

THIRD DIVISION

G.R. No. 251732 – JULIUS ENRICO TIJAM y NOCHE and KENNETH BACSID y RUIZ, *petitioners*, versus PEOPLE OF THE PHILIPPINES, *respondent*.

Promulgated:

July 10, 2023

Mis-OCBatt

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DISSENTING OPINION

SINGH, J.:

Petitioners Julius Enrico Tijam y Noche (**Tijam**) and Kenneth Bacsid y Ruiz (**Bacsid**) (collectively, the **petitioners**) were charged with Theft under Article 308, in relation to Article 309, of the Revised Penal Code (**RPC**):

That on or about the 18[th] day of August 2017, in Pasay City Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, with intent to gain and without the consent of the complainant KIM MUGOT Y MONJARDIN (Mugot), did then and there willfully, unlawfully, and feloniously take, steal and carry away one (1) unit Samsung A7 valued at Php25,000.00 owned by and belonging to aforesaid complainant, to the damage and prejudice of the latter in the amount of Php25,000.00.

Contrary to law.

The Regional Trial Court (**RTC**) convicted the petitioners because they were found in possession of complainant Kim Mugot's (**Mugot**) cellular phone, which raised a disputable presumption that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act.<sup>1</sup>

On appeal, the Court of Appeals (**CA**) affirmed the conviction, highlighting the fact that Mugot positively identified Bacsid as the person on his left side as passengers rushed to board the bus and that Mugot saw Tijam holding his cellular phone and handing it over to Bacsid.<sup>2</sup>

<sup>1</sup> Ponencia, p. 3.

<sup>2</sup> Id. at 4.



In resolving the Petition, the *ponencia* first ruled that the findings of the RTC and the CA are based on speculations, surmises, and conjectures, warranting a review of the factual circumstances of the case. Absent direct evidence to support a finding of petitioners' guilt beyond reasonable doubt, it was necessary to look into the sufficiency of circumstantial evidence.<sup>3</sup>

However, the *ponencia* found the circumstantial evidence lacking. It found that Bacsid's overt acts of pinning Mugot against the bus door and walking back to the waiting area could not have established that Bacsid unlawfully took Mugot's cellular phone. The same finding was applied to Tijam, whose overt acts were merely holding the cellular phone and handing it over to Bacsid.<sup>4</sup>

The *ponencia* also rejected the application of Section 3(j), Rule 131 of the Revised Rules of Court, which provides for the disputable presumption that a person found in possession of a thing taken involving a recent wrongful act is the taker and the doer of the whole act. It reminded the courts to be mindful before applying the said presumption. Besides, to rebut the presumption, Tijam's possession of the cellular phone is inconsistent with his guilt because he merely picked it up from the pavement.<sup>5</sup>

Thus, the *ponencia* acquitted both petitioners for failure of the prosecution to prove their guilt for simple theft beyond reasonable doubt.<sup>6</sup> The *ponencia* finds that the circumstances do not establish the crime charged and holds:

It cannot be gainsaid that the only overt acts remotely connecting Bacsid to the purported Theft are Mugot's allegations that Bacsid pinned him against the bus door and thereafter, walked back to the waiting area. By no stretch of the imagination may the act of pinning someone establish the unlawful taking of property. Besides, it is strange that Mugot claimed that Bacsid pinned him to the bus door at his (Mugot's) left side, while the cellular phone was taken from his right pocket.

On the other hand, the only conspicuous deed hinting at Tijam's participation is the fact that he held Mugot's cellular phone and allegedly handed the same to Bacsid at the passenger waiting area. However, there is nothing in the records to indicate that Mugot saw Tijam inside the bus or show that the latter was there when his cellular phone was purportedly stolen.

Mugot further related that he was rushing inside the bus with other commuters. It was therefore not impossible for the purported Theft (if it indeed occurred), to have been committed by someone else. To stress, a

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<sup>3</sup> Id. at 6-7.

<sup>4</sup> Id. at 7-8.

<sup>5</sup> Id. at 8-10.

<sup>6</sup> Id. at 11.



conviction based on circumstantial evidence, must exclude the possibility that some other person committed the crime, which does not obtain here.

At best, the circumstantial evidence presented merely arouses suspicion or gives room for conjecture, which is not sufficient to convict. Overall, the circumstances do not constitute an unbroken chain that points to the petitioners, to the exclusion of all others, as the guilty persons. Worse, the facts from which the inferences are derived have not been substantially proven and fail to engender a moral certainty of guilt. Thus, the petitioners' constitutional presumption of innocence must prevail.<sup>7</sup>

While I agree with Tijam's acquittal, I respectfully dissent and vote to affirm Bacsid's conviction.

The Court has ruled that in criminal cases, proof beyond reasonable doubt does not require absolute certainty of the fact that the accused committed the crime, and it does not likewise exclude the possibility of error; what is only required is that degree of proof which, after a scrutiny of the facts, produces in an unprejudiced mind moral certainty of the culpability of the accused.<sup>8</sup>

For conviction to ensue, the guilt of the accused may be established by either direct evidence or circumstantial evidence. Direct evidence proves a challenged fact without drawing any inference, while circumstantial evidence indirectly proves a fact in issue, such that the fact-finder must draw an inference or reason from circumstantial evidence.<sup>9</sup>

In the present Petition, there is no dispute that no direct evidence was presented and the evidence for the prosecution is largely circumstantial. Thus, it behooves upon the Court to determine the sufficiency of the circumstances and whether the same "tend by inference to establish the fact" constituting the elements of the crime charged.<sup>10</sup>

Rule 133, Section 4 of the Revised Rules on Evidence<sup>11</sup> provides three requisites that should be established to sustain a conviction based on circumstantial evidence:

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

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and

<sup>7</sup> Id. at 7-8.

<sup>8</sup> *People v. Juare and Aguadilla*, G.R. No. 234519, June 22, 2020, 939 SCRA 137, 154-155.

<sup>9</sup> *Bacerra v. People*, 812 Phil. 25, 35 (2017).

<sup>10</sup> *Imperial v. People*, G.R. No. 230519, June 30, 2021.

<sup>11</sup> A.M. No. 19-08-15-SC, entitled "2019 PROPOSED AMENDMENTS TO THE REVISED RULES ON EVIDENCE," approved on October 8, 2019.



(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Inferences cannot be based on other inferences.

It is worth noting, however, that circumstantial evidence suffices to convict an accused only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person; the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.<sup>12</sup>

The Court explained in *People v. Monje*<sup>13</sup> the guidelines to be observed in weighing the probative value of circumstantial evidence:

In assaying the probative value of circumstantial evidence, four (4) basic guidelines must be observed: (a) It should be acted upon with caution; (b) All the essential facts must be consistent with the hypothesis of guilt; (c) The facts must exclude every other theory but that of guilt of the accused; and, (d) The facts must establish with certainty the guilt of the accused as to convince beyond reasonable doubt that he was the perpetrator of the offense. The peculiarity of circumstantial evidence is that the series of events pointing to the commission of a felony is appreciated *not singly but collectively*. The guilt of the accused cannot be deduced from scrutinizing just one (1) particular piece of evidence. It is more like a puzzle which when put together reveals a convincing picture pointing to the conclusion that the accused is the author of the crime.<sup>14</sup> (Italics in the original)

Based on the foregoing principles, I find that the circumstantial evidence in the present Petition suffice to convict Bacsid of theft. Mugot's straightforward testimony sufficiently established circumstances that lead to the reasonable conclusion that Bacsid took Mugot's cellphone from his pocket. These circumstances are:

1. Mugot had his cellphone in the right pocket of his pants while waiting to board the bus in the passenger's waiting area of the SM Mall of Asia;<sup>15</sup>
2. When the bus arrived, Bacsid boarded through the front side entrance of the bus;<sup>16</sup>

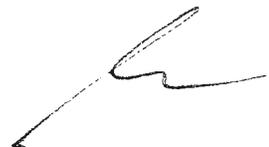
<sup>12</sup> *People v. Bayon*, 636 Phil. 713, 722 (2010).

<sup>13</sup> 438 Phil. 716 (2002).

<sup>14</sup> *Id.* at 732-733.

<sup>15</sup> *Rollo*, p. 46, CA Decision; *rollo*, p. 82, RTC Decision.

<sup>16</sup> *Id.*



3. As other passengers rushed to board the bus, Bacsid pinned Mugot against the door of the bus;<sup>17</sup>
4. Immediately after, Mugot noticed his cellphone missing from his pocket;<sup>18</sup>
5. Mugot alighted from the bus and followed Bacsid the person who pinned him against the door of the bus and who was heading back to the passenger's waiting area;<sup>19</sup>
6. At the passenger's waiting area, Mugot saw Tijam hand over the phone to Bacsid.<sup>20</sup>

While the above circumstances, taken individually, would not lead to a conclusion that Bacsid was the culprit, they collectively establish with certainty Bacsid's guilt. The key circumstance that links Bacsid to the unlawful taking of Mugot's cellular phone is his identification as the person who pinned Mugot to the door, after which Mugot realized that his cellular phone was missing. The events that followed are consistent with the hypothesis of Bacsid's guilt and exclude any other theory that point to another person being the culprit.

If Mugot had not identified Bacsid as the person who pinned him to the door, then the facts that Bacsid left the bus and returned to the passenger's waiting area and Tijam handed his cellular phone to Bacsid become irrelevant. The series of events from the moment Bacsid pinned Mugot to the bus door until Mugot went after Bacsid at the passenger's waiting area formed an unbroken chain that is consistent with Bacsid's guilt for the unlawful taking of Mugot's cellular phone.

Contrary to the majority opinion, there is nothing strange with Mugot's claim that he was pinned to the bus door at his left side while the cellular phone was taken from his right pocket. It is not impossible for Bacsid to reach for Mugot's right side while pinning him on his left side. It is a wily strategy for a person who attempts to steal from another to employ a distraction, such as initiating a sudden physical contact, so that the victim would not notice the unlawful taking.

To bolster the above circumstances, it is worthy to note that Bacsid was seen boarding the bus initially, but suddenly left and did not attempt to ride the bus anymore; and that Tijam was seen handing over the cellular phone to Bacsid, even if they just met at the passenger's waiting area. It may thus be

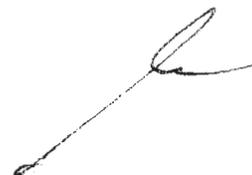
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<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id.



inferred that Bacsid attempted to escape immediately after taking the cellular phone and that Tijam thought that the cellular phone belonged to Bacsid when it fell to the pavement. This is the circumstance which engendered doubt as to the guilt of Tijam because his act of picking up the phone from the pavement is equivocal and not indicative that he connived with Bacsid. Whereas, the fact that Tijam handed Mugot's phone to Bacsid is very indicative that Tijam believed it belonged to Bacsid, ergo, it was in Bacsid's possession before it fell to the pavement. The application of the presumption, therefore, is warranted. And since Bacsid was unable to explain why he had Mugot's phone in his possession, the presumption became conclusive.

Jurisprudence is replete with cases that explain how an inference of guilt arising from possession of recently stolen goods. The following basic facts, which apply in the present Petition, must be established:

Before an inference of guilt arising from possession of recently stolen goods can be made, however, the following basic facts need to be proven by the prosecution: (1) that the crime was committed; (2) that the crime was committed recently; (3) that the stolen property was found in the possession of the defendant; and (4) that the defendant is unable to explain his possession satisfactorily.<sup>21</sup> (Italics omitted)

It is for all these reasons, supported by the evidence on record, that I vote against the *ponencia* to find Bacsid guilty as charged.

**WHEREFORE, I DISSENT** as to the acquittal of Kenneth Bacsid y Ruiz, but concur as to the acquittal of Julius Enrico Tijam y Noche, who were both charged with Theft under Article 308, in relation to Article 309, of the Revised Penal Code.

  
**MARIA FILOMENA D. SINGH**  
Associate Justice

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<sup>21</sup> *Mabunga v. People*, 473 Phil. 555, 566 (2004).