

**SIMPLICIO DURNA ET AL., PETITIONERS, VS. BIENVENIDO A. TAN,
JUDGE OF THE COURT OF THE FIRST INSTANCE OF RIZAL, RIZAL
CITY BRANCH, RESPONDENT.**

G.R. No. L-2760. February 11, 1950

Ponente: MORAN, C.J.

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MORAN, C.J.:

On August 26, 1948, an information for qualified theft was filed in the Court of First Instance of Rizal City charging the herein petitioners with having stolen an automobile belonging to Ned C. Cook which was parked in Port Area, City of Manila, on August 25, 1948, and which was later found in San Juan street, Rizal City. During the trial, after the prosecution had presented its evidence, the defense moved for the dismissal of the information on the ground that the trial court lacked jurisdiction to try the case. This motion and a subsequent motion for reconsideration were denied, and the defense was ordered to present its case. After presenting its evidence, the defense again moved for dismissal on the same ground and the lower court again denied the motion. Hence, this petition on the ground that the offense charged having been allegedly committed in Manila, the court of Rizal City has no jurisdiction to try the case.

Rule 106 of the Rules of Court provides in its Sections 5, 9 and 14 (a):

"Sec. 5. Sufficiency of complaint or information.—A complaint or information is sufficient if it states the name of the defendant; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.

"When an offense is committed by more than one person, all of them shall be included in the complaint or information."

"Sec. 9. Place of the commission of the offense.—The complaint or information is sufficient if it can be understood therefrom that the offense, was committed or some of the essential ingredients thereof occurred at some place within the jurisdiction of the court, unless the particular place wherein It was committed constitutes an essential element of the offense or is necessary for identifying the offense charged."

Sec. 14. Place where action is to be Instituted.—(a) In all criminal prosecutions the action shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place."

From the foregoing provisions and in accordance with settled jurisprudence, the commission of an offense is triable only in the courts of the place where the offense was allegedly committed.

In the instant case, the offense charged was fully committed in the City of Manila where the automobile was allegedly stolen from its parking place in Port Area. The fact that said automobile was later found in Rizal City is not an essential ingredient of the crime but a mere circumstance which could add nothing to the nature of the

offense or to its consummation. Hence, this circumstance cannot be made determinative of the jurisdiction of the trial court over the criminal action. In the case of *People vs. Mercado* (65 Phil., 665, 666) the defendant had stolen an animal in Gapan, Nueva Ecija, and had later taken it to Candaba, Pampanga, where it was found, and this Court held that the fact that the animal was taken to Pampanga did not give the court of that province concurrent jurisdiction to try the case because the consummation of the theft was completed when the animal was taken from the owner in Nueva Ecija, and its taking to Pampanga added nothing to the nature or consummation of the offense.

The American rule that larceny is a continuing offense does not apply to theft because "carrying away" which is one of the characteristics of larceny is not an essential ingredient of theft, as stated by this Court in the *Mercado* case. If, as maintained by some members of the court, every moment's continuance of the thief's possession is a new taking and asportation, then criminal action would never prescribe against a thief in possession of the stolen thing.

For all the foregoing, the Petition is hereby granted and respondent Judge is hereby ordered to dismiss the case for lack of jurisdiction. No costs.

Ozaeta, Paras, Pablo, and Torres, JJ., concur.

Bengzon, J., see dissenting opinion.

Padilla, Tuason, Montemayor, and Reyes, JJ., joins Justice Bengzon dissent.

CONCURRING SEPARATE OPINION

FERIA, J.:

I concur in the decision of the majority.

It is a well settled principle of Criminal Jurisprudence that every offender against the law must be prosecuted for his crime in the jurisdiction wherein it was committed and section 14, Rule 106, of the Rules of Court, is declaratory of that principle. It prescribes that "all criminal prosecution shall be instituted and tried in the court of the municipality or province where the offense was committed or any one of the essential ingredients thereof took place."

The common law and statutory provision in most States which provides, according to 22 C. J. S. pp. 291, 292, and 32 Am. Jur. Larceny, Sec. 97, that "one who steals property in one county and brings it into another may be indicted and tried for simple larceny either in the county where the theft was committed or in any county into or through which the stolen property was brought" can not be applied in this Jurisdiction, because said common law and statutory provision are not in force here in the Philippines. Just because the interests of justice may be best served by applying said common law and statutory provision would not justify its application as part of our law to the present case. If it is better than the provision of said Sec. 14 of Rule 106 we should recommend its formal adoption by the proper authorities; but until that is done we can not apply it as part of our law to the present case, specially in view of our ruling in the case of *People vs. Mercado*, (65 Phil., 665, 666) cited in the decision of the majority, which conforms to the statutory provision of Sec. 14, Rule 106, of the Rules of Court.

The principle upon which the common law of England applied in the United States and the statutory provision in most of the States declaratory thereof is predicated is that in larceny because the "legal possession still remaining in the true owner, every moment's continuance of the trespass and felony and every subsequent act of removal or

asportation amount, in legal consideration, to a new caption and asportation." This principle can not be invoked in this jurisdiction, for theft as defined in our Revised Penal Code can not be considered as a continuing and transitory offense, inasmuch as asportation or carrying away of the stolen goods is not an essential element thereof. In Texas, however, though asportation is not also an essential ingredient of larceny and, therefore, this offense is not a continuing or transitory one, the thief may be prosecuted "either in the county where he took the property or in any other county through or into which he may have carried the same" (Sec. 235, Texas Code of Criminal Procedure), because there is there an express statutory provision to that effect.

"To constitute larceny the first essential is that the thing which is the subject of the crime should be taken from the possession of the owner into the possession of the thief, and be carried away by him, for until this is done there is no larceny, however definite may be the intent of the prospective thief to commit the theft, and however elaborate his preparations for doing so. This was the rule at common law and seems to be the rule under all the statutes except in Texas where the statute omits the words 'carrying away;' for which reason asportation is held not to be an element of larceny in that state, even in the case of larceny from the person." (36 Corpus Juris, pp. 747, 748.)

"In the case of *Hartman vs. State*, (8 Tex. Cr. 582; 213 S. W. 936), it was held that "Under the statute any taking of property without the owner's consent and with the present intent to deprive the owner of its value and to appropriate the same by the taker is theft, and asportation is not necessary to make out the offense."

Besides, it is not true that the interests of justice would be served by following and applying the above quoted common law and statutory provision in most of the States. The reason given by the dissenters to the effect that "if a car stolen in Manila and driven by the thief to Appari, Cagayan, it would be very inconvenient to bring here the witness in Appari who actually saw the accused in possession of the automobile, (possession is partial proof that accused stole it)" is predicated upon the erroneous assumption that ordinarily it is necessary to prove the possession of the thing, stolen by the accused after the offense was consummated in order to obtain the latter's conviction. Generally the offense of theft is committed by taking, without violence or intimidation against persons or force upon things, a personal property belonging to another without the latter's consent and with intent of gain. It is immaterial that the thief should, after committing the offense, keep the property in his possession, consume it if it is perishable or give it to another person, and therefore the witness or witnesses who may testify to the stealing by the accused must necessarily be those who reside or were found at the place from where the property was taken.

The only cases in which it is necessary to prove the actual possession of a stolen good by the accused after the theft was consummated or completed is, when a personal property was stolen or disappeared from the possession of the owner, no person saw the act of stealing it, and the property lost or stolen is found a short time afterwards in the possession of a person who can not satisfactorily explain how he came into the possession thereof, because in such case it may be presumed that the person having in his possession a property recently stolen is the one who has committed the theft; but it is also necessary to prove, besides the possession, that the property belongs to another and was stolen or has recently disappeared from the latter's possession by the testimony of the owner. But "even in such exceptional cases it would be more convenient to prosecute the offense in the municipality or province where the property was taken or stolen than in the jurisdiction into which the property was taken and compel the owner to go to the place into which the stolen property was brought and testify as the principal witness, because the fact that it was found in possession of the defendant after the commission of the offense may be established by the testimony of any person who might have seen the accused in possession thereof at any place, or by the agents of authority arresting the defendant with the stolen property in his possession.

DISSENTING OPINION

BENGZON, J.:

The court of first instance of Rizal had jurisdiction to try the case. The information alleged, that the accused had stolen the car from the Manila Port Area and had trot it to Rizal City, Rizal province.

I have no quarrel with the general rule that an offense is triable in the courts of the place where it was committed. But I submit that this particular theft was also deemed to have been committed in Rizal City, to which the stolen car was taken by the accused. Our crime of theft is of the same nature as larceny in the United States, where it is held that:

"Both at common law and under statutory provisions in most states one who steals property in one county and brings it into another may be indicted and tried for simple larceny either in the county where the theft was committed, or in any county into or through which the stolen property was brought; the theory being that the possession of the stolen goods by the thief is a larceny in every county through or into which he carries them, because, as the legal possession still remains in the owner, every moment's continuance of the trespass and felony amounts to a new taking and asportation." (22 C. J. S., Criminal Law, pp. 291, 292).

"Notwithstanding the general rule that crimes are to be prosecuted in the county in which committed, in the law of larceny it is settled that a person committing a simple larceny may be prosecuted not only in the county in which he originally steals the property, but in any county into which he subsequently carries it with, a continuing felonious intent to make it the subject of larceny. A similar rule has been applied in the Federal courts, in cases where property stolen in one Federal district is brought into another by the offender and the question has arisen as to which district is proper for institution of prosecution under a Federal statute. In such, cases a larceny is, in contemplation of law, committed in the county or district into which the property is brought, on the principle that since legal possession of the property remains in the true owner, the law will regard each moment's continuance of the trespass and felony, and every subsequent act of removal by the thief as a new caption and asportation." (32 Am. Jur., Larceny, sec. 97).

In the interests of justice the above rule—on the so-called continuing or transitory offenses—should be followed in this country, because if a car is stolen in Manila and driven by the thief to Aparri, Cagayan, it would be very inconvenient to bring here the witnesses in Aparri, who actually saw the accused in possession of the automobile (possession is partial proof that accused stole it). Such rule is not unknown, in our jurisprudence. It was explained (apparently with approval) in *U. S. vs. Cunanan*, 26 Phil., 376; and *U.S. vs. Bernabe*, 23 Phil., 154 is obviously—although not expressly—an application thereof.

I know that in *People vs. Mercado*, (65 Phil., 665, 666) the above theory of American jurisprudence was examined and expressly rejected. But it seems clear that the rejection was based on two propositions, which upon careful examination do not sustain such rejection.

The first proposition is: There is a difference between the crime of larceny in the United States and the crime of theft in the Philippines, because whereas larceny requires not only the "taking" of property but also the "carrying away", it is enough in the Philippines that the property be "taken" for the consummation of theft. On this proposition, I would say that the difference, even if admitted, has no substantial effect upon the adjective principle that where the theft is consummated in one province it may be prosecuted in any other province into which the thief should subsequently bring the stolen merchandise, because in the eyes of the law every moment's continuance of the dispossession of the owner amounts to a new taking and asportation. (See *C. J. S. and Am. Jur.*, supra.). In the *Mercado* case, supra, there was no doubt that theft of cattle was consummated in Nueva Ecija. The prosecution there contended—and I think rightly—that even if consummated in Nueva Ecija the offenders could

be prosecuted in Pampanga where the rustled animals were subsequently conveyed. In the precedents cited by the prosecution (in the Mercado case) the larceny was consummated also in one county, but the thieves were allowed to be prosecuted in another county to which they had removed the stolen things. Therefore, the difference between the essential elements of the crime did not justify a different procedural doctrine.

The second proposition which induced the court to reject the transitory-offense theory is this:

"Practical reasons and considerations, however, require that no pass be opened to the thief through which he may easily frustrate the right of the owner of a stolen thing to recover it from him or to go after it, or which may make it difficult, if not impossible, for him to secure the punishment of the offender. By allowing the owner of the stolen thing to follow the thief no matter how far from the scene of the crime the latter may have brought it, in order to have him prosecuted which, surely, will be the effect of sustaining a contrary opinion, is to put obstacles in his way precisely because this will result in expenses and delay. If this were done, the thief would contrive in all cases to carry as far as possible what he may have stolen so that he would have greater chances of getting unpunished." {65 Phil., 674}

It is difficult to perceive how the theory we advocate could favor the culprit and frustrate prosecution. On the contrary, if the thief may be booked in any place to which he carries his plunder, his main accomplice - flight - becomes valueless. It may even become an additional hazard, if and when the forces of law and order are given the privilege to prosecute him in any of the provinces through which he has travelled with his booty - wherever the prosecution may have found convenient evidence against him.

Moreover, the above paragraph of the Mercado decision is premised on the assumption that the transitory-offense idea requires the owner to follow the thief and prosecute him in the province where such thief may have chosen to carry the loot. That assumption is a fundamental mistake. The theory permits (does not require) the owner to prosecute in any province to which the culprit may have brought the stolen articles. The owner may choose to prosecute him in the province where the goods had originally been feloniously seized.

An example: A car is stolen in Manila and later carried by the thief into Davao. No witness in Manila saw him in the act of grabbing or driving the vehicle. But in Davao there are persons who saw him in possession. Under the transitory-offense theory, the owner may either prosecute him in Manila and spend for transportation of the Davao witnesses to Manila, or else prosecute him in Davao, and pay for his own transportation from Manila to Davao. Such owner may choose according to his convenience; of course, with advice of the prosecuting officers under whose direction the case for the People is always handled.

It being clear, in my opinion, that the rejection of the transitory-offense theory, is unfair to the victim and is contrary to the intention of the justices who concurred in the Mercado ruling, I have no hesitation to vote for departure from it.

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