Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

GUILBEMER FRANCO,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 191185

Present:

VELASCO, JR., *J.*,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

February 1, 2016

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DECISION

REYES, *J.*:

The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. The prosecution cannot be allowed to draw strength from the weakness of the defense's evidence for it has the *onus probandi* in establishing the guilt of the accused – *ei incumbit probatio qui dicit, non que negat* – he who asserts, not he who denies, must prove.[1]

Nature of the Case

Before the Court is a Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court where petitioner Guilbemer Franco (Franco) assails the Decision[3] dated September 16, 2009 of the Court of Appeals (CA), in

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1 *People v. Masalihit*, 360 Phil. 332, 343 (1998).
2 *Rollo*, pp. 10-30.
3 Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Amelita G. Tolentino and Stephen C. Cruz concurring; CA *rollo*, pp. 88-92.

CA-G.R. CR No. 31706, affirming the Decision[4] dated February 27, 2008 of the Regional Trial Court (RTC) of Manila, Branch 15, in Criminal Case No. 05-238613. The RTC convicted Franco of the crime of Theft under an Information, which reads as follows:

> That on or about **November 3, 2004**, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to gain and without the knowledge and consent of the owner thereof, take, steal and carry away one (1) Nokia 3660 Model cellular phone worth Php 18,500.00 belonging to **BENJAMIN JOSEPH NAKAMOTO Y ERGUIZA** to the damage and prejudice of the said owner in the aforesaid amount of Php 18,500.00, Philippine Currency.
>
> Contrary to law.[5]

On September 5, 2005, Franco, assisted by counsel, pleaded not guilty to the crime charged.[6]

The Facts

The evidence for the prosecution established the following facts:

On November 3, 2004 at around 11:00 a.m., Benjamin Joseph Nakamoto (Nakamoto) went to work out at the Body Shape Gym located at Malong Street, Tondo, Manila. After he finished working out, he placed his Nokia 3660 cell phone worth ₱18,500.00 on the altar where gym users usually put their valuables and proceeded to the comfort room to change his clothes. After ten minutes, he returned to get his cell phone, but it was already missing. Arnie Rosario (Rosario), who was also working out, informed him that he saw Franco get a cap and a cell phone from the altar. Nakamoto requested everyone not to leave the gym, but upon verification from the logbook, he found out that Franco had left within the time that he was in the shower.[7]

The gym's caretaker, Virgilio Ramos (Ramos), testified that he saw Franco in the gym but he was not working out and was just going around the area. In fact, it was just Franco's second time at the gym. Ramos even met him near the door and as Franco did not log out, he was the one who indicated it in their logbook. When Nakamoto announced that his cell phone was missing and asked that nobody leaves the place, he put an asterisk opposite the name of Franco in the logbook to indicate that he was the only

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4 Rendered by Presiding Judge Mercedes Posada-Lacap; records, pp. 62-66.
5 Id. at 1.
6 *Rollo*, p. 34.
7 Id. at 33-34.

one who left the gym after the cell phone was declared lost.[8]

Nakamoto, together with Jeoffrey Masangkay, a police officer who was also working out at the gym, tried to locate Franco within the gym's vicinity but they failed to find him. They proceeded to the police station and while there, a report was received from another police officer that somebody saw Franco along Coral Street, which is near the gym and that he was holding a cell phone. They went to Coral Street but he was already gone. A vendor told them that he saw a person who was holding a cell phone, which was then ringing and that the person was trying to shut it off. When they went to Franco's house, they were initially not allowed to come in but were eventually let in by Franco's mother. They talked to Franco who denied having taken the cell phone.[9]

Nakamoto then filed a complaint with the *barangay* but no settlement was arrived thereat; hence, a criminal complaint for theft was filed against Franco before the City Prosecutor's Office of Manila, docketed as I.S. No. 04K-25849.[10]

In his defense, Franco denied the charge, alleging that if Nakamoto had indeed lost his cell phone at around 1:00 p.m., he and his witnesses could have confronted him as at that time, he was still at the gym, having left only at around 2:45 p.m.[11] He also admitted to have taken a cap and cell phone from the altar but claimed these to be his.[12]

Ruling of the RTC

In its Decision dated February 27, 2008, the RTC convicted Franco of theft, the dispositive portion of which reads:

> IN VIEW OF THE FOREGOING, this Court finds [Franco], GUILTY beyond reasonable doubt of the crime of theft penalized in paragraph 1 of Article 309 in relation to Article 308 of the Revised Penal Code and hereby imposes upon him the penalty of imprisonment of two (2) years, four (4) months and one (1) day as minimum to seven (7) years and four (4) months as maximum and to pay the complainant Php18,500.00.
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> SO ORDERED.[13]

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8 Records, pp. 64-65.
9 Id. at 63-64.
10 *Rollo*, p. 34; TSN, February 8, 2006, pp. 14-15.
11 Records, p. 9.
12 TSN, January 29, 2007, p. 5.
13 Records, p. 66.

The RTC did not find Franco's defense credible and ruled that his denial cannot be given evidentiary value over the positive testimony of Rosario.[14]

Franco then appealed to the CA.[15]

Ruling of the CA

In affirming the RTC decision, the CA found the elements of theft to have been duly established. It relied heavily on the "positive testimony" of Rosario who declared to have seen Franco take a cap and a cell phone from the altar. The CA likewise gave credence to the testimony of Ramos who confirmed that it was only Franco who left the gym immediately before Nakamoto announced that his cell phone was missing. Ramos also presented the logbook and affirmed having put an asterisk opposite the name "ELMER," which was entered by the accused upon logging in. The CA stated that taken together, the foregoing circumstances are sufficient to support a moral conviction that Franco is guilty, and at the same time, inconsistent with the hypothesis that he is innocent.[16] The CA further ruled that the RTC cannot be faulted for giving more weight to the testimony of Nakamoto[17] and Rosario,[18] considering that Franco failed to show that they were impelled by an ill or improper motive to falsely testify against him.[19]

In his petition for review, Franco presented the following issues for resolution, to wit:

I.

WHETHER THE HONORABLE [CA] ERRED IN GIVING WEIGHT AND CREDENCE TO THE PROSECUTION WITNESSES' INCONSISTENT AND IRRECONCILABLE TESTIMONIES.

II.

WHETHER THE HONORABLE [CA] ERRED IN AFFIRMING [FRANCO'S] CONVICTION DESPITE THE FACT THAT THE SAME WAS BASED ON FABRICATIONS AND PRESUMPTIONS.

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14 Id. at 65-66.
15 Id. at 70-71.
16 *Rollo*, pp. 35-36.
17 TSN, February 8, 2006, pp. 1-19.
18 TSN, April 19, 2006, pp. 1-15.
19 *People v. PFC Malejana*, 515 Phil. 584, 597 (2006).

III.

WHETHER THE HONORABLE [CA] ERRED IN ACCEPTING THE VALUE OF THE ALLEGEDLY STOLEN CELLULAR PHONE WITHOUT SUBSTANTIATING EVIDENCE.[20]

Ruling of the Court

Preliminarily, the Court restates the rule that only errors of law and not of facts are reviewable by this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court. This rule applies with greater force when the factual findings of the CA are in full agreement with that of the RTC.[21]

The rule, however, is not ironclad. A departure therefrom may be warranted when it is established that the RTC ignored, overlooked, misconstrued or misinterpreted cogent facts and circumstances, which, if considered, will change the outcome of the case. Considering that what is at stake here is liberty, the Court has carefully reviewed the records of the case[22] and finds that Franco should be acquitted.

Failure of the prosecution to prove Franco's guilt beyond reasonable doubt

The burden of such proof rests with the prosecution, which must rely on the strength of its case rather than on the weakness of the case for the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.[23]

In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: *first*, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and *second*, the fact that the accused was the perpetrator of the crime.[24]

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20 *Rollo*, p. 17.
21 *Boneng v. People*, 363 Phil. 594, 600 (1999).
22 *People v. Agulay*, 588 Phil. 247, 263 (2008).
23 *People v. Villamueva*, 427 Phil. 102, 128 (2002).
24 *People v. Santos*, 388 Phil. 993, 1004 (2000).

Under Article 308 of the Revised Penal Code, the essential elements of the crime of theft are: (1) the taking of personal property; (2) the property belongs to another; (3) the taking away was done with intent to 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.[25]

The *corpus delicti* in theft has two elements, to wit: (1) that the property was lost by the owner; and (2) that it was lost by felonious taking.[26] In this case, the crucial issue is whether the prosecution has presented proof beyond reasonable doubt to establish the *corpus delicti* of the crime. In affirming Franco's conviction, the CA ruled that the elements were established. Moreover, the RTC and the CA apparently relied heavily on circumstantial evidence.

To sustain a conviction based on circumstantial evidence, Section 4, Rule 133 of the Rules of Court provides that the following requisites must concur: (1) there must be more than one circumstance to convict; (2) the facts on which the inference of guilt is based must be proved; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. With respect to the third requisite, it is essential that the circumstantial evidence presented must constitute an unbroken chain, which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of others, as the guilty person.[27]

The prosecution presented three (3) witnesses – Nakamoto, the complainant; Ramos, the gym's caretaker; and Rosario, another gym user.

Their testimonies established the following circumstances: (1) Nakamoto placed his cell phone on the altar,[28] left and went to change his clothes, and after ten minutes, returned to get his cell phone but the same was already missing;[29] (2) Rosario saw Franco get a cap and a cell phone from the same place;[30] and (3) Ramos saw Franco leave the gym at 1:15 p.m. and the latter failed to log out in the logbook.[31] The RTC and the CA wove these circumstances in order to arrive at the "positive identification" of Franco as the perpetrator.[32]

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25 *People v. Bustinera*, G.R. No. 148233, June 8, 2004, 431 SCRA 284, 291.
26 *Tan v. People*, 372 Phil. 93, 105 (1999).
27 *People v. Ayola*, 416 Phil. 861, 872 (2001).
28 CA *rollo*, p. 88.
29 TSN, February 8, 2006, pp. 4-5.
30 Id. at 5; TSN April 19, 2006, p. 5.
31 TSN, August 28, 2006, pp. 6-7.
32 CA *rollo*, pp. 90-91.

A perusal of their testimonies, however, shows that certain facts have been overlooked by both courts.

For one, it was only Rosario who saw Franco get a cap and a cell phone from the altar. His lone testimony, however, cannot be considered a positive identification of Franco as the perpetrator.[33]

In *People v. Pondivida*,[34] the Court held:

> Positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime. There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. x x x.[35] (Emphasis omitted and underscoring ours)

Rosario's testimony definitely cannot fall under the first category of positive identification. While it may support the conclusion that Franco took a cell phone from the altar, it does not establish with certainty that what Franco feloniously took, assuming that he did, was Nakamoto's cell phone. Rosario merely testified that Franco took "a cell phone." He stated:

> Q: How did you know that the said cell phone was taken by the accused?
> A: [W]e were then in a conversation when I asked him to spot or assist me with the weights that I intended to carry. We were then situated in an area very near the altar where his cap and cell phone were placed. **After assisting me, he went to the area and took the cell phone and the cap at the same time.**
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> Q: [W]ho were you talking [sic] at that time?
> A: Guilbemer Franco.
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> Q: It was also [G]uilbemer Franco who helped or spot you in the work out?
> A: Yes, sir.

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33 *Rollo*, p. 66.
34 G.R. No. 188969, February 27, 2013, 692 SCRA 217.
35 Id. at 222, citing *People v. Caliso*, 675 Phil. 742, 755 (2011).

Q: And after assisting you, what did Franco do?
A: He took the cell phone of Mr. Nakamoto and his cap at the same time and covered the cell phone by his cap and left the place.

Q: Where was that cell phone of the private complainant placed at that time?
A: At the top of the altar where is [sic] cap is also located.

Q: How far was that altar from where you were working?
A: Only inches.

Q: It was directly in front of you?
A: Yes, sir.

Q: What did you do when the accused took the cap as well as the cell phone of the private complainant?
A: None, sir. I thought the cap and cell phone was his.

Q: How did you know that the cell phone belongs to the private complainant?
A: After Mr. Nakamoto came out from the shower, he went directly to the altar to get his cell phone which was not there anymore and asked us where his cell phone and I told him that I saw Mr. Franco get a cell phone from that area.[36] (Emphasis ours)

On cross-examination, Rosario also stated that he did not actually see Franco take Nakamoto's cell phone[37] but on re-direct, he clarified that he did not see the cell phone of Nakamoto because he thought that the cell phone was owned by Franco.[38]

What was firmly established by Rosario's testimony is that Franco took a cell phone from the altar. But Franco even admitted such fact.[39] What stands out from Rosario's testimony is that he was unable to particularly describe at first instance what or whose cell phone Franco took from the altar. He only assumed that it was Nakamoto's at the time the latter announced that his cell phone was missing. This was, in fact, observed by the RTC in the course of Rosario's testimony, thus:

COURT: What you actually saw was, [G]uilbemer Franco was taking his cap together with the cell phone placed beside the cap but you do not know that [the] cell phone was Bj's or Nakamoto's?
A: [Y]es, Your Honor.

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36 TSN, April 19, 2006, pp. 4-5.
37 Id. at 11.
38 Id. at 12.
39 TSN, January 29, 2007, pp. 5-9.

COURT: You just presumed that the cell phone taken by Guilbemer Franco was his?
A: Yes, Ma'am.[40] (Emphasis ours)

Moreover, it must be noted that save for Nakamoto's statement that he placed his cell phone at the altar, no one saw him actually place his cell phone there. This was confirmed by Rosario –

COURT:
Q: And on that day, you were able to see that Nakamoto on four incidents, when he logged-in, during work-out and when he went inside the C.[R].?
A: Yes, sir.

Q: Therefore, you did not see Nakamoto place his cell phone at the Altar?
A: Yes, sir.[41] (Emphasis ours)

Ramos, the gym caretaker, also testified that he did not see Franco take Nakamoto's cell phone and only assumed that the cell phone on the altar was Nakamoto's, thus –

Q: And do you know who owns that cell phone put [sic] over the altar?
A: Benjamin Nakamoto.

Q: How do you know that it belongs to Benjamin Nakamoto?
A: He is the only one who brings a cell phone to the gym.

x x x x

Q: [D]id you actually see him take the cell phone of Nakamoto?
A: I did not see him take the [cell] phone but as soon as the cell phone was lost, he was the only one who left the gym.[42]

Neither can the prosecution's testimonial evidence fall under the second category of positive identification, that is, Franco having been identified as the person or one of the persons last seen immediately before and right after the commission of the theft. Records show that there were other people in the gym before and after Nakamoto lost his cell phone. In fact, Nakamoto himself suspected Rosario of having taken his cell phone, thus:

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40 TSN, April 19, 2006, p. 12.
41 Id. at 10.
42 TSN, August 28, 2006, pp. 6-7.

ATTY. SANCHEZ:

Q: You said that you stayed inside the rest room for more or less 10 minutes?
A: [Y]es, sir.

Q: After 10 minutes, you don't know whether aside from Franco somebody went out from the gym because you were inside the c.r.?
A: Yes, sir.

x x x x

Q: As a matter of fact, one of your witness[es] who went near the place where your cell phone was placed was this Arnie Rosario?
A: Yes, sir.

Q: And it was only the accused and [Rosario] who were near the place where you said you placed the cell phone?
A: Yes, sir.

Q: You did not suspect [Rosario] to have taken the cell phone?
A: I also suspected, sir.[43] (Emphasis ours)

Moreover, the prosecution witnesses confirmed that the altar is the usual spot where the gym users place their valuables. According to Rosario:

ATTY. SANCHEZ:
Q: And in that place, you said there was a Sto. Niño?
A: At the Altar.

Q: Those who work-out in that gym usually place their things [on top of] the altar.
A: Yes, sir.

Q: Therefore, there were people who place their cell phones on top [of] the Altar?
A: Yes, sir.

Q: Aside from Nakamoto, other people place their things on top [of] the Altar?
A: Yes, sir.[44] (Emphasis ours)

The prosecution's evidence does not rule out the following possibilities: *one*, that what Franco took was his own cell phone; *two*, even on the assumption that Franco stole a cell phone from the altar, that what he feloniously took was Nakamoto's cell phone, considering the fact that at the time Nakamoto was inside the changing room, other people may have placed their cell phone on the same spot; and *three*, that some other person may have taken Nakamoto's cell phone.

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43 TSN, February 8, 2006, p. 11.
44 TSN, April 19, 2006, p. 10.

It must be emphasized that "[c]ourts must judge the guilt or innocence of the accused based on facts and not on mere conjectures, presumptions, or suspicions."[45] It is iniquitous to base Franco's guilt on the presumptions of the prosecution's witnesses for the Court has, time and again, declared that if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction.[46]

Franco also asserts that the logbook from which his time in and time out at the gym was based was not identified during the trial and was only produced after Ramos testified.[47] Ramos testified that when Nakamoto announced that his cell phone was missing and asked that nobody leaves the place, he put an asterisk opposite the name of Franco in the logbook to indicate that he was the only one who left the gym after the cell phone was declared lost.[48]

Under the Rules on Evidence, documents are either public or private. Private documents are those that do not fall under any of the enumerations in Section 19, Rule 132 of the Rules of Court.[49] Section 20 of the same Rule, in turn, provides that before any private document is received in evidence, its due execution and authenticity must be proved either by anyone who saw the document executed or written, or by evidence of the genuineness of the signature or handwriting of the maker.[50]

In this case, the foregoing rule was not followed. The testimony of Ramos shows that the logbook, indeed, was not identified and authenticated during the course of Ramos' testimony. At the time when Ramos was testifying, he merely referred to the log in and log out time and the name of the person at page 104 of the logbook that appears on line 22 of the entries for November 3, 2004. This was photocopied and marked as Exhibit

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45 *People v. Anabe*, 644 Phil. 261, 281 (2010).

46 *People v. Timtiman*, G.R. No. 101663, November 4, 1992, 215 SCRA 364, 373, citing *People v. Remorosa*, G.R. No. 81768, August 7, 1991, 200 SCRA 350, 360.

47 *Rollo*, p. 48.

48 Id. at 54-55.

49 Sec. 19. *Classes of Documents.* – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
(b) Documents acknowledge before a notary public except last wills and testaments; and
(c) Public records kept in the Philippines, or private documents required by law to be entered therein.

All other writings are private.

50 *Sanvicente v. People*, 441 Phil. 139, 151 (2002).

"C-1."[51] Meanwhile, when Nakamoto was presented as rebuttal witness, a page from the logbook was again marked as Exhibit "D."[52] The logbook or the particular page referred to by Ramos was neither identified nor confirmed by him as the same logbook which he used to log the ins and outs of the gym users, or that the writing and notations on said logbook was his.

The prosecution contends, meanwhile, that the RTC's evaluation of the witnesses' credibility may no longer be questioned at this stage.[53] The Court is not unmindful of the rule that the assignment of value and weight to the testimony of a witness is best left to the discretion of the RTC. But an exception to that rule shall be applied in this case where certain facts of substance and value, if considered, may affect the result.[54] In *Lejano v. People*,[55] the Court stated:

> A judge must keep an open mind. He must guard against slipping into hasty conclusion, often arising from a desire to quickly finish the job of deciding a case. A positive declaration from a witness that he saw the accused commit the crime should not automatically cancel out the accused's claim that he did not do it. A lying witness can make as positive an identification as a truthful witness can. The lying witness can also say as forthrightly and unequivocally, "He did it!" without blinking an eye.[56]

The facts and circumstances proven by the prosecution, taken together, are not sufficient to justify the unequivocal conclusion that Franco feloniously took Nakamoto's cell phone. No other convincing evidence was presented by the prosecution that would link him to the theft.[57] The fact Franco took a cell phone from the altar does not necessarily point to the conclusion that it was Nakamoto's cell phone that he took. **In the appreciation of circumstantial evidence, the rule is that the circumstances must be proved, and not themselves presumed.** The circumstantial evidence must exclude the possibility that some other person has committed the offense charged.[58]

Franco, therefore, cannot be convicted of the crime charged in this case. There is not enough evidence to do so. As a rule, in order to support a conviction on the basis of circumstantial evidence, all the circumstances must be consistent with the hypothesis that the accused is guilty. In this case, not all the facts on which the inference of guilt is based were proved. The matter of what and whose cell phone Franco took from the altar still remains uncertain.

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51 TSN, August 28, 2006, pp. 7, 14.
52 TSN, March 19, 2007, p. 4.
53 *Rollo*, p. 66.
54 *People v. Deunida*, G.R. Nos. 105199-200, March 28, 1994, 231 SCRA 520, 532.
55 652 Phil. 512 (2010).
56 Id. at 581.
57 *Rollo*, p. 24.
58 *People v. Anabe*, supra note 45.

Franco's defense of denial

The evidence of the prosecution must stand on its own weight and not rely on the weakness of the defense.[59] In this case, Franco did not deny that he was at the Body Shape Gym on November 3, 2004, at around 1:00 p.m. and left the place at around 2:45 p.m.[60] He did not even deny that he took a cell phone from the altar together with his cap. What he denied is that he took Nakamoto's cell phone and instead, claimed that what he took is his own cell phone.[61] Denial may be weak but courts should not at once look at them with disfavor. There are situations where an accused may really have no other defenses but denial, which, if established to be the truth, may tilt the scales of justice in his favor, especially when the prosecution evidence itself is weak.[62]

While it is true that denial partakes of the nature of negative and self-serving evidence and is seldom given weight in law,[63] the Court admits an exception established by jurisprudence that the defense of denial assumes significance when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt.[64] The exception applies in the case at hand. The prosecution failed to produce sufficient evidence to overturn the constitutional guarantee that Franco is presumed to be innocent.

Value of the cell phone

It is also argued by Franco that the value of the cell phone must be duly proved with reasonable degree of certainty. On the other hand, the people contended that there has been a judicial admission of the same.[65] This issue, however, is now moot and academic considering Franco's acquittal.

Conclusion

The circumstantial evidence proven by the prosecution in this case failed to pass the test of moral certainty necessary to warrant Franco's conviction. Accusation is not synonymous with guilt.[66] Not only that, where the inculpatory facts and circumstances are capable of two or more

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59 *People v. Tan*, 432 Phil. 171, 199 (2002).
60 *Rollo*, pp. 45-46.
61 TSN, January 29, 2007, pp. 5-6.
62 *People v. Ladrillo*, 377 Phil. 904, 917 (1999).
63 *People v. Cañete*, 364 Phil. 423, 435 (1999).
64 *People v. Mejia*, 612 Phil. 668, 687 (2009).
65 TSN, February 8, 2006, p. 6.
66 *See People v. Manambit*, 338 Phil. 57 (1997).

explanations or interpretations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not meet or hurdle the test of moral certainty required for conviction.[67]

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated September 16, 2009 in CA-G.R. CR No. 31706 is hereby **REVERSED** and **SET ASIDE**. Petitioner Guilbemer Franco is **ACQUITTED** of the crime of Theft charged in Criminal Case No. 05-238613 because his guilt was not proven beyond reasonable doubt.

No costs.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

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67 *Atienza v. People*, G.R. No. 188694, February 12, 2014, 716 SCRA 84, 104-105.

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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
FEB 18 2016

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