THIRD DIVISION

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

Promulgated:

July 10, 2023

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CONCURRING OPINION

CAGUIOA, *J.*:

I agree with the *ponencia* that the prosecution in this case was not able to prove beyond reasonable doubt the guilt of both petitioners Julius Enrico Tijam *y* Noche (Tijam) and Kenneth Bacsid *y* Ruiz (Bacsid).

It is evident that the testimony of the complainant, Kim Mugot (Mugot), constituted the bulk of the prosecution's evidence in this case, since he was the only one with personal knowledge of the alleged taking of his cellphone. His narration essentially consisted of the following events: first, he was pinned to the door of a bus by Bacsid while a throng of commuters were rushing to board the same; second, he later noticed that his cellular phone, which was in his right pocket, was missing; third, he followed the person who pinned him to the bus door back towards the unloading area; and fourth, he saw Tijam (not Bacsid) handing his phone to Bacsid.[1] From these events, Mugot and the prosecution concluded that Bacsid and Tijam must have acted in conspiracy to steal Mugot's phone.

While these circumstances may inspire suspicion at best, these cannot by any means be sufficient to prove that the crime of theft was even committed, let alone that Bacsid and Tijam perpetrated the same.

First, the Court cannot hastily conclude that Mugot's phone was taken from him just because he was pinned to the bus's door. There were many commuters who were also trying to board the bus along with him, and he could have been jostled around by Bacsid and the other people around him.

Second, when Mugot next saw his missing phone, it was in Tijam's hand, and the latter was handing the same to Bacsid. This is a key point and significant source of doubt in the prosecution's theory. There is a significant logical gap between Mugot being pinned to the bus and allegedly getting his phone stolen by Bacsid, and Mugot discovering his phone in Tijam's hand, moments later.

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[1] *Ponencia,* pp. 3 and 8.

The logical expectation would be that, if Bacsid indeed took the phone, it would be in his possession. Also, if the hypothesis is that Bacsid turned over the phone to Tijam as his co-conspirator, then Tijam should not be handing it back to Bacsid. There are simply too many unanswered questions about the entire situation, and too many possible explanations for Tijam's and Bacsid's behavior. As pointed out by the *ponencia,* another likely explanation is that due to the many passengers rushing to board the bus, Mugot dropped his cellular phone without noticing, and that Tijam just happened to pick it up.[2] There is no other compelling evidence which would make the conclusion that they committed theft to be the most plausible option.

More importantly, the constitutionally-protected right of an accused to be presumed innocent disincentivizes the Court from concluding that Tijam and Bacsid are guilty of theft, when there are simply too many doubts and gaps in the prosecution's evidence. The Court has ruled time and again that "where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with innocence and the other with guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to convict the accused."[3]

In this particular case, I believe it is even proper to go so far as to say that the evidence did not only fail to fulfill the test of moral certainty, it also failed to meet the requisite threshold of probable cause. In this case, the trial court, the Court of Appeals and evidently, the prosecution, all relied on the presumption under Section 3(j), Rule 131 of the Rules of Evidence which states that "a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act." To my mind, this provision was too hastily applied against the two accused. The provision itself exhorts that before a person in possession of a thing may be considered as the taker thereof, *there must first have been a recent wrongful act; there should have been a taking that occurred.* In this case, the taking itself was not even sufficiently proven. How then can there be a presumption that the two accused were the "taker[s] and the doer[s] of the whole act"?

The *ponencia* astutely points out that courts should take care not to indiscriminately rely on presumptions in criminal cases lest they lead to unjust convictions. The particular facts of the case must always be thoroughly considered. This same principle is not only true of courts, but should also be adhered to by prosecutors when deciding whether there is merit in pursuing a case. A prosecutor's judiciousness can shield the innocent not only from the costs of litigation but also from deprivation of liberty for protracted periods of time. Deciding not to pursue a case riddled with doubt is just as commendable as steadfastly pursuing one buttressed by strong evidence.

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2 *Id.* at 10–11.

3 *People v. Lignes*, G.R. No. 229087, June 17, 2020.

Given the foregoing, I vote to **ACQUIT** petitioners Tijam and Bacsid.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice