Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CARLU ALFONSO A. REALIZA, *Petitioner,*	**G.R. No. 228745**
- versus -	Present: LEONEN, *J.*, *Chairperson*, GESMUNDO, CARANDANG, ZALAMEDA, *and* GAERLAN, *JJ.*
PEOPLE OF THE PHILIPPINES, *Respondent.*	Promulgated: August 26, 2020 MisADCBatt

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DECISION

GAERLAN, *J.*:

Before the Court is a Petition for Review on C*ertiorari*[1] under Rule 45 of the Rules of Court seeking the reversal of the July 20, 2016 Decision[2] and the October 17, 2016 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 01185-MIN. The assailed CA Decision and Resolution affirmed the Decision[4] of the Regional Trial Court (RTC), 9th Judicial Region, Branch 6 of Dipolog City in Criminal Case No. 18037, which upheld the Judgment[5] of the Municipal Trial Court in Cities (MTCC), 9th Judicial Region, Branch 1, Dipolog City in Criminal Case No. A-36997, finding Carlu Alfonso A. Realiza (petitioner) guilty beyond reasonable doubt of the crime of theft defined and penalized under Article 308 in relation to Article 309 of the Revised Penal Code (RPC).

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1 *Rollo*, pp. 4-19.
2 Id. at 40-48; penned by Associate Justice Ronaldo B. Martin, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring.
3 Id. at 48-49.
4 Id. at 35-39; penned by Acting Presiding Judge Victoriano DL. Lacaya, Jr.
5 Id. at 22-34, penned by Judge Chad Martin Paler.

The Facts

In an Information[6] dated May 20, 2011, petitioner was charged with the crime of Theft before the MTCC, Branch 1, Dipolog City in Criminal Case No. A-36997, the pertinent text of which states:

> On January 7, 2011 at around 1:00 o'clock in the afternoon in Sitio Lungkanad, Gulayon, Dipolog City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and without the knowledge and consent of ELFA L. BOGANOTAN, did then and there, willfully, unlawfully, and feloniously take, steal and carry away the rubber boots, iron pot, and frying pan belonging to the latter. As a result thereof, said ELFA L. BOGANOTAN suffered actual damages in the amount of One Thousand Six Hundred Pesos (P1,600.00), which is the total value of the stolen items.
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> Contrary to law.[7]

When arraigned, petitioner, assisted by counsel, entered a plea of "not guilty" to the charge. After the pre-trial conference, trial on the merits ensued.

The prosecution presented the testimonies of two witnesses, complainant Elfa Boganotan (Elfa) and her son, Kim Boganotan (Kim). Elfa testified that she is a resident of Lungkanad, Gulayon, Dipolog City. She alleged that on January 7, 2011, at around 1:00 p.m., petitioner stole from her house a pair of rubber boots, an iron pot, and a frying pan. The incident was relayed to her by Kim, who was present at the scene. Elfa narrated that when she returned home with her husband from Dipolog City, Kim informed them that petitioner entered their house and took several items. She further stated that while passing by petitioner's house on their way home, she saw petitioner playing with the items taken from their house. Elfa did not retrieve the items, but instead, reported the incident to the Dipolog Police Station, which led to the filing of the criminal case against petitioner. Meanwhile, Kim testified that on January 7, 2011, at around 1:00 p.m., he saw petitioner enter their house and steal some personal items. He recounted that he was at the garden fronting their house with his younger brother, Pablo Boganotan, Jr. (Pablo), when the stealing took place. He also stated that they did not stop petitioner because the latter threatened to kill them. Kim informed their parents about the incident as soon as they arrived.[8]

On the other hand, petitioner denied the accusation against him. He averred that he lives in Lungkanad, Gulayon, Dipolog City, in the house

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6 Id. at 20.
7 Id.
8 Id. at 41.

owned by his parents, which is located about 80 to 100 meters away from Elfa's house. He claimed that on January 7, 2011, at around 12:30 p.m., he left his house to accompany his brother on board his motorcycle to Labrador, Polanco, Zamboanga del Norte, which took them 30 minutes to reach the place. From Labrador, Polanco, they proceeded to Montaño Food Sardines factory in Turno, Dipolog City to buy Spanish Sardines before returning home in Lungkanad. He asserted that he arrived home at around 3:00 p.m. and that he never saw Kim or his brother Pablo. Petitioner believed that the charge of theft against him was fabricated by Kim, Elfa, and his uncle George Realiza (George), who accused him of transferring the stone monument separating their respective landholdings. Moreover, he denied that he threatened Kim. Petitioner argued that he could not have entered Elfa's house to steal their belongings because he was in Labrador, Polanco at the time.[9]

Witness Salvador Eba, Jr., corroborated petitioner's testimony. He claimed that on January 7, 2011, at around 1:00 p.m., he was buying gasoline at Gumahad Store when he saw petitioner and his brother Ricky, riding a motorcycle going towards the direction of Labrador, Polanco, Zamboanga del Norte. Another witness for the defense, Rosemarie Hangcan, testified that she is the teacher of Kim. According to her, based on her Form 1 or School Register, which indicated the morning and afternoon attendance of her students, Kim was inside the classroom at around 1:00 p.m. on January 7, 2011.[10]

The MTCC Ruling

After trial, the MTCC, Branch 1 of Dipolog City, rendered a Judgment finding petitioner guilty of the crime charged, to wit:

> **WHEREFORE**, premised on the foregoing discussion, the Court finds the accused, Carlu Alfonso A. Realiza, **GUILTY** beyond reasonable doubt of the crime of Theft defined and penalized under Article 308 of the Revised Penal Code in relation to Article 309 Paragraph 3 of the same Code and he is hereby sentenced to suffer the indeterminate penalty of imprisonment from **4 months and 21 days of Arresto Mayor Maximum in its Medium Period to 4 years and 2 months of Prision Correccional Medium**. The accused is further ordered to pay the private complainant the sum of One Thousand Six Hundred Pesos (₱1,600.00) representing the value of the stolen rubber boots, iron pot, and frying pan which are not recovered by the private complainant.
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> **SO ORDERED**.[11] (Emphasis in the original)

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9 Id. at 42.
10 Id. at 42-43.
11 Id. at 33-34.

Aggrieved, petitioner filed a Notice of Appeal. The case was then raffled to the RTC, Ninth Judicial Region, Branch 6, and was docketed as Criminal Case No. 18037.

The RTC Ruling

On March 4, 2014, the RTC promulgated its Decision,[12] the dispositive portion of which reads:

> **WHEREFORE**, finding no reversible error committed by the lower court, the judgment appealed from is hereby **AFFIRMED**.
>
> **IT IS SO ORDERED**.[13] (Emphasis in the original)

Still unsatisfied, petitioner filed a petition for review with the CA.

The CA Ruling

On July 20, 2016, the CA promulgated the assailed Decision,[14] which affirmed the RTC Decision *in toto*, thus:

> **WHEREFORE**, premises considered, the assailed Decision dated March 4, 2014 of the Regional Trial Court, Branch 6, Dipolog City which affirmed the Judgment dated November 12, 2012 rendered by the Municipal Trial Court in Cities, Branch 1, Dipolog City, finding petitioner Carlu Alfonso A. Realiza guilty beyond reasonable doubt of the crime of Theft defined and penalized under Article 308 in relation to Article 309 Paragraph 3 of the Revised Penal Code is **AFFIRMED**. The instant Petition for Review is hereby **DISMISSED** for lack of merit.
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> **SO ORDERED**.[15] (Emphasis in the original)

Petitioner filed a motion for reconsideration, but the same was denied in a Resolution dated October 17, 2016.[16]

Hence, this petition.

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12 Id. at 35-39.
13 Id. at 39.
14 Id. at 40-48.
15 Id. at 47-48.
16 Id. at 48-49.

Issue

Essentially, the issue is whether or not petitioner's guilt was established beyond reasonable doubt.

Our Ruling

The Court finds no merit in the petition.

The well-established rule is that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary and unsupported conclusions can be gathered from such findings. [17] The determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect.[18]

Petitioner argues that Kim is not a credible witness and that his testimony is fabricated with lies, bias and animosity. He insists that the only reason he was charged of theft is because of the conflict between him and his uncle George, who accused him of moving the stone monument serving as the boundary between his area and that of his uncle. Petitioner contends that Elfa and her family, being the caretakers of George's portion of the property, merely fabricated their testimony against him.

In this case, the trial court gave full credence to Kim's testimony, who asserted that on January 7, 2011, at around 12:00 p.m., he arrived home from school and saw petitioner taking the personal belongings of Elfa. According to the CA, the positive and direct testimony of Kim that petitioner actually took their personal belongings proved too credible and strong to be ignored. Settled is the rule that findings of the trial courts which are factual in nature and which involve credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts, or speculative, arbitrary and unsupported conclusions can be gathered from such findings.[19] Here, the evidence on record fully supports the trial court's factual finding, as affirmed by the CA.

Furthermore, with regard to petitioner's contention that he could not have committed theft as he was on his way to Labrador, Polanco, Zamboanga del Norte, the CA held that his defense of alibi is inherently weak. Although

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17 *People v. Presas*, 659 Phil. 503, 511 (2011).
18 *People v. Sabadlab*, 679 Phil. 425, 438 (2012).
19 *People v. Villamin*, 625 Phil. 698, 712-713 (2010).

petitioner has proven that he was on his way to Labrador at 1:00 p.m. on January 7, 2011, it does not exculpate him from the crime imputed to him. The Court believes that petitioner had enough time to commit theft before he left Lungkanad, Gulayon. It must be stressed that Kim testified that he saw petitioner stealing items in their house when he arrived at around 12:00 p.m.

Evidently, petitioner's defense of denial cannot be given more weight over the positive identification of eyewitnesses. Likewise, for the defense of alibi to prosper, the appellant (petitioner) must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[20]

Article 308 of the RPC defines theft as follows:

> 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 of another without the latter's consent.

Under Article 308 of the RPC, 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 person or force upon things.[21]

In the present case, all the elements of the crime of theft were successfully established by the prosecution. As found by the trial courts and upheld by the CA, petitioner took the rubber boots, frying pan and iron pot owned by Elfa without the latter's consent or permission. Petitioner retained the items which shows his intention to gain. It was also established that he entered the house of Elfa without violence, intimidation or force upon things. Hence, the Court agrees with the CA in affirming both the RTC and the MTCC finding petitioner guilty beyond reasonable doubt of the crime of theft.

However, this Court modifies the penalty to be imposed upon petitioner pursuant to Section 81 of Republic Act (R.A.) No. 10951.[22] On August 29, 2017, President Rodrigo Roa Duterte signed into law R.A. No. 10951 that sought, among others, to help indigent prisoners and individuals accused of

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20 *People v. Piosang*, 710 Phil. 519, 527-528 (2013).

21 *Valenzuela v. People*, 552 Phil. 381, 397 (2007).

22 Entitled "An Act Adjusting the Amount or the Value of Property and Damage on Which a 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.

committing petty crimes. It also increased the fines for treason and the publication of false news; and likewise increased the baseline amounts and values of property and damage to make them commensurate to the penalties meted on the offenses committed in relation to them.[23]

Basic wisdom underlies the adjustments made by R.A. No. 10951. Imperative to maintaining an effective and progressive penal system is the consideration of exigencies borne by the passage of time. This includes the basic economic fact that property values are not constant. To insist on basing penalties on values identified in the 1930s is not only anachronistic and archaic; it is unjust and legally absurd to a moral fault.[24]

Hence, pursuant to Section 81 of R.A. No. 10951, any person found guilty of theft under Article 309 of the RPC, as amended, shall be punished by *arresto mayor* to its full extent, if the value of the thing stolen is over ₱500.00 but does not exceed ₱5,000.00. Considering that the value of the stolen items in this case amounted to ₱1,600.00, the penalty of *arresto mayor* from one month and one day to six months should be imposed upon petitioner.

Under R.A. No. 11362,[25] also known as the Community Service Act, the Court may, in its discretion, and lieu of service in jail, require that the penalties of *arresto menor* and *arresto mayor* be served by the defendant by rendering community service in the place where the crime was committed, and under such terms as the court shall determine, taking into consideration the gravity of the offense and the circumstances of the case.

Section 3 of R.A. No. 11362 provides:

> SECTION 3. Community Service. — Article 88a of Act No. 3815 is hereby inserted to read as follows:
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> ARTICLE 88a. Community Service — The court in its discretion may, in lieu of service in jail, require that the penalties of *arresto menor* and *arresto mayor* be served by the defendant by rendering community service in the place where the crime was committed, under such terms as the court shall determine, taking into consideration the gravity of the offense and the circumstances of the case, which shall be under the supervision of a probation officer: Provided, That the court will prepare an order imposing the community service, specifying the number of hours to be worked and the period within which to complete the service. The order is then referred

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23 *People v. Mejares*. G.R. No. 225735, January 10, 2018.

24 Id.

25 Entitled "AN ACT AUTHORIZING THE COURT TO REQUIRE COMMUNITY SERVICE IN LIEU OF IMPRISONMENT FOR THE PENALTIES OF ARRESTO MENOR AND ARRESTO MAYOR, AMENDING FOR THE PURPOSE CHAPTER 5, TITLE 3, BOOK I OF ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE." Approved on August 8, 2019.

> to the assigned probation officer who shall have responsibility of the defendant. x x x
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> Community service shall consist of any actual physical activity which inculcates civic consciousness, and is intended towards the improvement of a public work or promotion of a public service.
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> If the defendant violates the terms of the community service, the court shall order his/her re-arrest and the defendant shall serve the full term of the penalty, as the case may be, in jail, or in the house of the defendant as provided under Article 88. However, if the defendant has fully complied with the terms of the community service, the court shall order the release of the defendant unless detained for some other offense.
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> The privilege of rendering community service in lieu of service in jail shall be availed of only once.

Clearly, the judge may require that the penalties for *arresto menor* and *arresto mayor* be served by the petitioner by rendering community service in the place where the crime was committed. The above-mentioned law likewise provides that the privilege of rendering community service in lieu of service in jail shall only be availed once.

It must be emphasized that the imposition of the penalty of community service is still within the discretion of the Court and should not be taken as an unbridled license to commit minor offenses. It is merely a privilege since the offended cannot choose it over imprisonment as a matter of right. Furthermore, in requiring community service, the Court shall consider the welfare of the society and the reasonable probability that the person sentenced shall not violate the law while rendering the service. With the enactment of R.A. No. 11362, apart from the law's objective to improve public work participation and promote public service, it is expected that the State's policy to promote restorative justice and to decongest jails will be achieved.

WHEREFORE, the Decision dated July 20, 2016 and the Resolution dated October 17, 2016 of the Court of Appeals, Cagayan de Oro City in CA-G.R. No. 01185-MIN, finding petitioner Carlu Alfonso A. Realiza **GUILTY** beyond reasonable doubt of the crime of theft is hereby **AFFIRMED with MODIFICATION** in that he is sentenced to suffer the penalty of community service in lieu of imprisonment. The Municipal Trial Court in Cities, 9th Judicial Region, Branch 1, Dipolog City, is hereby **DIRECTED** to conduct hearing to determine the number of hours to be worked by petitioner and the period within which he is to complete the service under the supervision of a probation officer assigned by the Court.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
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, Third Division

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