

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICHARD GAYO Y ABILADOR AND RENATO GAJO Y DE VERA, ACCUSED-APPELLANTS.

Ponente: BARRIOS, M. M., J.

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BARRIOS, M. M., J.:

On appeal is the Decision dated 26 December 2011 of the Regional Trial Court (Branch 31, Agoo, La Union), wherein the accused-appellants were found guilty of the crime of Qualified Theft as follows:

“X X X

After a careful study of the evidence presented in this case, the court has come to the conclusion that both accused Richard Gayo and Renato Gajo are guilty of qualified theft, punished in Article 310 of the Revised Penal Code as principals (Article 17 of the Revised Penal Code), Richard Gayo by direct participation and Renato Gajo by inducement. They are both sentenced to suffer the penalty of imprisonment ranging from two years four months and one day of prision correccional minimum as the penalty's minimum to six years and one day of prision mayor minimum as the penalty's maximum.

They are civilly liable for the stealing of fishes in the fishpond of the Juloyas in the equivalent amount of P2,000.00.

SO ORDERED.”

THE ANTECEDENT FACTS

An Information dated 11 August 2011 charged accused-appellants, as follows:

“X X X

That on or about the 19[th] day of May, 2011 in the Municipality of Agoo, Province of La Union, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring and mutually helping one another, with intent to gain, did then and there willfully, unlawfully and feloniously catch, take, steal and carry away fishes locally known as Bangus and Tilapia from the fishpond of Alicia Juloya amounting to one thousand [P1,000.00] pesos without Alicia Juloya's consent, to her damage and prejudice.

CONTRARY TO LAW.”

Incidentally, two (2) other malefactors were originally charged along with herein accused-appellants; however, they were later dropped as accused on account of their minority. Eventually, they testified against accused-appellants.

From the prosecution's evidence, it is gathered that private complainants Spouses Anselmo and Alicia Juloya bought a parcel of land in Sta. Rita Central, Agoo, La Union from Spouses Floro and Corazon Gajo for the price of Three Million Five Hundred Thousand Pesos (P3,500,000.00). They initially gave a downpayment of Six Hundred Twenty Thousand Pesos (P620,000.00), while the remaining balance was to be paid in monthly

installments of Twenty Thousand Pesos (P20,000.00) until fully paid. Pursuant to their Deed of Conditional Sale of Realty dated 17 October 2009, Spouses Juloya “can take over possession of the subject Properties and utilize the same in any manner which as the new owners thereof may decide; x x x.”[1] Subsequently, a Memorandum of Agreement (MOA) dated 05 July 2010 was executed by the parties upon the request of Spouses Gajo stipulating for the acceleration of the full payment of the purchase price. However, before the provisions of the MOA were fully consummated the relationship between the parties soured which resulted in the filing of several complaints against each other and their kin.

On 19 May 2011, accused-appellants Renato Gajo (son of Spouses Gajo) and Richard Gayo ordered the two (2) minors to catch fish from the fishpond situated within the parcel of land bought by Spouses Juloya. Appellant Richard Gayo accompanied the minors, harvesting therefrom around twenty-five (25) pieces of bangus and about fifty (50) pieces of tilapia and bulan-bulan without the consent of Spouses Juloya. As it happened, about twenty (20) kilos of fish with an estimated value of Two Thousand Pesos (P2,000.00) were taken by accused-appellants.

In defense, accused-appellants claimed that the fishpond is still owned by Spouses Gajo because Spouses Juloya have not paid in full the purchase price of the land. For his part, accused-appellant Renato Gajo argued that he is the eldest son of Spouses Gajo; hence, he cannot be considered to have stolen from the fishpond of his own parents. He also raised the alibi that he was with his wife at the time of the incident. With respect to accused-appellant Richard Gayo, he asserts that the fishpond from where they took the fishes was owned by Spouses Gajo.

As heretofore said, the trial court found accused-appellants guilty as charged. In this appeal, they raise the the following errors:

I.

THE HONORABLE REGIONAL TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF QUALIFIED THEFT IN SPITE OF THE LACK OF CREDIBILITY OF THE PROSECUTION WITNESSES WHO TESTIFIED ON MATERIAL AND RELEVANT MATTERS PERTAINING TO THE COMPLAINED INCIDENT.

II.

THE HONORABLE REGIONAL TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS IN SPITE OF ITS FACTUAL FINDINGS THAT ACCUSED-APPELLANTS ACTED IN GOOD FAITH.

OUR RULING

The appeal has no merit.

Under Article 308 of the Revised Penal Code, the crime of Theft is essentially defined as the unlawful taking of personal property belonging to another without the latter's consent. The penalty depends on the value of the property stolen. The elements of theft as defined under Article 308 of the same Code are as follows: (1) there was a taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and, (5) the taking was accomplished without violence or intimidation against the person or force upon things.[2]

Under certain situations, in Article 310, however, the crime is deemed Qualified Theft as when the property stolen is “fish taken from a fishpond or fishery”, and the penalty therefor is increased by two (2) degrees as that specified in Article 309 of the Revised Penal Code.

After a careful review of the extant evidence, We agree with the trial court that all of the elements under Article 310 in relation to Article 308 of the said Code have been proven by the prosecution. There is no denying the fact that fishes were taken from the fishpond; even accused-appellants admit this fact. Moreover, the clear and straight-forward testimonies of the two (2) minors that they were ordered by the accused-appellants to catch fish have convincingly established the fact of unlawful taking. There is evidently intent to gain, as the testimonies of the said minors amply showed that they delivered the fishes to the house of accused-appellant Gajo. Thereafter, accused-appellant Gajo gave the minors a share of the catch.[3]

Moreover, it is conceded that accused-appellants did not ask permission from Spouses Juloya to catch fish from the fishpond. This is evident from their stance that the fishpond is still owned by the Spouses Gajo, the sale to Spouses Juloya notwithstanding. There is no doubt, however, that the fishes taken belonged to Spouses Juloya. It is categorically stipulated in the Deed of Conditional Sale that Spouses Juloya were given the right to use and possess the parcel of land as owners. Spouses Juloya, in turn, had already constructed a fence around the property to manifest their right of dominion. They placed a net around the subject fishpond, and cleared it of garbage, mud, sand and stones. They have already broadcasted fingerlings thereon and have already harvested fish several times before the incident happened.[4] In this regard, the contention of accused-appellant Gajo[5] that the fishes found in the pond were deposited therein after typhoon Pepeng deserves scant consideration. The typhoon occurred around October 2009, while the thievery happened in May 2011. It is important to note that more than one (1) year had already passed since the typhoon, and the sale had already been executed and the possession of the land had been transferred to Sps. Juloya. Evidently, the fishes stocked in the fishpond, and from which accused-appellants illegally took the bangus, tilapia and “bulan-bulan”, were owned by Spouses Juloya who were rightfully operating the fishpond and exercising rights of dominion thereon as expressly granted them in the Deed of Conditional Sale that they executed with Spouses Gajo. Spouses Juloya, therefore, were the clear owners of the fishes illicitly taken by accused-appellants.

Incidentally, the trial court committed an error when it made a finding that there was good faith on the part of accused-appellants and considered it as a mitigating circumstance. Good faith is not among the circumstances enumerated as mitigating circumstances under Article 13 of the Revised Penal Code. We do not find anything analogous to the enumerated circumstance as to credit accused-appellants therewith, certainly not that of having no intention to commit so grave a wrong. Intention, being an internal state, must be judged through external acts. Here, accused-appellant Gajo knew fully well that the subject fishpond was already sold by his parents to Spouses Juloya on installments. Although the latter may still have been an unpaid balance, under their contract, the right of possession and enjoyment was already transferred to Spouses Juloya. Accused-appellant Gajo was well aware that several actions have been instituted by and between the parties on the question of ownership, yet, accused-appellants cannot deny the fact that Spouses Juloya owned the fish inventory therein as they were the ones operating and in possession of the fishpond. Taking the fishes without the permission of the owner or operator belies the claim of good faith.[6]

Article 309 of the Revised Penal Code prescribes the penalty of prision correccional in its minimum and medium periods for simple theft, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos. As aforementioned, Article 310 of the same Code provides that the penalty next higher by two (2) degrees shall be meted if the theft is qualified. Applying the said provision, the proper penalty in this instance is prision mayor in its medium and maximum periods, i.e., eight (8) years and one (1) day to twelve (12) years. The Indeterminate Sentence Law, on the other hand, provides that the maximum term should be “that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense.”[7] Hence, under the Indeterminate Sentence, the minimum of the penalty to be imposed against accused-appellants

should be within the range of prision correccional in its maximum period to prision mayor in its minimum period, i.e., four (4) years, two (2) months and one (1) day to six (6) years.

WHEREFORE, the foregoing considered, the appealed Decision dated 26 December 2011 of the Regional Trial Court (Branch 31, Agoo, La Union), is **AFFIRMED** with **MODIFICATION**. Accused-appellants Richard Gayo and Renato Gajo are sentenced to suffer the penalty of imprisonment ranging from Six (6) Years of prision correccional as the minimum, to Nine (9) Years, Four (4) Months and One (1) Day of prision mayor as the maximum.

SO ORDERED.

Reyes, Jr., (Chairperson) and Pizarro, JJ., concur.

[1] Records, p.102.

[2] People of the Philippines v. Bernard G. Mirto, G.R. No. 193479, 19 October 2011.

[3] TSN dated 28 November 2011, pp.6-8, and p. 21.

[4] TSN dated 28 November 2011, pp.7-8.

[5] TSN dated 07 December 2011, p. 8.

[6] Exuperancio Canta v. People of the Philippines, G.R. No. 140937, 28 February 2001.

[7] Section 1, Act No. 4103, otherwise known as the Indeterminate Sentence Law.

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