

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PABLO ISAAC ALIAS JOSE DE JESUS, DEFENDANT AND APPELLANT.***G.R. No. L-7561. April 30, 1955*

Ponente: REYES, A., J.

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This is an appeal from a judgment of the Court of First Instance of Manila, convicting the appellant of qualified theft. The case is before us because the appeal raises only a question of law.

It appears that in the morning of January 19, 1955, in the City of Manila, Philippines, one Dr. Licerio Velasquez, owner of a jeepney with license plate No. AC-2553, whose driver was on vacation and had recommended the appellant to take his place, entrusted the vehicle to the said appellant for a "pasada", that is to say, for transporting passengers for a compensation, the vehicle being destined for that purpose as its license plate would indicate.[1] The understanding was that appellant was to bring back the vehicle in the evening of that same day and pay P10 "in hire." But appellant never returned, and after a search the vehicle was found in a machine shop in Tarlac, where it was left by appellant allegedly for the purpose of having it repainted. Arrested by the police several days later, appellant voluntarily signed a statement to the effect that, though he took the vehicle for a "pasada", his real intention was to steal it, for he already had an agreement with one Mrs. Juana Lim that he would steal a jeepney and she would wait at the Balintawak monument.

In asking for appellant's acquittal, counsel de oficio contends that, while appellant may have committed estafa, he cannot be held guilty of theft, on the theory that as the possession of the vehicle was obtained with the consent of its owner, there has been no illegal taking.

To this we cannot agree. In the case of *U. S. vs. De Vera* (43 Phil, 1000), this Court said that when the delivery of a chattel has not the effect of transferring the juridical possession thereof, or title thereto, it is presumed that the possession of, and title to, the thing so delivered remains in the owner; and the act of disposing thereof with intent of gain and without the consent of the owner constitutes the crime of theft. This, we think, is actually the case here. For as we see it, appellant had only substituted for the regular driver of a vehicle devoted to the transportation of passengers for a fare or compensation and therefore operated as a public utility; and while his arrangement with the owner was to turn in, not all the fare collected, but only a fixed sum known in the trade as "boundary", still he cannot be legally considered a hirer or lessee, since it is ordained in section 26 of the Rules of Regulations of the Public Service Commission that "no motor vehicle operator shall enter into any kind of contract with any person if by the terms thereof it allows the use and operation of all or any of his equipment under a fixed rental basis.[2] In the eye of the law then, appellant was not a lessee but only an employee or agent of the owner, so that his possession of the vehicle was only an extension of that of the latter. In other words, while he had physical or material possession of the jeepney, the juridical possession thereof remained in the owner. Under those circumstances his disposing of the jeepney with intent of gain and without the consent of its owner makes him guilty of theft.

Quoting from Ruling Case Law, this Court has also said in the same case:

"A felonious taking is necessary in the crime of larceny, and generally speaking, a taking which is done with the consent or acquiescence of the owner of the property is not felonious. But if the owner parts with the possession thereof for a particular purpose, and the person who receives the possession avowedly for that purpose has the fraudulent intention to make use of it as the means of converting it to his own use and does so convert it, this is larceny, for in such case, the fraud supplies the place of the trespass in the taking, or, as otherwise stated, the subsequent felonious conversion of the property by the alleged thief will relate back and make the taking and conversion larceny.

Under this theory, appellant, who, according to his own confession, took the vehicle from its owner already with the intention of appropriating it, should also be deemed guilty of theft. (*People vs. Trinidad*, 50 Phil., 65.)

Wherefore, the judgment appealed from is affirmed, with costs against the appellant.

Pablo, Acting C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

Judgment affirmed.

[1] AC being the denomination for auto-calesa service.

[2] See copy of said section in *Almario on the Public Service Act (Annotated)*, Appendix A, p. 202.

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