

**PUA YI KUN, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES,
HON. PLACIDO C. RAMOS, JUDGE OF THE COURT OF FIRST
INSTANCE OF MANILA, RESPONDENTS.**

G.R. No. L-26256. June 26, 1968

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Raised as the only issue in this original petition for certiorari and prohibition[1] is the materiality, in an information for Theft, of the identity of the owner of the stolen property; in other words, whether or not an accurate identification of the owner of the stolen property is essential to the validity of an information for theft.

The facts of this case are not in dispute:

On February 13, 1964, Pua Yi Kun was charged with the crime of theft before the City Court of Manila (Crim. Case No. E-18590; I.S. 64-5062), in an information reading as follows:

"The undersigned (Assistant Fiscal) accuses Pua Yi Kun of the crime of theft, committed as follows:

"That on or about the period from January 10, 1964 to January 13, 1964, in the City of Manila, Philippines, the said accused, conspiring and confederating to-gether with one whose true name and identity are still unknown and helping each other, did then and there wilfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away the following:

"Nine (9) stock certificates of the Lepanto Consolidated Mining Co. and the Consolidated Mining, Inc., to wit:

Lepanto Shares: Certificate Nos. 44431 - 30,000 shares; 50372 - 19,000 shares; 48758 -1,351 shares; Consolidated Shares: 45453-B - 90,000 shares; 44728-B - 100,000 shares; 44562-B - 100,000 shares; 43691-B - 100,000 shares; 43688-B - 50,000 shares; 43529-B - 90,000 shares,

all valued at P10,335.00, belonging to the aforesaid mining companies to the damage and prejudice of said owners in the aforesaid sum of P10,335.00, Phil-ippine currency.

"Contrary to law."

Arraigned on July 15, 1964, the accused entered a plea of not guilty.

On January 26, 1965, Assistant Fiscal Agapito C. Magpantay moved for the dismissal of the case against the accused Pua Yi Kun, on the ground that reinvestigation and re-examination of the evidence on hand disclosed that the same would be insufficient to establish the guilt of the accused beyond reasonable doubt. In view of this motion, the City Judge on January 29, 1965, ordered the dismissal of the case with costs de officio.

On April 20, 1966, another information for theft of the same stock certificates was filed in the Court of First Instance of Manila (Crim. Case No. 82120; I.S. 64-5062 & 64-5063), this time charging Pua Yi Kun and Frank Chou, thus:

"That on or about the 10th day of January, 1964, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away three (3) stock certificates of the Lepanto Consolidated Mining Co., consisting of 50,351 shares, valued at P0.72 a share, or a total value of P36,252.72, and six (6) stock certificates of the Consolidated Mines, Inc., consisting of 530,000 shares valued at P0.085 a share or a total value of P45,050.00, belonging to the Chiong & Co., Inc., to the damage and prejudice of said owner in the aforesaid sum of P81,302.72 , Philippine currency.

"Contrary to law."

Thereupon, the accused Pua Yi Kun moved to quash the information on the ground of double jeopardy, pointing to the previous dismissal of the theft-case against him in the City Court of Manila. The court below, however, taking into account the fact that the information filed in the City Court named the Lepanto Consolidated Mining Company and the Consolidated Mines, Inc. as the owners of the stolen certificates of stock, when it appeared that the said property actually belonged to Chiong & Co., ruled that such erroneous allegation of ownership of the property affected the validity of the information. Consequently, according to the lower court, since the accused Pua Yi Kun could not have been validly convicted under the aforementioned first information (in the City Court), the filing of the second case in the Court of First Instance did not expose him to the danger of a second conviction for the same offense. The motion to quash the information in Criminal Case No. 82120 was, therefore, denied. The accused filed the present petition.

It cannot be denied that the theft-charge against herein petitioner, now pending in the Court of First Instance of Manila, is practically the same as that filed against him in the City Court of Manila;^[2] that said case was dismissed upon motion of the prosecuting fiscal himself, after the accused had been duly arraigned and had entered his plea to the charge. The court below, nevertheless, rejected petitioner's claim of being placed in second jeopardy reasoning that, as it is necessary to aver in an information for theft that the owner of the stolen property did not give his consent to its taking by the accused, then the correct identity of that owner is essential to the validity of the information. And, since admittedly, there was an erroneous naming of the supposed offended party in the first information, that information was defective and the case did not constitute a first jeopardy to the accused.

We see no grave abuse of discretion in the appealed denial of the motion to quash the second information.

It is not contested that one of the requisites for a successful plea of former jeopardy is the existence of a valid complaint or information, sufficient in form and substance to support a conviction, in the first prosecution to which the accused has been subjected (Sec. 9, Revised Rule 117). This means that the complaint or information must aver all the elements of the offense charged, because if it is radically defective, "as when it does not recite the essential requisites of the offense, so that unless cured by the evidence at the trial, it cannot support a judgment of conviction" (IV Moran, Rules of Court, 1963 Ed., 208; U.S. vs. Extrana, 16 Phil. 520; Serra vs. Mortiga, 11 Phil. 762, 204 U.S. 470). As ruled in *People vs. McNealy*, 17 Calif. 332, 335, "[I]t would be a contradiction in terms to say that a person was put in jeopardy by an indictment under which he could not be convicted, and it is obviously immaterial whether the inability to convict arose from the variance between the proof and the indictment, or from some defect in the indictment itself."

Because in the case at bar the offense charge is theft, it became essential that the previous indictment that was dismissed without the consent of the accused, should have expressed all the requisites of that particular offense. As theft is defined in paragraph 1 of Article 308 of the Revised Penal Code to be a felony committed -

"by any person who, without intent to gain, but without violence against or intimidation of persons, nor force

upon things, shall take personal property of another without the latter's consent."

the decisions of this Court have ruled that five elements are essential to constitute the crime: (1) the taking of personal property; (2) that the property belongs to another; (3) that the taking was done with intent of gain; (4) that it was done without the consent of the owner, and (5) that it was accomplished without violence or intimidation of persons nor force upon things (U.S. vs. De Vera, 43 Phil. 1000; People vs. Mercado, 65 Phil. 665; People vs. Yusay, 50 Phil. 598; People vs. Rodrigo, L-18507, March 31, 1966, 16 S.C. Rep. Anno. 475).

Now, with particular regard to the taking without the consent of the owner, it is conceded that the first information (City Court Case No. E-18590 of Manila) averred that the stolen certificates belonged to the mining companies (Lepanto Consolidated Mining Co. and the Consolidated Mines, Inc.). The allegation that the accused took, stole and carried away certificates of stock without the consent of their owner could only mean that it was done without the consent of the two companies aforementioned. But as the motion to quash the second charge necessarily assumes the truth of the averment therein that the true owner was Chiong & Co., then we must conclude that the first information in the City Court was insufficient to support a conviction, because the same did not allege that the taking of the certificates was done without the consent of the true owner or possessor (Chiong & Co.). True, that the first charge did state that the taking was done without the consent of the mining companies Lepanto and Consolidated; but as they were not the owners, the allegation was not only irrelevant, but it did not import that the act was also done against or without the consent of the real owner. Such deficiency is fatal to the sufficiency of the first charge, because non-consent of the owner to the taking is essential to the existence of the crime of theft under the first paragraph of Article 308 of the Revised Penal Code.

We are aware that some decisions state that the crime of theft does not require that the culprit should know the owner of the thing stolen. Other authorities declare that it is not necessary for the existence of the crime of theft that it should appear in a specific manner who is the owner of the thing stolen, and the crime is consummated provided the thing belongs to another and the same is taken with intent of gain (Decision, Supreme Court of Spain, Nov. 22, 1898 and October 4, 1905).

By and large, these pronouncements are merely generalizations designed to cover all varieties of theft, from the one where the thing stolen is taken directly from the owner's control to that committed by "any person who having found lost property, shall fail to deliver the same to the local authorities or to its owner" which is also theft under Article 308, paragraph 2(1), Revised Penal Code. The rulings, therefore, are not fully applicable to the present case, which does not involve property lost (extraviada) nor do they warrant the inference that the non-consent of the owner or possessor can be excused.

In the ordinary course of events, the owner of the thing (whoever he should be) would not consent to the taking of his property without any consideration or quid pro quo therefor; nevertheless, the possibility of such consent remains and the law demands that it be negated in the information. That the owner's lack of consent cannot be dispensed with in charging an ordinary theft under the first paragraph of Article 308 of the Penal Code, is shown by the express requirement there in that the taking should be without the consent of the owner.[3] In view of the clear text of the law, an information or charge that does not aver this lack of consent is manifestly bad and insufficient, and may be quashed for failure to allege an essential element of the delict.

Since the first charge against petitioner in the City Court was thus deficient in not alleging each and every element of the offense, and as no evidence was produced to cure the defect, the Court of First Instance did not gravely abuse its discretion in holding that there under jeopardy did not attach.

WHEREFORE, the petition for certiorari is dismissed, and the writ applied for is denied, with costs against petitioner Pua Yi Kun.

Concepcion, C.J., Dizon, Zaldivar, Sanchez, and Angeles, JJ., concur.
Makalintal and Fernando, JJ., took no part.
Castro, J., reserves his vote.

[1] This petition was filed to determine the correctness of the denial by the Court of First Instance of Manila of the accused's motion to quash the information in Criminal Case No. 82120 of said court, insofar as herein petitioner is concerned.

[2] Except for the names of the supposed offended party and the value of the stolen articles.

[3] "Ha de ejecutarse el hecho sin la voluntad del dueño de la cosa mueble. Aun en el caso del consentimiento del dueño prestado con engaño, desaparece el hurto para dar paso a otro delito." (Sanchez Tejerina, Derecho Penal, Vol. 2, p. 401).

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