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (emphasis added)

Synthesizing the foregoing provisions, the elements of Qualified Theft, committed with grave abuse of discretion, can simply be enumerated as follows:

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.⁵

As correctly observed by the appellate court, all of the elements of Qualified Theft are present in this case, viz:

There is no dispute that the items (transmission, boom arm, differential assembly, and I-beam) which are the subject matter of this case belong to the CEO of Iligan City. There is no dispute that these items, although considered "heap of scrap," have not yet been declared unserviceable or waste by the proper authority or office. Nor have they been marked for proper disposal. Unless properly disposed in accordance with Section 379 of the Local Government Code, these items are still government properties or owned by the City of Iligan.

There is also no dispute that these items were taken away from the CEO and were already under complete and effective control of the persons taking the same. This is because these items were loaded onto the garbage truck driven by Tangian and brought to Tominobo at the Delfin Junk Store.

Apparently, the taking of these items was without the consent of the CEO of Iligan City because there was no gate pass issued to that effect. Evidence shows that when the garbage truck left the premises of the CEO, no gate pass was surrendered by Tangian. Yongco did not bother to ask for a gate pass on the pretext that there was another guard on duty at the gate.

⁵ *People v. Mirto*, G.R. No. 193497, October 19, 2011, 659 SCRA 796, 807.

Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject to asportation. Actual gain is irrelevant as the important consideration is the intent to gain. Since these items were brought to the junk store, intent to gain becomes obvious. The presumption of *animus lucrandi* has not been overturned.

It is equally patent that the taking of these items was done with grave abuse of confidence. The accused in this case, it bears stressing, were guards and drivers with access to the entrance and exit of the CEO premises. In other words, they enjoyed the trust and confidence reposed on them by their employer (the City of Iligan) to have access throughout the CEO premises on account of their respective duties. More so since the primary function of the CSU is to guard the properties, including the said items, of the CEO. It was this trust and confidence that was gravely abused by them that makes the theft qualified.⁶

Concisely stated, the fact of taking without consent is indubitable. Indeed, petitioners hinge their plea for acquittal and supporting argument primarily on their lack of criminal intent and the observed conspiracy.

Addressing the issue head on, We uphold the findings of the appellate court. No error can be ascribed to the CA when it determined the existence of conspiracy between and among petitioners in this case.

There is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it.⁷ Well-settled is the rule that in conspiracy, direct proof of a previous agreement is not necessary as it may be deduced from the mode, method, and manner by which the offense was perpetrated.⁸ It may be inferred from the acts of the accused before, during, or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.⁹

In the case at bar, even though there is no showing of a prior agreement among the accused, their separate acts taken and viewed together are actually connected and complemented each other indicating a unity of criminal design and purpose.¹⁰

Tangian's complicity in the illicit deed was manifest from the fact, as he himself admitted, that he was the one who personally transported the stolen items from the CEO to the junkshop. His claim that he was not aware of any irregularity in the act he performed is rendered dubious by his 16 years of service as truck driver for the City of Iligan. To be sure, his record of service argues against his claim of ignorance of the standard protocol that a gate pass to be issued by the CEO property custodian should first be secured before taking out items from the CEO compound, including alleged

⁶ *Rollo* (G.R. No. 209373), pp. 19-20.

⁷ RPC, Art. 8(2).

⁸ *Aquino v. Paiste*, G.R. No. 147782, June 25, 2008, 555 SCRA 255, 271-272.

⁹ *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 506.

¹⁰ *Rollo* (G.R. No. 209373), p. 104.

waste materials. He should also know better than to assume that Lañojan can authorize the withdrawal of items without the requisite gate pass since Lañojan's duty, as security guard, is precisely to prevent the same.

Similarly, Yongco's claim of good faith is belied by his own admission that he knew of the office procedure that a gate pass is required every time something is taken out of the CEO premises. In fact, four gate passes were given to him that morning by Lañojan, covering waste materials withdrawn during the latter's shift. At the very least, this should have reminded him of his duty to demand a gate pass for property leaving the CEO premises. Neither memory lapses or lapses in the performance of his duty will explain Yongco's failure to demand a gate pass. The only viable explanation is that he was in connivance with other petitioners.¹¹

Lastly, the RTC, with valid reason, tagged Lañojan as having instigated and marshalled the entire scheme. To quote the trial court:

x x x As shown above, it appears that Lañojan broached the idea to Yongco that the items subject of this case will be withdrawn under the pretext of clearing the CEO scrap yard of unserviceable waste materials. Then Lañojan gave Yongco 4 gate passes apparently to be used to cover-up or camouflage the actual withdrawal later that evening. Then Lañojan told Tangian to load the items under the same ploy of clearing the scrap yard of unserviceable waste materials and that they will not encounter any problem. Finally, Lañojan was seen by Brgy. Kag. Oliveros Garcia at 1:30 o'clock in the morning of April 16, 2005 receiving the items as they were dumped near the Delfin Junk Store, Tominobo, Iligan City. After the items were dumped, Lañojan then gave Tangian the "thumbs-up" sign, meaning everything is okay – clear proof of meeting of minds between Tangian and Lañojan, and their collusion to steal the items under the pretext of disposing unserviceable waste materials. This non-verbal "thumbs-up" sign was also seen by the truck helper Salosod.¹² x x x

In conspiracy, the act of one is the act of all. Once conspiracy is established, all the conspirators are answerable as co-principals regardless of the extent or degree of their participation.¹³ The guilt of one is the guilt of all. It is common design which is the essence of conspiracy—conspirators may act separately or together in different manners but always leading to the same unlawful result. The character and effect of conspiracy are not to be adjudged by dismembering it and viewing its separate parts but only by looking at it as a whole—acts done to give effect to conspiracy may be, in fact, wholly innocent acts.¹⁴ Applying this doctrine in the case at bench, it can reasonably be concluded that despite Lañojan's lack of physical participation in hauling the items to Tangian's truck and bringing them to the junk shop, he can still be liable for Qualified Theft via conspiracy. All told, there is no cogent reason for us to disturb the findings of the appellate court, affirmatory of those of the trial court.

¹¹ Id. at 26.


¹² Id. at 107.

¹³ *Aquino v. Paiste*, supra note 8, at 272.

¹⁴ *Preferred Home Specialties, Inc. v. Court of Appeals*, G.R. No. 163593, December 16, 2005, 478 SCRA 387, 415.

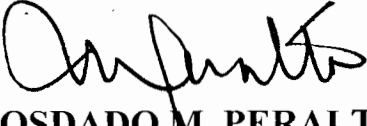
WHEREFORE, premises considered, the consolidated petitions are hereby **DENIED** for lack of merit. The CA's January 21, 2013 Decision and September 10, 2013 Resolution in CA-G.R. CR No. 00549-MIN are hereby **AFFIRMED**.

SO ORDERED.



PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice



MARTIN S. VILLARAMA, JR.
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