

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PABLO ISAAC ALIAS JOSE DE JESUS, DEFENDANT AND APPELLANT.

CA-No. 6119-R. October 29, 1952

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This case is being certified to this Tribunal by the Fifth Division of the Court of Appeals by means of a resolution which narrates all the pertinent facts and which we reproduce below:

"Pablo Isaac alias Jose de Jesus interposed an appeal against the decision of the Court of First Instance of Manila, finding him guilty of the crime of qualified theft under Article 310 of the Revised Penal Code, as amended by Republic Act No. 120, and sentencing him to suffer an indeterminate penalty of from 4 years, 2 months and 1 day of prision correccional to 9 years, 4 months and 1 day of prision mayor, to the necessary penalties provided by law, and to pay the costs.

"Counsel de oficio in his brief does not dispute the correctness of the statement of facts in the judgment appealed from, which is as follows:

"From the evidence we find that Licerio Velasquez, physician and businessman, was the owner of a jeepney with plate No. AC-2553; on or about January 18, 1950, Severino Rodriguez, his chauffeur, having asked for a vacation, recommended accused in this case; accused represented himself to be named Jose de Jesus; that was on the night of January 18, 1950; he came back the next day; and Licerio gave him the jeepney for a "pasada", the agreement being that he should return it at night and deliver the sum of P9 to the owner as the hire for that period of one day; he did not come back any more; therefore Licerio asked Severino to accompany him to the house of Jose de Jesus, herein accused; but having located the same, accused's father claimed that he already considered the accused as a neglected son because of his previous misconduct; further efforts of Licerio to locate him by looking for him in the house of his grandfather and in the house of his uncle proved fruitless; therefore they went to the secret service and reported the matter, and Pablo Isaac alias Jose de Jesus was found by them to be a wanted person according to the records a few days afterwards, that is on January 25, 1950, Licerio was informed that his jeep was in Tarlac; he reported to the secret service; accompanied by Detectives Cunanan, Gonzales and Buenaflor they went to Tarlac and found it in an auto repair shop of Mr. Dizon; it turned out that accused had, on the 19th of January, 1950, in the afternoon, gone to Tarlac with the jeepney; he contacted witness Irineo Noeum, a mechanic, and asked him if he knew a painter who could paint the jeepney; witness Nocum accompanied him to the painter named Rosendo Wagan, who told accused to come back the next day; the jeepney was left at the shop of Mr. Dizon; it was there where the secret service located the same on January 21, 1950.

" 'On his investigation, the accused made a declaration in Tagalog which is his language, being Exhibit A; in synthesis, he admitted having taken the jeep; that a certain Mrs. Juana Lim had waited for him at Balintawak monument; and that on the date in question, January 19, 1950, they proceeded to Plaridel, Bulacan, and later to Tarlac, Tarlac, with the jeep.'

"It is, however, contended that under the facts stated above, the accused could not be convicted of qualified

theft, but at most of the lighter crime of estafa. Therefore, the question herein involved is one of law and comes under the exclusive appellate jurisdiction of the Supreme Court.

"WHEREFORE, the Fifth Division of this Court RESOLVED to refrain from deciding this case and to certify it to the Supreme Court for final determination, pursuant to section 17 (6) of Republic Act No. 296, otherwise known as the Judiciary Act of 1948."

The Court of Appeals is right in stating that counsel de oficio for appellant means to raise only a question of law in this appeal. When said counsel de oficio says in his brief that "the statement of facts found in the decision of the trial court is substantially correct" the Court of Appeals is warranted in concluding that said counsel "does not dispute the correctness of the statement of facts in the judgment appealed from." But it remains to be determined whether said counsel can bind his client, the appellant herein in admitting or not disputing the facts as found by the trial court. We entertain grave doubts on the matter. A defendant in a criminal case, on appealing from a decision of conviction may state in his notice of appeal that he will raise only questions of law, in which case it will be presumed that he accepts the findings of fact of the trial court; in that case the appeal goes direct to the Supreme Court.

In the present case, however, it does not appear that appellant made any such declaration of his intention to raise only questions of law, or expressed any tacit acceptance of the facts found by the trial court. He would appear to have merely given a general notice of appeal, and the presumption is that he would raise questions both of fact and law. That may be the reason why the appeal went to the Court of Appeals. May his counsel, specially not a hired lawyer selected and appointed by him, but an attorney de oficio, not of his choosing but appointed by the Court, now admit the facts found by the lower court, for him? We do not think so. Under similar circumstances, the appellant himself must make the admission of the trial court's findings of fact, especially those that are material and decisive, so as to confine the appeal to only questions of law for decision.

As things stand we believe that the present appeal involves questions both of law and fact. Consequently, the Court of Appeals has jurisdiction over it. The case is hereby remanded to that Court.

Paras, C. J., Pablo, Bengzon, Padilla, Jugo, Bautista Angelo, and Labrador, JJ., concur.<

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