

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PRUDENCIO MAGLAYA Y LIM, DEFENDANT -APPELLANT.

G.R. No. L-29243. November 28, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

From a decision of the Court of First Instance of Manila, defendant Prudencio Maglaya y Lim has interposed the present appeal, which was certified to Us by the Court of Appeals, the only question therein raised being one purely of law.

Appellant was tried, on a plea of not guilty, under an information charging him with the crime of qualified theft and alleging:

"That in or about and during the period comprised the month of October, 1963 to February 21, 1964, inclusive, in the City of Manila, Philippines, the said accused, did then and there willfully, un-lawfully and feloniously, with intent of gain and with-out the knowledge and consent of the owner thereof, take, steal and carry away the following personal property, to wit:

"1 'Walther' adding machine, Model SM?

32 with Ser. No. 957285-D/R No.

2335 valued at P1, 800. 00

"1 'Adler' typewriter, Model Electric

21 with Ser. No. 7113553-d/R No.

2334 valued P1,900.00

"1 'Olympia' typewriter, Model SG-1?

S, 15" carriage Ser. No. 8698 &

695044-D/R 2342 valued at 1,125.00

"1 'Adler' typewriter, model special

13" Ser. No. 2314432 D/R-2242

valued at 895.00

"1 'Paymaster' checkwriter, Model X?

550 Ser. No. 98 C-11970 D/R?

2190 valued at 530.00

"1 'Olivetti' Summa-Prima' adding
machine Ser. No. 45446 D/R
No. 2191 valued at 595. 00

"1 'Adler' typewriter, Model Universal
(20) 13" carriage Ser. No.
8035650 Chassis 8035650 Carriage
D/R-2103 valued 975. 00

"1 'Adler' typewriter, Model Universal
(20) 13" carriage, Ser. No.
8045014 & 8044973 D/R No. 2176
valued at 975. 00

"1 'Adler' typewriter, model Special
13" Ser. No. 2314496 D/R No.
2260 valued at 895. 00

"1 'Adler' typewriter, Model Universal
(20) 15" carriage, Ser. No.
8066312 & 8066325 valued at 1, 050. 00

"1 'Adler' typewriter, model Universal
(20) 13" carriage, Ser. No.
8034905, 8035641 valued at 975. 00

"1 'Adler' typewriter, Model Special
13" Ser. No. 2314430-D/R No.
2238 valued at 895. 00

"1 'Walther' Calculating machine?
manual Model WSR-160, Ser.
No. 165308 D/R No. 2258
valued at 780. 00

"1 'Adler' typewriter, model electric
21 Pica, Ser. No. 7113555 D/R
2241 valued at 1, 900. 00

Total P13,390. 00

all valued at P13,390.00, belonging to the PHOENIX MFG. & MERCHANDISING CORPORATION, to the damage and prejudice of said owner, in the aforesaid amount of P13,390.00, Philippine currency.

"That in the commission of the said offense, the said accused committed a grave abuse of confidence, he being then employed as a salesman of the said Phoenix Mfg. and Merchandising Corporation, at the time, and as such, had free access to the place where the property stolen were kept.

"Contrary to law."

In due course, the trial court rendered a decision finding that:

"During the period between October, 1963 and February, 1964, the defendant was a commission salesman of the Phoenix Manufacturing & Merchandising Corporation with office at Dasmariñas Street, Manila. He had no fixed salary, but he received a commission of 10% on the selling price of the articles he sold. The Phoenix Manufacturing & Merchandising Corporation was engaged in the sale and distribution of typewriters and adding machines, manual and electrical. The procedure followed by the corporation was for the commission agent to contact the prospective buyer and if he finds one, the commission agent reports to the corporation and a delivery receipt is made out in favor of the prospective customer indicating in the delivery receipt the name of the commission agent. The machine is then delivered by an employee of the corporation accompanied by the commission agent to the prospective customer for the purpose of trial for a period of not more than three days, extendible upon request of the commission agent. x x x "

that during the period from October, 1963 to January, 1964, said corporation delivered the machines enumerated in the information, with a total value of P13,390.00, to prospective customers of appellant; and that:"

"x x x Without authority from the Phoenix Manufacturing & Merchandising Corporation, the defendant withdrew and pulled out these machines from the respective prospective customers who had decided not to buy them, and instead of returning the said machines to the Phoenix Manufacturing and Merchandising Corporation, the accused pawned them with various pawn shops including the Agencia de Empeños de Tambunting, Inc. , Merced Hernandez, Agencies de Empeños de Vicente Lao, R. Pilares Pawnshop, and R. Aguirre Pawnshop, Inc. Not having returned the machines to the Phoenix Manufacturing & Merchandising Corporation, the attention of the accused was called by the company, and the accused promised to return the same. The manager of the company became suspicious, and he wrote to one of the customers, the A-1 Adjustment Agency, inquiring about the machines. The corporation received the answer, Exhibit D, dated March 4, 1964, informing the Phoenix Manufacturing & Merchandising Corporation that of the 5 machines that were delivered to it for demonstration, only two were in their possession, the rest having been returned to the accused Denny Chan or Prudencio Maglaya. Upon check-up of the records of the accused, it was found out that several machines had been delivered under the name of the defendant and had not been returned. The matter was reported to the Manila Police Department in the letter dated March 5, 1965 and now marked Exhibit B, enumerating the machines which were missing. The accused was arrested by the police and his statement was taken in writing, now marked Exhibit A. He admitted that he had taken the machines enumerated in Exhibit B and covered by the delivery receipts, Exhibits C, C-1 to C-12; and that he had pawned them with various pawnshops; and he surrendered to the police 6 pawnshop tickets now marked Exhibits G, H, I, J, K and L. Seven other machines were covered by pawnshop tickets, but all the 13 machines described in the delivery receipts, Exhibits C to C-12 were recovered by the police and returned to the Phoenix Manufacturing & Merchandising Corporation, as evidenced by the receipts Exhibits E and F.

"The accused admitted having received these office machines and pawned them. He testified further that he had done this in the past, but without the knowledge of the corporation whenever he needed money because his wife and children were sick, but he redeemed them when he had money and returned them to the corporation; that he had informed Mrs. Fuster and the manager of the corporation that he had pawned these machines, and they told him not to do it again.

"Neither Mrs. Fuster or the manager of the corporation could relieve the accused from criminal liability. As commission agent, it was the duty of the accused when he withdrew or pulled out those machines from the customers to return them to the Phoenix Manufacturing & Merchandising Corporation. In pawning the machines without the authority of the corporation, he had acted in breach of the trust reposed upon him by the corporation and this constitutes the crime of estafa. "

Premised upon the foregoing facts, the trial court found appellant guilty of estafa, under "Art. 308, par. (1) of the Revised Penal Code", and sentenced him to an indeterminate penalty ranging from six (6) months of arresto mayor to five (5) years, five (5) months and eleven (11) days of prision correccional, as well as to pay the costs. Hence, this appeal, upon the ground that he cannot be convicted of estafa under the allegations of the aforementioned information charging him with qualified theft.

In this connection, We note that, although convicting appellant of estafa, the provision cited in the decision appealed from is Art. 308, paragraph one (1), of the Revised Penal Code, which defines the crime of theft, and that the maximum penalty meted out is, either that prescribed in subdivision 2 of Art. 309 of the same Code, which refers to theft of property worth more than P6,000 but not exceeding P12,000, or that provided for in the first paragraph of Art. 315 of said Code, for the crime of estafa, when the damage caused is over P12,000 but does not exceed P22,000. It would seem, however, that His Honor, the trial Judge had applied the latter provision, because of the characterization, made in said decision, of the crime committed by the accused.

Although both parties argue in their respective briefs on whether the crime of estafa is included in that of qualified theft alleged in the information filed in this case, We deem it unnecessary to pass upon such question, for, under the facts proven, appellant is guilty of the crime of theft. It is true that the machines specified in the information were delivered to him by his prospective customers, but the physical possession thus secured by him did not vest in him the juridical possession necessary for the crime of estafa. Indeed, he had no authority from his employer, the owner of said machines, to retrieve the same from said prospective customers. He evidently had misled them into believing that in retaking said machines he was acting on behalf of his employer. From a legal viewpoint, he had, therefore, taken and carried away the machines without the knowledge and consent of the owner thereof. Having concededly performed these acts with intent of gain, and caused damage and prejudice to said owner, appellant is clearly guilty of the crime of theft.

Thus, in *U.S. v. De Vera*[1], We held that one who, having secured possession of a gold bar from its owner under the pre-text that he (the former) would have it examined by a silversmith and then return it to said owner, but, instead disappeared with the gold bar, was guilty of theft, not of estafa. Quoting with approval, from Viada, the eminent commentator on the Spanish Penal Code, the following passage, involving a situation which is quite analogous to the one at bar:

"Is the shepherd, who takes away and converts to his own use several heads of the cattle under his care, guilty of the crime of estafa, within case No. 5 of article 548, or of theft, defined and punished in article 533, No. 2, of the Code? - The Supreme Court has decided that it was this latter and more serious crime that was committed: 'Considering that the crime of theft is committed when one, with intent of gain, and without using violence or intimidation against persons, or force upon things, takes away personal property of another without the owner's consent; and in the present case Manuel Diaz Castilla undoubtedly committed the crime defined, for, with intent of gain, he took away two bucks and a female goat, against the will of his master, the owner of the said cattle, which were under his care as shepherd: Considering that, in holding that the crime committed was that of theft and not of estafa, as claimed by the appellant, ignorant of the true elements which constitute the latter crime, the lower court did not commit any error of law, nor violate any legal provision, as contended by defendant's counsel in support of this appeal. ' (Decision rendered June 23, 1886, published in the Gazette of September 16, p. 189.)"

We added in our decision in the De Vera case:

"In the above cited case, did the shepherd re-ceive the cattle which were under his care? - Undoubtedly. Were the cattle voluntarily delivered by the owner to the shepherd? - It is to be presumed. Did the shep-herd have the consent of the owner when he took away some of the cattle and converted them to his own use? - No. In this case of the shepherd, as in the example given, the crime committed was that of theft, notwithstanding the fact that the thing misappropriated had been deli-vered voluntarily by the owner to the supposed thief, who disposed of it without the owner's consent. And this is so because the delivery of the cattle to the shepherd does not have the effect of transferring the juridical possession of, or title to, the cattle thus delivered, x x x. "1

The doctrine laid down in the De Vera case was applied in *People v. Lacson* 2 and in *People v. Isaac* 3 involving, in the first case, a bank teller who misappropriated money held by him as such, and, in the second, the temporary driver of a jeepney engaged in public service 4, who disposed of it with intent of gain and without the consent of its owner, upon the theory that the bank teller had the money on behalf of the bank, which was its juridical possessor, and that the jeepney was in the juridical possession of its owner, although physically held by said temporary driver.

Although appellant had taken advantage of his position in committing the crime aforementioned, We do not believe he had acted with grave abuse of confidence and can be convicted of qua-lified theft, because his employer had never given him the posses-sion of the machines involved in the present case or allowed him to take hold of them, and it does not appear that the former had any especial confidence in him. Indeed, the delivery of the machines to the prospective customers was entrusted, not to appellant, but to another employee.

Inasmuch as the aggregate value of the machines stolen by appellant herein is P13,390.00, the crime committed falls under Art. 308, in relation to the first subdivision of Art. 309 of the Revised Penal Code, which prescribes the penalty of prision mayor in its minimum and medium periods. No modifying circumstance having attended the commission of the offense, said penalty should be meted out in its medium period, or from 7 years, 4 months and 1 day to 8 years and 8 months of prision mayor. The penalty imposed in the decision appealed from is below this range.

WHEREFORE, with the modification that appellant should be sentenced to an indeterminate penalty ranging from 2 years, 4 months and 1 day of prision correccional to 7 years, 4 months and 1 day of prision mayor, the decision appealed from is hereby affirmed, in other respects, with costs against him.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando and Teehankee, JJ., concur.

[1] 43 Phil. 1000.

1 Underscoring ours.

2 57 Phil. 325, 334.

3 96 Phil. 931, 932.

4 The regular driver of which was on vacation.

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