CHANROBLES PUBLISHING COMPANY

SUPREME COURT
SECOND DIVISION

LITTON MILLS, INC. and/or JAMES L. GO,
***Petitioners*,**

-versus-

G.R. No. 151400
September 1, 2004

MELBA S. SALES,
***Respondent*.**
x--x

D E C I S I O N

CALLEJO, SR., *J*.:

Petitioner Litton Mills, Inc., represented by James Go, insists that this is a plain and simple case of an employee caught in flagrante. Respondent Melba S. Sales intractably contends the opposite, and maintains that she was a victim of a despicable frame-up. The Labor Arbiter and the National Labor Relations Commission (NLRC) sided with the petitioner herein, while the Court of Appeals gave credence to the stance of the respondent. The petitioner now comes before the Court for relief on a petition for review on certiorari.

The Antecedents

On September 20, 1999, petitioner Litton Mills, Inc. dismissed the respondent for theft of two (2) packs of miniature fuse links and a

piece of cloth tape, found inside the latter's bag during an inspection at the exit gate of the petitioner's plant. On October 1, 1999, the respondent filed a Complaint against the petitioner for illegal dismissal with the NLRC docketed as NLRC-NCR-Case No. 00-10-090039-99.

The Case for the Petitioner

On April 22, 1983, the petitioner employed respondent Melba S. Sales and assigned her to the Spinning, Weaving and Finishing Department. As of September 5, 1999, she was assigned as a weaver at the Weaving Department with a daily wage of P326.29.[1] At around 6:10 a.m. on September 5, 1999, Security Officer Noel A. Maallo was at Gate 2 of the plant site, inspecting the handbags of employees exiting the gate after their tours of duty. The practice of bag inspection whenever persons entered and exited the plant site had been a long-standing procedure of the petitioner.

When Maallo opened the respondent's bag, he found two packs of miniature fuse links inside a side pocket, as well as cloth tape hidden beneath and commingled with the respondent's soiled clothes. The fuse links had apparently been embedded in the machines at the Spinning, Weaving and Finishing Department, and without which such machines would not operate.[2] Maallo made a written report[3] of the incident to Johnson Robert Go, Jr. that day and reported the incident to the Pasig City Police. The report was placed in the police blotter.[4] On September 6, 1999, the respondent was required by the petitioner, through its Assistant Vice-President, Rodolfo S. Mariño, to submit an explanation why no disciplinary action should be taken against her for stealing company property. The respondent was also informed that she was being placed under preventive suspension for fifteen (15) days effective immediately.[5] On September 7, 1999, the respondent submitted a handwritten explanation in which she denied the charges. She also stated therein that she had a talk with Maallo while in front of the door to the room of Atty. Mariño, and was told that the inspection of bags of employees that early morning of September 5, 1999 had been very strict because their office had earlier received information that a woman was about to bring out company property at the exit gate.[6]

A formal investigation of the incident was conducted by Atty. Melvyn S. Florencio, who later submitted his Report to the President of the petitioner, Johnson Roberto Go, Jr., recommending the dismissal of the respondent for theft of company property which was one of the Offenses Subject to Disciplinary Action (OSDA), under Section 1 thereof.

The Case for the Respondent[7]

The respondent adduced evidence that she was first employed by the petitioner Litton Mills, Inc. as a weaver on April 22, 1983. She had been the leading critic of the employees' union in the company and often criticized Emiliano Salonga, one of the members of the Board of Directors of the Union, in the presence of many persons.[8] She was once invited by Salonga to attend an orientation conference at the behest of the union, but she just laughed at him.[9] When the petitioner ordered a retrenchment, union president Ariel Villanueva supported the decision of the management. The respondent criticized the retrenchment, as well as the increase of union dues and special assessment of P200.00 after the execution of the Collective Bargaining Agreement between the union and the petitioner.[10] At one time, Salonga told another employee, Zaida C. de Asis, that he would do anything to eliminate the respondent.[11] The respondent averred that her criticism did not sit well with Sonia Mercado, who considered her (the respondent) very critical and outspoken of the leadership of the union.[12] Mercado was also very angry with the respondent for another reason; she suspected the latter of calling her husband and telling him of her close relationship with Salonga.[13] Even Alex Go, the manager of the Spinning, Weaving and Finishing Department, talked to her at 2:30 p.m. on April 27, 1999, and told the respondent that someone had reported that she had been leaving the working area and going to other departments during office hours. She vehemently denied the report and even reminded Go that she had a production rating of 80% to 95% compared to the failing rating of Mercado, who oftentimes talked with Salonga in the working area.

Not long after, or on September 3, 1999, the cloth tape and fuse links were found in the respondent's bag.

The respondent claimed that she was a victim of a frame-up. She averred that on September 4, 1999, a Saturday, she reported for work at the plant site and arrived there at 2:00 p.m. She brought a handbag in which she placed some clothes as she was scheduled to work overtime up to 6:00 a.m. the next day, September 5, 1999. She placed her bag inside her locker before reporting for work at the Weaving Department. However, she failed to lock her locker before she left. At around 4:30 a.m., Zaida de Asis, who was also assigned at the Weaving Department, saw Salonga hand over to Mercado a plastic bag about 3 inches long and 3 inches wide.[14] At around 5:00 a.m., she returned to the locker room, got her bag from the locker and took out her clothes from the bag. She placed the bag on the bench as she changed her clothes. Also changing their clothes then with her were Zaida de Asis, Sonia Mercado and two other employees.[15] The respondent placed her soiled clothes inside her bag and returned her bag to her locker. She did not lock her locker, as she usually did, and returned to the working area.[16]

At around 6:00 a.m., the respondent left the working area and took out her bag from the locker. She did not notice anything unusual inside her bag. She then proceeded to Gate 2 of the plant where she saw two long lines formed, one for women employees and the other for male employees. The lines were manned by security officers, one of whom was Security Officer Maallo. She noticed that the inspection of the bags of male employees was lax compared to the inspection done on the women employees, which was unusually strict. She saw Salonga near the security guard being frisked, and then leave. She heard someone shout, "May nagtip; may nagtip." Zaida de Asis' bag was inspected ahead of the others. Momentarily, Maallo announced, "Sino ang gustong magpakapkap sa akin?" She forthwith presented herself to Maallo and opened her bag for inspection. She was aghast when Maallo found the cloth tape and the two packs of miniature fuse links inside. Maallo ordered her to stay while he continued with his inspection of the bags of the other employees.

The respondent herein asserts that the miniature fuse links found in her bag were used in the Maintenance Department. After the incident, Union president Ariel Villanueva, spread word that he was even prepared to have his head cut off if the respondent would be reinstated to her position.

After the respondent rested her case, Mercado testified and identified her and Salonga's joint statement. She admitted that at about 2:30 p.m. to 3:00 p.m. on September 5, 1999, she placed a plastic bag containing pineapple pie from Salonga.[17] She denied the respondent's claim that she and Salonga instigated the alleged frame-up.

During the conciliation conference at the Arbitration Branch, the petitioner offered to pay the respondent separation pay if she agreed to resign from the company. The respondent, however, refused the offer.

On February 16, 2000, Labor Arbiter Jose G. de Vera, rendered a Decision dismissing the complaint but ordering the petitioner to pay her P6,559.35.[18]

The respondent appealed the decision to the NLRC which affirmed the decision of the Labor Arbiter.[19] The petitioner filed a motion for partial reconsideration of the decision, while the respondent filed her motion for reconsideration thereof. Both motions were denied by the NLRC.[20]

The respondent filed a petition for certiorari with the Court of Appeals which rendered judgment on September 28, 2001 setting aside and reversing the decision of the NLRC, ordering the reinstatement of the respondent and remanding the case of the Labor Arbiter for the computation of the monetary awards in favor of the respondent.

The petitioner comes before this Court and raises the following issues:

I

> WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE RESPONDENT WAS ILLEGALLY DISMISSED.

II

> WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN DECLARING THAT THE RESPONDENT IS ENTITLED TO REINSTATEMENT TO HER FORMER POSITION WITH FULL BACKWAGES AND PAYMENT OF HER MONETARY CLAIMS.[21]

The core issues are the following: (a) whether or not the petitioner adduced the requisite quantum of proof that the respondent stole the cloth tape and pieces of miniature fuse links owned by her employer, the petitioner; and (b) whether the penalty of dismissal meted against the respondent is appropriate in this case.

The general rule is that the factual findings of the NLRC affirming those of the Labor Arbiter are given high respect by the appellate court absent a showing of unfairness or arbitrariness in the process of their deduction from the evidence or grave abuse of discretion.[22]

In this case, the Labor Arbiter, after calibrating the evidence of the respondent and Zaida de Asis, ratiocinated as follows:

> The main issue for resolution in the instant case is whether or not there exists just and valid cause to justify the termination of the complainant.
>
> The complainant, in her position paper, alleges that she was framed up. In particular, she accused union officers Emiliano Salonga and Sonia Mercado as the ones responsible in planting incriminatory evidences against her. She claims that she incurred the ire of the said union officers who suspected her of spreading rumors about an alleged amorous relationship between them. As proof of the alleged plot against her, complainant relied on the affidavit executed by Zaida de Asis who allegedly saw Emiliano Salonga gave Sonia Mercado a plastic bag containing small items which later was discovered inside complainant's bag.
>
> The attendant circumstances in the instant case as found by this Arbitration Branch militate strongly against the complainant.

> She was caught red-handed by the security guard who inspected her bag as she was about to leave the company premises to be containing objects belonging to the respondent company.
>
> While the complainant claimed innocence contending that she was completely unaware about what was implanted inside her bag by those who allegedly framed her up, her explanation nonetheless failed to convince this Arbitration Branch. Complainant's tale that some union officers plotted her ouster from the company after she was suspected of spreading rumors about the alleged illicit relationship between them is at most an afterthought designed to extricate herself from a difficult bind.
>
> Further, complainant relied on the sworn declaration of a co-employee identified as Zaida de Asis who testified that when the security guard inspected the bag of the complainant and found therein a plastic bag containing the fuse links, she allegedly recognized the plastic bag as the one she earlier saw being handed by Emiliano Salonga to Sonia Mercado at the vicinity of the locker room.

It is to be noted singularly that the above declarations of Ms. De Asis is inconsistent with the findings of the investigating officer, who in his report states as follows:

> "Upon clarificatory questioning, she said that she's acquainted with Ms. Melba Sales. She does not know if Ms. Melba Sales (sic) or Mr. Emiliano Salonga has personal animosity with Ms. Melba Sales. She is not in a position to comment on the charge filed by the security department of Litton Mills, Inc. against Ms. Melba Sales. She was with Ms. Melba Sales at the time the later (sic) was being inspected by Mr. Noel Maallo but does know (sic) what happened with Ms. Melba Sales while being searched by Mr. Maallo, as she had already left Gate 2."

The foregoing statement of Ms. De Asis during the administrative investigation readily shows that she was no longer present at the time the security guard discovered the pilfered items inside the bag of the complainant and, therefore, is not in a position to state that the bag was the same plastic bag being handed by Salonga to Sonia Mercado.

The foregoing inconsistent statements of Ms. De Asis clearly shows that she is not a reliable witness.[23]

The NLRC affirmed the findings of the Labor Arbiter and further declared that:

> In trying to convince us that the articles found in her bag were planted, complainant-appellant relied heavily on the declarations of her sole witness Ms. Zaida C. de Asis. Unfortunately, a close scrutiny of her sworn statement would reveal that the same is not substantially supportive of what complainant-appellant wants us to believe. It is noted that while Ms. De Asis declared that she saw Salonga giving small items in a plastic to Mercado, she did not personally witness the security guard inspecting the complainant-appellant's bag. She merely presumed that what she saw being handed to Mercado were the same items found in the bag during inspection. She even stated that she learned of the incident only the following day. More important, Ms. De Asis did not see what articles were being given to Mercado. Neither did she witness when the stolen articles were supposedly planted in complainant-appellant's bag. These could easily be gleaned from the following statements in her affidavit. (Records, p. 33).
>
> "x x x
>
> 3) Na, noong Septiembre 6, 1999, mga alas kuwatro ng madaling araw habang papasok sa locker room, ay nakita ko na itong si Emiliano Salonga na may iniabot na maliit na bagay na naka-plastic kay Sonia Mercado.
>
> x x x
>
> 6) Na, ng inspiksyunin ng OIC ng guwardia ang bag ni Sales ay nakita niya iyong nakabalot ng plastic, na siya ring nakita ko ng iabot nitong si Emilio (sic) Salonga kay Sonia Mercado. Ito ay napag-alaman ko kinabukasan. (Underscored for emphasis)

The aforequoted statements, particularly that which shows that Ms. De Asis was no longer present at the time the security guard discovered the pilfered items, were confirmed in the investigation report which states in part, thus:

> "After the undersigned terminated his investigation with Ms. Melba Sales, the latter presented as her only witness Ms. Zaida de Asis, who testified that at around September 05, 1999 at around (sic) 4:30 A.M., she left the women's locker area. At this juncture, she saw a woman near the door of the men's locker room and saw a man giving to the woman a plastic pack which is about 3 inches in length and 3 inches in width. She did not see the contents of what was given to the woman. She identified the man as Mr. Emiliano Salonga and the woman as Ms. Sonia Mercado.
>
> "Upon clarificatory questioning, she said that she's acquainted with Ms. Melba Sales or Emiliano Salonga has personal animosity with Ms. Melba Sales. (sic) She is not in a position to comment on the charge filed by the security department of Litton Mills, Inc. against Ms. Melba Sales. She was with Ms. Melba Sales at the time the latter was being searched by Mr. Noel Maallo but does not know what happened with Ms. Melba Sales while being searched by Mr. Noel Maallo as she had already left gate 2."

All told, the Labor Arbiter did not err in finding that there is no valid basis for complainant-appellant's defense of frame-up and, consequently, the well-founded and rational conclusion that complainant-appellant stole company property. Respondents-appellees, therefore, had valid grounds to dispense with her services. After all, theft committed by an employee constitutes a valid reason for dismissal by the employer (Firestone Tire and Rubber Co. of the Phils. vs. Lariosa, 148 SCRA 187).

It is noted, however, that during the early stages of this proceedings, respondents-appellees offered to grant complainant-appellant separation pay equivalent to 15-days pay for every year of service. Considering that complainant-appellant had worked with the company for 17 years with no known previous bad record, which

presumably prompted respondents-appellees to voluntarily make the proposal, the ends of social and compassionate justice would be served if respondents-appellees would make good its offer.[24]

However, the Court of Appeals found the factual findings of the Labor Arbiter and the NLRC, and their conclusions based on said findings, erroneous and held as follows:

> The striking facts which appeared on record could not escape Our attention, to wit:
>
> "1) That it is a standard security procedure of the private respondent Litton Mills that all persons entering and leaving the premises of the company are required to submit their bags and other belongings to the security personnel at the gate for inspection (Rollo, p. 162);
>
> "2) That petitioner, after hearing Security Officer Noel Maallo shouted: (sic) Sino ang gustong magpakapkap sa akin?, voluntarily went to the said security officer so that she may be inspected after she opened her bag (Ibid, p. 194);
>
> "3) That during the investigation conducted by Melvyn S. Florencio, petitioner admitted that the fuse and cloth tape were found inside her bag but she maintained her innocence (Ibid, p. 201);
>
> "4) That the packs of miniature fuse links were found inside the side pocket of petitioner's bag, while the cloth tape was found at the center pocket of the petitioner's bag hidden beneath and mixed with her soiled clothes (Ibid, p. 185);
>
> "5) That the miniature fuse links are being used by different machines at the Spinning, Weaving and Finishing Departments without which would cause stoppage of said machines (Ibid, p. 185); and

> "6) That petitioner, despite having been offered by private respondents of separation pay, refused and opted to proceed with this litigation to prove her innocence (Ibid, p. 25)."

These facts and circumstances lead Us to conclude that the petitioner is innocent of the charge of pilferage.

> **First**, if she really had the intention to steal the fuse links and the cloth tape from the respondent company, knowing that a routine inspection is conducted before leaving the plant, she should not have put the fuse links inside the side pocket of her bag. Said side pocket was apparent in the eyes of the security officers and are most likely to be inspected. Note that the cloth tape which is less important than the fuse links was the one found inside the center pocket of the bag mixed with the soiled clothes of the petitioner.
>
> **Second**, the petitioner's conduct of voluntarily going to the security officer and of spontaneously opening her bag for inspection is an act inconsistent with the idea that she was hiding something in her bag.
>
> **Third**, there is no proof of motive attributed to herein petitioner why she would steal the fuse links vital in the operation of the machines in her department. Neither is there any proof adduced why she would have stolen said articles with persistence, knowing that the risk of being caught is highly probable because of the routine inspection.
>
> **Finally**, despite having been offered to be paid of a separation pay which a truly guilty individual could have hastily accepted, the petitioner refused and opted to proceed with this burdensome litigation to prove her innocence.

It would seem from the above circumstances and observations that the mere fact that certain company articles were found in the possession of herein petitioner during the routine inspection is not sufficient to warrant a reasonable mind to conclude that she is guilty of theft of private respondents' properties. Hence, public

respondents gravely abused their discretion in upholding the dismissal of herein petitioner absent substantial evidence to prove the same.[25]

The petitioner contends that the Court of Appeals erred in reversing the decision of the NLRC, affirming on appeal the decision of the Labor Arbiter whose findings are generally accorded, not only respect, but even conclusive and binding effect on the Court of Appeals. The petitioner asserts that the "striking facts" referred to by the Court of Appeals in its decision are based on conjectures, possibilities and suppositions.

The petitioner avers that it was not incredible for the respondent to have kept the subject goods in her bag on her way to Gate 2 because she knew that, on previous occasions, the inspection of bags of exiting employees was lax and perfunctory. She did not expect such inspection at 6:10 a.m. of September 5, 1999 to be strict, such that even wallets of employees were searched. She said so herself in her affidavit –

> Sa pagsapit ko sa gate 2 na siyang daang palabas napansin ko na ang pila ng kababaihan ay mahaba, dahil sa hindi pangkaraniwang higpit ng kanilang pagsisiyasat at pagkapkap, na maging ang wallet ay kanilang tinitingnan, subali't hindi naman ginagawa sa pila ng kalalakihan, sa pila namin ay may sumigaw ng "May nagtip, may nagtip." Sa puntong ito nagsalita si Ginoong Maallo na OIC ng mga guardiya na "Sino ang gustong magpakapkap sa akin?" sa tinuran niyang iyon agad akong tumungo sa kanya dahil alam ko ang proseso nito. Kaya binuksan ko ang zipper ng aking bag at ipinasiyasat sa kanya, at dito na po niya nakita ang mga bagay na ibinibintang sa akin na wala naman akong kinalaman.[26]

There is no evidence on record, the petitioner avers, that the contents of the side pocket of the respondent's bag were inspected by Maallo before the bag was opened. It also posits that it was not unexpected for the respondent to have placed the cloth tape inside her bag and hide it between her soiled clothes, because if she placed the cloth tape in the side pocket, it would have caused the pocket and the bag to bulge, and thus, invite the attention of the security officer conducting

the inspection. It also posits that the respondent's acts of counterchecking her bag before presenting it to Maallo for inspection was consistent with her stealing the stated items. Motive to commit a crime is not an essential element of theft. The fact remains, the petitioner emphasizes, that the respondent was caught in flagrante; hence, motive need not be established. The defense of frame-up, the petitioner notes, cannot prevail since the respondent was caught in flagrante.

The petitioner posits that, while it is true that it offered to pay separation pay to the respondent during the conciliation phase of the proceedings before the Arbitration Branch, it did so merely to "buy peace" and not to admit that the charge against the respondent was baseless; for if it were otherwise, then all illegal dismissal cases would prosper by the mere expedience of the complainant rejecting the offer of the employer to settle the case by way of a compromise.

The respondent, in her Comment on the petition, cited the ruling of this Court in Judric Canning Corporation vs. Inciong,[27] to wit:

> It Offered to pay respondent union members separation pay of one (1) month. This is a clear admission of the charge of arbitrary dismissal for why should the petitioner offer to pay what it calls "severance pay" if the private respondents were not, indeed, dismissed, or if the petitioner sincerely believed in the righteousness of its stance?
>
> The respondent asserts that having served the petitioner for seventeen (17) long years without any blemish, she certainly would not steal a piece of cloth tape and pieces of miniature fuse links, an offense for which she would surely be dismissed from her employment, besides being charged with a felony. She contends that it was never the burden of the respondent to prove her innocence of the charge; the petitioner, as complainant, was burdened to prove the said charge with clear and convincing evidence, and not merely substantial evidence, considering that the charge was for the theft of her employer's property, meriting the penalty of dismissal from employment under Section 1.00 of the OSDA.

The Ruling of the Court

The petition has no merit.

In illegal dismissal cases, the employer is burdened to prove just cause for terminating the employment of its employee with clear and convincing evidence. (Concorde Hotel vs. Court of Appeals, 362 SCRA 583 [2001]).[28] The case of the employer must stand or fall on its own merits and not on the weakness of the employee's defense. (Dela Cruz vs. NLRC, 268 SCRA 458 [1997]).[29] The alleged weakness of the defense of the employee cannot operate to relieve nor discharge the employer of its burden in termination cases. This principle is designed to give flesh and blood to the guaranty of security of tenure granted by the Constitution to employees under the Labor Code. (Dela Cruz vs. NLRC, 268 SCRA 458 [1997]). [30]

The petitioner was burdened to prove the charge of theft of its property by the respondent to wit: (a) it was the owner of the cloth tape[31] and the miniature fuse links;[32] (b) the respondent herein took said property; (c) without the consent of the petitioner as owner. Taking is the act of depriving another of the possession and dominion of movable property without his permission and consent, and without animus revertendi.[33] However, as found by the Court of Appeals, the petitioner failed to discharge its burden.

First. The only evidence adduced by the petitioner that it was the owner of the cloth tape and fuse links referred to was the Affidavit of Maallo that, upon verification, the fuse links were being used by different machines at the Spinning, Weaving and Finishing Department and that without them, such machines would stop functioning or operating.[34] The petitioner failed to submit any affidavit or document showing that it was the owner of the said fuse links and cloth tape.

Second. The petitioner failed to prove the particular section of the plant where the cloth tape and fuse links were kept. There is no evidence that the respondent took the articles from any of the sections of the petitioner's plant where the said articles were kept, and that the respondent had access to those sections of the plant. It bears stressing that the respondent was merely a weaver in the

Spinning, Weaving and Finishing Department. The respondent could not have taken the articles where they were kept because from the time she arrived in the plant up to the time when she exited from her place of work, she was either in the locker room to change her clothes and to return her bag in the locker, or was at her working place.

Third. We are not impervious of Rule 131, Section 3(j) of the Revised Rules of Evidence which provides:

> 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; otherwise, the things which a person possesses, or exercises acts of ownership over, are owned by him;

However, for such presumption to arise, the petitioner was burdened to prove the following: (a) that its property was stolen; (b) it was committed recently; (c) that the stolen property was found in the possession of the respondent; and (d) the respondent is unable to explain his possession satisfactorily.[35] The presumption does not apply if the property was not recently stolen. In this case, the petitioner failed to establish its ownership of the cloth tape and miniature fuse links, that the same were stolen, and that the theft was committed shortly before the same were found in the possession of the respondent at the exit gate.

The Labor Arbiter and the NLRC rendered judgment against the respondent simply and merely because the said quasi-judicial agencies disbelieved her explanation as to how and why the articles were in her bag, and why she could not have stolen the said articles from the plant of the petitioner. It was not ascertained whether the petitioner herein mustered the requisite quantum of evidence to prove its charge against the respondent with clear and convincing evidence. In fine, judgment was rendered by the Labor Arbiter against the respondent because of the weakness of her defense; instead, it should have rendered judgment in her favor because of the petitioner's failure to prove just cause for her dismissal, to wit, that she stole her employer's property.

In calibrating the evidence of the petitioner vis-à-vis that of the respondent, the Court of Appeals found the respondent's evidence credible and entitled to full probative weight.

We agree with the Court of Appeals.

Case law has it that, for evidence to be believed, it must not only proceed from the mouth of a credible witness, it must be credible in itself. Evidence is credible when it is such as the common experience of mankind can approve as probable under the circumstances. There is no test of truth of human testimony, except its conformity to our knowledge, observation and experience.[36]

In this case, the respondent had been under the employ of the petitioner for seventeen (17) years since April 22, 1983. There is no evidence that any charges were ever filed against her for any infraction from 1983 up to 1999. While the petitioner's Department Manager Alex Go claimed that on two occasions in 1999, he called the respondent's attention and reprimanded her for allegedly loitering outside the working area and engaging in gossip during working hours,[37] the respondent vehemently denied the same. The petitioner was unable to explain why Alex Go executed his affidavit on the respondent's supposed infractions only after September 5, 1999. Moreover, the petitioner had not adduced any evidence to controvert that of the respondent's that while under its employ, her production rating ranged from 80% to 95%.[38]

We find it incredible that the respondent would steal a measly cloth tape and two packs of miniature fuse links and risk being dismissed from her employment. The respondent knew that her bag would be inspected by the security guard at the exit gate; hence, the articles would be discovered if she stole the articles and placed the same in her bag on her way out of the plant via the exit gate. Even if bag inspections had been lax or perfunctory in the past, there was the ever-present possibility that any stolen articles in the bag could be discovered.

Ordinarily, one who has stolen property will do so beyond the prying eyes of anyone who would squeal on her, and exert all effort to conceal the corpus delicti to avert apprehension and prosecution

therefor. In this case, the respondent noticed, while waiting for her bag to be inspected, that the inspection of bags of exiting female employees was unusually strict. Even as security guard Maallo announced, “Sino ang gustong magpakapkap sa akin?” and amidst the shouts of, “May nagtip, may nagtip,” the respondent spontaneously went towards Maallo, opened her bag without hesitation, and presented it for inspection. The spontaneous actuations of the respondent are inconsistent with those of one who has just allegedly stolen the properties of her employer, and are consistent with her claim that the articles were placed in her bag without her knowledge.

Fourth. The respondent averred that when she was seated in front of the door of Atty. Marino’s office with Maallo, the latter told her that the security guards had been unusually strict in the inspection of bags earlier that morning because of a telephone report received from a woman and a man. Maallo did not deny the averments of the respondent. Indeed, the information relayed by Maallo to the respondent was somehow confirmed by the latter’s testimony that before she presented her bag for inspection, someone shouted, “May nagtip, may nagtip.” We find it implausible for the respondent to have stolen the cloth tape and fuse links with the knowledge of not only one but two or more persons; what with her open and vociferous criticisms of the Union and its president, and one of the members of the Board of Directors, Emiliano Salonga.

IN LIGHT OF ALL THE FOREGOING, the petition is **DENIED** for lack of merit. The assailed Decision of the Court of Appeals is **AFFIRMED**. No costs.

SO ORDERED.

Austria-Martinez, *J., (Acting Chairman)*, Tinga, and Chico-Nazario, *JJ.*, concur.
Puno *J., (Chairman)*, on official leave.

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[1] Rollo, p. 12.
[2] Id. at 50.
[3] Id. at 51.

[4] Id. at 52.
[5] Id. at 54.
[6] Id. at 55-56.
[7] Id. at 115.
[8] Id. at 117.
[9] Id. at 118.
[10] Id. at 115.
[11] Id. at 116.
[12] Id. at 118.
[13] Id.
[14] Id. at 146.
[15] Id. at 144.
[16] Id. at 117-118.
[17] Rollo, p. 148.
[18] Id. at 150-154.
[19] Id. at 184-189.
[20] Id. at 207-208.
[21] Id. at 20.
[22] Ignacio vs. Coca-Cola Bottlers Phils., Inc. 365 SCRA 418 (2001); CMP Federal Security Agency, Inc. vs. NLRC, 308 SCRA 36 (1999).
[23] Id. at 151-153.
[24] Id. at 187-188.
[25] Id. at 44-45.
[26] Id. at 55-56.
[27] 115 SCRA 887 (1982); Id. at 290.
[28] (Concorde Hotel vs. Court of Appeals, 362 SCRA 583 [2001]).
[29] (Dela Cruz vs. NLRC, 268 SCRA 458 [1997]).
[30] Ibid.
[31] A cloth tape is a sticky adhesive tape. It may be vinyl-coated, polyethylene, cotton, acetate or a general use cloth tape. Depending on its type, it can be used in book spine, binding, duct and pipe protection, electrical insulating and harnessing, nuclear grade, leisure sports, motorsport, sealing, bundling, masking, projection and theaters and exhibition gaffer. It can also be used for mending, repairing, decorating, protecting and color coding. A general use cloth tape is used in general taping where high specs or color are not an issue.
[32] Miniature fuse links are designed to protect electrical machinery and electrical circuits from damage or destruction caused by excessive current flows. The fuse links for industrial and similar applications, consist of body in steatite and can tolerate very high thermical changes, which occur inside of it at the cut- off time. The fusing elements consist of a silver-plated copper foil. The quart-sand allows to avoid the acropagation, keeping the fuse link at a low temperature. The double (inner and outer) caps, assure the best contact, the outer part is silver-plated to avoid an oxidation and to keep unchanged the electrical in every climactic conditions.
[33] People vs. Tan, 323 SCRA 30 (2000).
[34] Rollo, p. 50.

[35] Francisco, Revised Rules of Ownership of Properties, Vol. XV, Part II, 1991 ed., p. 102.
[36] People vs. Escalante, 238 SCRA 554 (1994).
[37] Rollo, p. 126.
[38] Id. at 118.

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