SECOND DIVISION

G.R. No. 256022 – PEDRO J. AMARILLE, Petitioner, **v. PEOPLE OF THE PHILIPPINES,** Respondent.

Promulgated:

AUG 0 7 2023

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CONCURRING OPINION

LEONEN, *J.*:

I concur. Petitioner Pedro J. Amarille should be acquitted of qualified theft of coconuts.

Furthermore, singling out theft of coconuts as qualified theft has become anachronistic and amounts to a violation of the equal protection of the laws. It is discriminatory not only against other food products, but also against the poor.

I

Generally, only questions of law may be raised in a petition filed under Rule 45 of the Rules of Court, as in this case. This Court is bound by the factual findings of the lower courts.[1] However, parties may allege, prove, and substantiate that their case falls under any of the exceptional cases when questions of facts may be reviewed by this Court:[2]

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is

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1 *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division]

2 *Quirino v. National Police Commission*, 845 Phil. 350, 360 (2019) [Per J. Leonen, Second Division]; *Pascual v. Burgos*, 776 Phil. 167, 184 (2016) [Per J. Leonen, Second Division].

> premised on the supposed absence of evidence and is contradicted by the evidence on record.[3]

In exceptional cases, this Court considers whether there are material facts and circumstances overlooked by the lower courts, which would raise reasonable doubt and lead to an accused's acquittal:

> This Court does not re-examine the facts of a case in a petition for review on certiorari under Rule 45 except for unusual reasons which would justify otherwise. One of these reasons is when certain material facts and circumstances had been overlooked by the trial court which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt which would entitle the accused to acquittal. We hold that this case falls under said exception to the rule on the binding effect on this Court of the lower courts' factual findings.[4] (Citations omitted)

In *Ligtas v. People*,[5] this Court allowed the reexamination of the facts to arrive at a just and equitable resolution, since the Court of Appeals erred in ruling that "all the essential elements of the crime of theft were duly proven by the prosecution despite petitioner having been pronounced a *bona fide* tenant of the land from which he allegedly stole."[6] In *Igdalino v. People*,[7] this Court also allowed an evaluation of the factual findings of the lower courts after they had overlooked certain material matters. While not a trier of facts, this Court may analyze, review, and even reverse factual findings of lower courts if there are compelling reasons to do so.[8] Furthermore, an appeal in criminal cases throws the whole case open for review.[9]

Here, petitioner alleges grave error on the Court of Appeals in affirming his conviction. He claims an exception to warrant a review of the factual findings, as "the judgment is based on a misapprehension of facts[.]"[10] Petitioner claims that it erred in appreciating the facts, which could justify a different conclusion.[11]

Without doubt, petitioner raises questions of fact. Nonetheless, this Court can give due course to his Petition because it falls under the exceptions as to when this Court may entertain questions of fact—when the judgment is based on a misapprehension of facts.

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3 *Pascual v. Burgos*, 776 Phil. 167, 182–183 (2016) [Per J. Leonen, Second Division], *citing Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per J. Bidin, Third Division]

4 *Pit-og v. People*, 268 Phil. 413, 419 (1990) [Per C.J. Fernan, Third Division].

5 766 Phil. 750 (2015) [Per J. Leonen, Second Division].

6 *Id.* at 764–765.

7 836 Phil. 1178 (2018) [Per J. Tijam, First Division].

8 *Alpay v. People*, G.R. Nos. 240402–20, June 28, 2021 [Per J. Inting, Third Division].

9 *Id. See also Candelaria v. People*, 749 Phil. 517 (2014) [Per J. Perlas-Bernabe, First Division].

10 *Rollo*, p. 24.

11 *Id.*

II

Theft and qualified theft are defined in the Revised Penal Code:

> ARTICLE 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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> Theft is likewise committed by:
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> 1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
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> 2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and
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> 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.
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> ARTICLE 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.

To prove the commission of theft, the following essential elements must be proven beyond reasonable doubt: (1) there is taking of personal property; (2) the property taken belongs to another; (3) the taking was done with intent to gain; (4) the taking was done without the consent of the owner; and (5) the taking is accomplished without violence or intimidation against person or force upon things.[12]

Intent to steal, or the intent to deprive another of their lawful ownership or possession of personal property, is presumed from the taking of personal property. However, this presumption may be rebutted by evidence that the property is taken in one's honest belief of owning the property:

> For one to be guilty of theft, the accused must have an intent to steal (*animus furandi*) personal property, meaning the intent to deprive another of his ownership/lawful possession of personal property which intent is

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[12] *People v. Mejares*, 823 Phil. 459 (2018) [Per J. Leonen, Third Division]; *Gaviola v. People*, 516 Phil. 228 (2006) [Per J. Callejo, Sr., First Division].

> apart from, but concurrent with the general criminal intent which is an essential element of a felony of *dolo (dolos malus)*. The *animo* being a state of the mind may be proved by direct or circumstantial evidence, inclusive of the manner and conduct of the accused before, during and after the taking of the personal property. General criminal intent is presumed or inferred from the very fact that the wrongful act is done since one is presumed to have willed the natural consequences of his own acts. Likewise, *animus furandi is presumed from the taking of personal property without the consent of the owner or lawful possessor thereof. The same may be rebutted by the accused by evidence that he took the personal property under a bona fide belief that he owns the property.*[13] (Emphasis supplied, citation omitted)

In *Gaviola v. People*,[14] this Court held the petitioner guilty of theft. It found his claim of having acted in honest belief of owning the land where he took the coconuts as mere pretense to escape criminal liability. It considered that there was already a court ruling declaring the private complainant as the owner of the land and that petitioner knew its location, identity, characteristics, and metes and bounds.

In *Diong-an v. Court of Appeals*,[15] this Court acquitted the petitioners of qualified theft upon finding that they lacked criminal intent in harvesting coconuts. It held that they only followed the instructions of their employer, whom they believed was the owner of the coconuts:

> Petitioners Diong-an and Lapuje were mere laborers working for Anastacio Baldero. It is clear from the records that they were only acting for Baldero and not in their own personal capacities. They were not claiming the coconuts for themselves and the proceeds from any sales would not accrue to them. They would be paid by Baldero with his own money and not necessarily from the sale of the harvested nuts. It is difficult to reconcile criminal intent to steal with the facts of the case. And it is harder still to explain why two laborers acting under instructions from one who claims to be the owner of the land should be convicted of qualified theft while the instigator of the act should not even be prosecuted.
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> In convicting the petitioners, the trial court relied heavily on their alleged knowledge of Bation's ownership over the coconut land.
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> Knowledge refers to a mental state of awareness about a fact. *Since the court cannot enter the mind of an accused and state with certainty what is contained therein, it should be careful in deducing knowledge from the overt acts of that person. Given two equally plausible states of cognition or mental awareness, the court should choose the one which sustains the constitutional presumption of innocence.*
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> The petitioners' knowledge that their employer Baldero no longer owned the land when they harvested the coconuts may be drawn from the facts. However, the same facts can also support a conclusion that what the

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13 *Gaviola v. People*, 516 Phil. 228, 237–238 (2006) [Per J. Callejo, Sr., First Division].
14 516 Phil. 228 (2006) [Per J. Callejo, Sr., First Division].
15 222 Phil. 357 (1985) [Per J. Gutierrez, Jr., First Division].

> petitioners knew was a dispute over the ownership of the land, not that their employer no longer owned it.[16] (Emphasis supplied)

In *Pit-og v. People*,[17] this Court likewise acquitted the petitioner of theft for lack of criminal intent, as she took the sugarcane and bananas believing those to be her own. It considered the prosecution's failure to definitively identify the exact location from where the alleged stolen plants were taken and to clearly identify the person wrongfully deprived of the thing belonging to them:

> Hence, the definitive identification of the area allegedly possessed and planted to sugarcane and bananas by Edward Pasiteng is imperative. There is on record a survey plan of the 512 square-meter area claimed by Edward but there are no indications therein of the exact area involved in this case. This omission of the prosecution to definitively delineate the exact location of the place where Erkey allegedly harvested Edward's plants has punctured what appeared to be its neat presentation of the case. *Proof on the matter, however, is important for it means the identification of the rightful owner of the stolen properties. It should be emphasized that to prove the crime of theft, it is necessary and indispensable to clearly identify the person who, as a result of a criminal act, without his knowledge and consent, was wrongfully deprived of a thing belonging to him.*
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> We see this case as exemplifying a clash between a claim of ownership founded on customs and tradition and another such claim supported by written evidence but nonetheless based on the same customs and tradition. When a court is beset with this kind of case, it can never be too careful. More so in this case, where the accused, an illiterate tribeswoman who cannot be expected to resort to written evidence of ownership, stands to lose her liberty on account of an oversight in the court's appreciation of the evidence.[18] (Emphasis supplied, citations omitted)

In *Ligtas*, this Court ruled that the prosecution failed to establish that the taking of the harvest was done without the owner's consent. It ruled that the Department of Agrarian Reform Adjudication Board decision finding the petitioner a tenant of the land gave him the right to the harvest:

> The existence of the DARAB Decision adjudicating the issue of tenancy between petitioner and private complainant negates the existence of the element that the taking was done without the owner's consent. The DARAB Decision implies that petitioner had legitimate authority to harvest the abaca. The prosecution, therefore, failed to establish all the elements of theft.
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> In this case, petitioner harvested the abaca, believing that he was entitled to the produce as a legitimate tenant cultivating the land owned by

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16 *Id.* at 363.

17 268 Phil. 413 (1990) [Per C.J. Fernan, Third Division].

18 *Id.* at 422–423.

private complainant. Personal property may have been taken, but it is with the consent of the owner.

No less than the Constitution provides that the accused shall be presumed innocent of the crime until proven guilty. "[I]t is better to acquit ten guilty individuals than to convict one innocent person." Thus, courts must consider "[e]very circumstance against guilt and in favor of innocence[.]" Equally settled is that "[w]here the evidence admits of two interpretations, one of which is consistent with guilt, and the other with innocence, the accused must be given the benefit of doubt and should be acquitted."[19] (Emphasis supplied, citations omitted)

In *Igdalino*, this Court found that the petitioners' open and notorious harvesting of the coconuts revealed their honest and good faith belief of ownership over the property. Thus, it ruled that the prosecution failed to establish the elements of unlawful taking:

Clearly, jurisprudence has carved out an instance when the act of taking of personal property defeats the presumption that there is intent to steal — when the taking is open and notorious, under an honest and in good faith belief of the accused of his ownership over the property.

In the instant case, the unrebutted testimonial evidence for the defense shows that the Igdalinos had been cultivating and harvesting the fruits of the coconut trees from the plantation since the time of their predecessor, Narciso. Narciso, in turn, had been cultivating and harvesting said coconut trees from the same plantation since Rosita was still a child. The harvesting of the coconuts were [sic] made by the Igdalinos openly and notoriously, as testified to by the other barangay residents.

Contrary to the CA's observations, the Court finds that the Igdalinos' open and notorious harvesting of coconuts was made under their belief that they, in fact, owned the land where the plantation is situated. This belief is honest and in good faith considering that they held, in their favor, OCT No. 1068 covering the disputed land under Narciso's name. We find that this honest belief was not tarred by the adjudication in Avertino's favor of the civil case for quieting of title over the same land. Knowledge that the land was finally adjudicated in favor of Avertino came to the Igdalinos only when Rosita inquired from the Register of Deeds in 2002, or long after the complained harvest was made. Neither was there any showing that the civil court had already rendered a final decision in Avertino's favor at the time the coconuts were harvested by the Igdalinos. All these tend to show that the Igdalinos' claim of ownership over the disputed land is bona fide. In sum, the prosecution failed to establish the elements of unlawful taking and thus, reasonable doubt persists.[20] (Citation omitted)

Similarly, here, the prosecution failed to establish all the elements of theft. Petitioner claims to have a right to gather the coconuts in the land, based on his honest belief that he owned the land and its improvements through his grandfather.[21] He claims that his grandfather owned the land and introduced

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19 *Ligtas v. People*, 766 Phil. 750, 783–784 (2015) [Per J. Leonen, Second Division].

20 *Igdalino v. People*, 836 Phil. 1178, 1187 (2018) [Per J. Tijam, First Division].

21 *Rollo*, p. 27.

the improvements including the coconuts; he also presented Tax Declaration No. 2008-32-0008-00050 registered under the name of Eufemio Amarille, his grandfather, to corroborate his claim.[22] He alleges that upon his grandfather's death, his children-heirs assumed ownership and possession of the land.[23] Moreover, he claims that his instruction to climb the coconut trees given openly and notoriously in broad daylight, with assurance of responsibility for complaints, bolsters his honest belief that he owned the property.[24]

Further, the lower court failed to give weight to the following facts in finding that petitioner could have honestly believed that his grandfather owned the land when he instructed Daniel Albaran (Albaran) to climb the coconut trees:

> The defense has pointed out that the Deeds of Absolute Sale in favor of Macario Jabines are null and void simply because there was no document of partition from the legal heirs of Eufemio Amarille; and that even if it were to be admitted that said deeds of conveyance were all valid to have conveyed the real property stated therein to Macario Jabines, there is still a remaining portion of 1/5 of the entire area belonging to the original owner. As such, the heirs of Eufemio Amarille, one of whom is accused Pedro Amarille, are still owners, albeit part only, of the real property covered by OCT No. 25102. This being the case, Pedro Amarille cannot be convicted from [sic] taking coconuts from a coconut plantation partly owned by him.
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> Accused established that although he grew up, studied and worked in Mindanao, he has been living in Maribojoc, Bohol since 1986. He has attempted to paint the picture that from 1986 up to the present, he has tilled the land owned by his grandfather Eufemio Amarille, planted thereon and harvested its coconut fruits because he believes that the property belongs to his grandfather. This property he claims is the same property where his grandfather brings him along when he was a kid.[25]

Moreover, the prosecution failed to clearly identify the person who was wrongfully deprived of the property belonging to them. There is doubt whether Macario Jabines (Jabines) or his heirs owned the land. The testimony of Albaran pointed out that one Hospicio Almonte owned the land:[26]

> Q: Now, when you said that you were requested by Pedro Amarille to climb the coconut trees, what was your response?
> A: I heed to [sic] his request.
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> Q: So, when you acceded to his request, what happened next?
> A: I climbed the coconut trees.

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22 *Id.*
23 *Id.*
24 *Id.* at 28–29.
25 *Id.* at 61–63.
26 *Id.* at 84.

. . . .

Q: When you reached that place where the coconut trees were growing, what did Pedro Amarille tell you?
A: He told me to climb the coconut trees because accordingly he is the owner of the land.

Q: What was your reaction of [sic] that statement?
A: I said this is not yours.

Q: *Why did you say that the coconut trees were not owned by the accused?*
A: *The late Hospicio Almonte was the owner of the coconut trees in Pustan.*

Q: Now, will you please clarify why do you say that the owner of the coconut trees was Hospicio Almonte?
A: When Hospicio Almonte was still living he was the one who always requested me and hired me to climb the coconut trees.

Q: And when you said those words to Pedro Amarille that the land and coconut trees belonged to Hospicio Almonte, what did Pedro Amarille say in response to you?
A: He said that he is the owner and he will be the one to copra [sic] the coconuts.[27] (Emphasis supplied)

If the heirs of Jabines indeed owned the land, they should have immediately known that someone had taken coconuts from their own land, and not just learned it from a certain Perto Bulacoy—and only three days after the incident had happened at that.[28] Thus, there is doubt as to who owns the land. The trial court did not clearly identify who owned the land or the coconuts in it.[29] Thus, the identity of the person wrongfully deprived of the personal property was not proven beyond reasonable doubt.

When there is doubt as to the guilt of the accused, this Court should sustain the constitutional presumption of innocence:

> If the inculpatory facts and circumstances are capable of two or more explanations one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.
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> The fundamental axiom underlying a criminal prosecution is that before the accused may be convicted of any crime, his guilt must be proved beyond reasonable doubt. Thus, if there are substantial facts which were overlooked by the trial court but which could alter the results of the case in favor of the accused, then such facts should be carefully taken into account by the reviewing tribunal.

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27 *Id.* at 89–90.
28 *Id.* at 84.
29 *Id.* at 61.

> Proof to sustain conviction must survive the test of reason. Suspicion of guilt, no matter how strong, should not be permitted to sway judgment.
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> Only if the trial judge and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. Every circumstance favoring his innocence must be duly taken into account. The proof against the accused must survive the test of reason. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged: that not only did he perpetrate the act but that it amounted to a crime. Moral certainty is required.[30] (Citations omitted)

III

This Court has a constitutional duty to declare the law on qualified theft of coconuts as unconstitutional for violating the equal protection clause, despite this issue not being raised by any party in this case. This duty arises from this Court's power to protect and enforce constitutional rights.[31]

The right of every person to the equal protection of the laws enshrined in our Constitution requires that all persons, under similar circumstances and conditions, shall be treated alike.[32] This Court has said:

> The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation, which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exists for making a distinction between those who fall within such class and those who do not.[33] (Citation omitted)

The equal protection of the laws does not prohibit legal classification, as long as it is reasonable classification, that is: (1) based on substantial distinctions that make for real differences; (2) germane to the purpose of the law; (3) not limited to existing conditions only; and (4) applicable equally to each member of the same class, thus:

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30 *People v. Torre*, 263 Phil. 458, 461–462 (1990) [Per J. Paras, Second Division].

31 CONST., art. VIII, sec. 5(5).

32 *Zomer Development Co., Inc. v. Special Twentieth Division of the Court of Appeals*, 868 Phil. 93, 113 (2020) [Per J. Leonen, *En Banc*], *citing Ichong v. Hernandez*, 101 Phil. 1155, 1164 (1957) [Per J. Labrador, *En Banc*].

33 *Ichong v. Hernandez*, 101 Phil. 1155, 1164 (1957) [Per J. Labrador, *En Banc*].

> The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.
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> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. *All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.*
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> In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. *Neither is it necessary that the classification be made with mathematical nicety. Hence legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.*[34] (Emphasis supplied, citations omitted)

There are three tests of judicial scrutiny to determine whether a classification is reasonable:

> Philippine jurisprudence has developed three (3) tests of judicial scrutiny to determine the reasonableness of classifications. The strict scrutiny test applies when a classification either *(i)* interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or *(ii)* burdens suspect classes. The intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the rational basis

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[34] *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60, 87–88 (1974) [Per J. Zaldivar, Second Division].

test applies to all other subjects not covered by the first two tests.[35] (Citations omitted)

In my separate opinion in *Samahan ng mga Progresibong Kabataan v. Quezon City*,[36] I expounded:

> The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it.
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> Intermediate review requires an important government interest. Here, it would suffice if government is able to demonstrate substantial connection between its interest and the means it employs. In accordance with *White Light*, "the availability of less restrictive measures [must have been] considered." This demands a conscientious effort at devising the least restrictive means for attaining its avowed interest. It is enough that the means employed is conceptually the least restrictive mechanism that the government may apply.
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> Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires that there be a compelling state interest and that the means employed to effect it are narrowly-tailored, actually — not only conceptually — being the least restrictive means for effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms.
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> . . . .
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> The governmental interests to be protected must not only be reasonable. They must be *compelling*.[37] (Citation omitted)

In *People v. Jalosjos*,[38] this Court, applying strict scrutiny, held that election to the position of a Congress representative is not a reasonable classification in criminal law enforcement:

> *A strict scrutiny of classifications is essential lest wittingly or otherwise, insidious discriminations are made in favor of or against groups or types of individuals.*
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> The Court cannot validate badges of inequality. The necessities imposed by public welfare may justify exercise of government authority to

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35 *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1113–1114 (2017) [Per J. Perlas-Bernabe, *En Banc*].

36 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].

37 J. Leonen, Separate Opinion in *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1147–1148, 1159 (2017) [Per J. Perlas-Bernabe, *En Banc*].

38 381 Phil. 690 (2000) [Per J. Ynares-Santiago, *En Banc*].

> regulate even if thereby certain groups may plausibly assert that their interests are disregarded.
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> We, therefore, find that election to the position of Congressman is not a reasonable classification in criminal law enforcement. The functions and duties of the office are not substantial distinctions which lift him from the class of prisoners interrupted in their freedom and restricted in liberty of movement. Lawful arrest and confinement are germane to the purposes of the law and apply to all those belonging to the same class.[39] (Emphasis supplied, citations omitted)

The strict scrutiny test has also been used in regulation involving a "suspect class," or "a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."[40] In *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,[41] this Court applied strict scrutiny, ruling that the rank-and-file employees of the Bangko Sentral ng Pilipinas represent the politically powerless, and that the continued implementation of the last proviso of Section 15(c) of Republic Act No. 7653 discriminated against these employees, making it unconstitutional. This Court said:

> Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.
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> *But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict.* A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.
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> . . . .
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> In the case at bar, the challenged proviso operates on the basis of the salary grade or officer-employee status. *It is akin to a distinction based on economic class and status*, with the higher grades as recipients of a benefit specifically withheld from the lower grades. Officers of the BSP now receive higher compensation packages that are competitive with the industry, while the poorer, low-salaried employees are limited to the rates prescribed by the SSL. The implications are quite disturbing: BSP rank-and-file employees are paid the strictly regimented rates of the SSL while employees higher in rank — possessing higher and better education and opportunities for career advancement — are given higher compensation

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39 *Id.* at 707–708.

40 *Zomer Development Co., Inc. v. Special Twentieth Division of the Court of Appeals*, 868 Phil. 93, 115 (2020) [Per J. Leonen, *En Banc*].

41 487 Phil. 531 (2004) [Per J. Puno, *En Banc*].

> packages to entice them to stay. *Considering that majority, if not all, the rank-and-file employees consist of people whose status and rank in life are less and limited, especially in terms of job marketability, it is they — and not the officers — who have the real economic and financial need for the adjustment.* This is in accord with the policy of the Constitution "to free the people from poverty, provide adequate social services, extend to them a decent standard of living, and improve the quality of life for all." *Any act of Congress that runs counter to this constitutional desideratum deserves strict scrutiny by this Court before it can pass muster.*
>
> To be sure, the *BSP rank-and-file employees merit greater concern from this Court.* They represent the more impotent rank-and-file government employees who, unlike employees in the private sector, have no specific right to organize as a collective bargaining unit and negotiate for better terms and conditions of employment, nor the power to hold a strike to protest unfair labor practices. Not only are they impotent as a labor unit, but their efficacy to lobby in Congress is almost nil as R.A. No. 7653 effectively isolated them from the other GFI rank-and-file in compensation. *These BSP rank-and-file employees represent the politically powerless and they should not be compelled to seek a political solution to their unequal and iniquitous treatment.* Indeed, they have waited for many years for the legislature to act. They cannot be asked to wait some more for discrimination cannot be given any waiting time. Unless the equal protection clause of the Constitution is a mere platitude, it is the Court's duty to save them from reasonless discrimination.[42] (Emphasis in the original)

In this case, not only is one's fundamental right to liberty involved, but the penal provision itself targets the poor. Therefore, the strict scrutiny test should be used to determine whether there is reasonable classification in imposing heavier penalties on theft of coconuts as compared to other fruits, cereals, or forest or farm products. A compelling State interest for the penal provision must be shown, and the means employed to effect it must be shown to be narrowly tailored or the least restrictive means.

Under Article 310 of the Revised Penal Code, theft is qualified and punished by the penalties next higher by two degrees than those specified in the next preceding article if the property taken consists of coconuts taken from the premises of a plantation:

> Thus, the stealing of coconuts when they are still in the tree or deposited on the ground within the premises is qualified theft. When the coconuts are stolen in any other place, it is simple theft. Stated differently, if the coconuts were taken in front of a house along the highway outside the coconut plantation, it would be simple theft only.[43]

In the 1950 case of *People v. Isnain*,[44] the counsel for the accused assailed Article 310, saying that in classifying the stealing of coconuts as qualified theft, it was unconstitutional for violating the equal protection

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42 *Id.* at 599–602.

43 *Empelis v. Intermediate Appellate Court,* 217 Phil. 377, 379 (1984) [Per J. Relova, First Division].

44 85 Phil. 648 (1950) [Per J. Bengzon, First Division].

clause. That the theft of coconuts was punished more heavily than the theft of similar produce such as rice and sugar, the counsel argued, denied the accused the equal protection of the laws.

In upholding the constitutionality of Article 310 and finding no violation of the equal protection clause, this Court explained why a heavier penalty is imposed for the theft of coconuts:

> In the matter of theft of coconuts, the purpose of the heavier penalty is *to encourage and protect the development of the coconut industry as one of the sources of our national economy.* Unlike rice and sugar cane farms where the range of vision is unobstructed, *coconut groves can not be efficiently watched because of the nature of the growth of coconut trees*; and without a special measure to protect this kind of property, it will be, as it has been in the past the *favorite resort of thieves*. There is therefore, some reason for the special treatment accorded the industry; and as it can not be said that the classification is entirely without basis, the plea of unconstitutionality must be denied.[45] (Emphasis supplied, citations omitted)

However, *Isnain* is a 1950 case, and the circumstances then were a lot different from the circumstances now, 73 years later. The compelling State interest then may no longer be present now. In *People v. Mejares*,[46] this Court pointed out that an effective and progressive penal system considers exigencies borne by the passage of time:

> On August 29, 2017, President Rodrigo Roa Duterte signed into law Republic Act No. 10951 that sought, among others, to help indigent prisoners and individuals accused of 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.
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> Basic wisdom underlies the adjustments made by Republic Act 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.[47]

Notably, despite the State protection provided for its development, the coconut industry is still struggling and "subjected to decades of neglect and abuse, characterized by low farm productivity, ageing trees, ageing and food insecure farmers with no social protection, stiff competition from palm oil,

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45 *Id.* at 650–651.

46 823 Phil. 459 (2018) [Per J. Leonen, Third Division].

47 *Id.* at 471.

inefficient value chains."[48] Imposing a heavier penalty for the theft of coconuts, therefore, is anachronistic and ineffectual:

> Therefore, the original interpretation of laws must give way to a new one, which should be attuned to the spirit of the age all over the earth. Although the wording of the articles of the Penal Code under discussion has not been changed, their interpretation may be changed in order that they may not become anachronistic. Considering that social conditions often unfold faster than legislation, it is a salutary function of the courts so to formulate their interpretation of old laws as to adjust them to contemporary exigencies of the public weal. This is not judicial legislation at all because the lawmakers intended that the law which they approved should govern for many years to come, and that therefore it should be interpreted by the courts in such a way as to meet new problems, provided the fundamental objectives of the law are distinctly kept in view. In the instant case, theft is punished, so the principle of crime repression is carried out; and the penalty is moderated because of extreme poverty and need, so the idea of punishment according to the circumstances of each case is also recognized.[49]

Moreover, with the advent of more advanced technology, there can be more ways to efficiently watch over and protect the coconut industry from thieves. Imposing a heavier penalty for theft of coconuts, through a lengthier restriction of the accused's liberty, may not be the least restrictive means for effecting the invoked interest.

Finally, there is no substantial distinction as to why the coconut industry is given more protection from thieves, while other fruits, cereals, or forest or farm products are not. The nature of growth of coconut trees does not make for real differences, as some people still resort to stealing coconuts, as in *Gaviola.* Hence, there is no reasonable classification between coconuts and other fruits, cereals, or forest or farm products so as to justify the imposition of a higher penalty for the theft of coconuts as compared to other food or farm products.

Senate Bill No. 1871, entitled "An Act Decriminalizing Qualified Theft of Coconuts and Reclassifying It as Simple Theft Under Article 308, Further Amending for This Purpose Article 310 of the Revised Penal Code, as Amended," filed last February 13, 2023, recognizes that poverty drives small-scale coconut farmers, tenants, and farm workers to steal coconuts:

> Many coconut farmers, especially small-scale farmers, farm workers, and tenants who mainly rely on coconut farming as their main source of livelihood, face challenges, such as lack of government support, low farm productivity, lack of capital and infrastructure, no sustained access to formal credit sources, recurring infestations of a pest called cocolisap,

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48 Edna A. Aguilar, Ernesto P. Lozada, & Corazon T. Aragon, *The Philippine Coconut Industry Roadmap (2021-2040)*, 2022, 24, *available at* http://www.pcaf.da.gov.ph/wp-content/uploads/2022/06/Philippine-Coconut-Industry-Roadmap-2021-2040.pdf (last accessed on June 19, 2023).

49 J. Bocobo, Concurring Opinion in *People v. Macbul*, 74 Phil. 436, 442–443 (1943) [Per J. Ozaeta, First Division].

> inadequate fertilization, climate related risks and hazards, insufficient farm to market roads, corruption, among others. To make matters even worse, coconut farmers are considered among the poorest in the country. They accounted for about 60% of the rural poor and have an average annual income of PHP 20,000 per hectare. Most of the 2.54 million coconut farmers in the country earn less than PHP 10,000 per year. Those who fall in this income range are largely farm workers and tenants. In 2019, the prevailing wage rate in the coconut farm sector was only PHP 338.72 per day. Because of this, *some farm workers and tenants have stolen coconuts on the lands that they work under the impulse of hunger, poverty, or the difficulty of earning a livelihood to support themselves and their family.*
>
> The high penalty for qualified theft, which is two degrees higher than simple theft under Article 308, only adds to the difficulties faced by the farmers, discouraging them from pursuing their livelihood, which further contributes to the industry's decline. These farmers are often subjected to high bail amounts for their temporary liberty, which further puts them on a significant financial strain. The penalty is deemed too harsh, especially for small-scale coconut farmers, tenants, and farm workers who rely on the sale of coconuts as their main source of income and who have only acted under desperation and impulse of hunger and poverty.[50] (Emphasis supplied, citations omitted)

Senate Bill No. 1871 acknowledges the onerous and anachronistic penalties imposed on qualified theft of coconuts under the Revised Penal Code, enacted on December 9, 1930. Senate Bill No. 1871 is sought to be passed to decriminalize qualified theft of coconuts and reclassify it to simple theft to "provide a relief to small-scale farmers, tenants, and farm workers, and reduce the burden on those who may be accused of this offense."[51]

Thus, a conviction for qualified theft of coconuts amounts to a violation of the equal protection of the laws. Singling out theft of coconuts as qualified theft discriminates not only against other food products, but also the poor.

Pursuant to our judicial duty to administer effective justice, laws should be progressively construed and liberally interpreted to meet changing conditions:

> Laws should be progressively construed, so that they may meet new conditions, so long as they fall within the general purpose of the legislature.
>
> . . . .
>
> It is this progressive interpretation that keeps legislation from becoming ephemeral and transitory. It is obvious that legislators want their creation to be a rule of conduct for an indefinite time. To carry out that desire of the legislator, a statute should always be made adaptable by the courts to the changing conditions of the social order. A strict interpretation,

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50 Explanatory Note on Senate Bill No. 1871, February 13, 2023, 1–2, *available at* http://legacy.senate.gov.ph/lis/bill_res.aspx?congress=19&q=SBN-1871 (last accessed on June 19, 2023).

51 *Id.* at 2.

> such as the majority adheres to, would render a statute obsolete shortly after it has been enacted, for human progress is always on the wing. Consequently, judicial statesmanship is ever mindful that time and tide wait for no static, fossilized statute, which is the fetish of rigid, literal interpretation. Courts are not museums for useless, anachronistic laws.[52]

All told, the crime charged violates petitioner's right to equal protection of the laws. In any case, I concur with the *ponencia* that the prosecution failed to prove all the elements of qualified theft of coconuts. There is reasonable doubt of petitioner's guilt, warranting his acquittal.

ACCORDINGLY, petitioner Pedro J. Amarille should be acquitted of theft of coconuts.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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[52] J. Bocobo, Dissenting Opinion in *Diuquino v. Araneta*, 74 Phil. 705, 706 (1944) [Per J. Ozaeta, First Division].