

CHUA HAI, PETITIONER, VS. HON. RUPERTO KAPUNAN, JR. AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA AND ONG SHU, RESPONDENTS.

G. R. No. L-11108. June 30, 1958

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

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

Certiorari against an order of the Court of First Instance of Manila, Hon. Ruperto Kapunan, Jr. presiding, ordering the return to the complainant in criminal case No. 34250, People vs. Roberto Soto, of 100 sheets of galvanized iron roofing which had been sold by the accused in said case to petitioner herein, Chua Hai. The order is as follows:

"Counsel for the complainant in this case seeks the return of the 700 sheets of galvanized iron now with the Manila Police Department which form part of the hardware materials involved in this case. Chua Hai, one of the persons who purchased from the accused one hundred (100) pieces of the said galvanized iron sheets, opposes the said motion on the ground that the question of ownership should be determined in the proper proceedings, claiming that he has a valid title to the 100 pieces, having bought them from the accused Roberto Soto on February 1, 1956. Roberto Soto is presently at large, his arrest having been ordered by this Court on June 13, 1956, for failure to appear for trial.

"Considering the provisions of Article 105 of the Revised Penal Code, the said 700 sheets, except five of them which are to be retained for purposes of evidence, are hereby ordered returned to the complainant, subject, however, to the condition that the complainant post a bond in an amount equal to twice the value of 100 sheets in favor of Chua Hai who has a claim of ownership to the said 100 sheets, and without prejudice on the part of said Chua Hai to file the corresponding action on the matter of ownership thereof by virtue of his purchase from the herein accused."

From the facts alleged in the pleadings presented in this case, we gather the following:: On January 31, 1956, Roberto Soto purchased from Youngstown Hardware, owned by Ong Shu, 700 corrugated galvanized iron sheets and 249 pieces of round iron bar for P6,137.70, and in payment thereof he issued a check drawn against the Security Bank and Trust Company for P7,000.00, without informing Ong Shu that he had no sufficient funds in said bank to answer for the same. When the check was presented for payment, it was dishonored for insufficiency of funds. Soto sold 165 sheets in Pangasinan and 535 sheets in Calapan, Mindoro. Of those sold in Pangasinan, 100 were sold to petitioner Chua Hai. When the case was filed in the Court of First Instance of Manila against Roberto Soto, for estafa, the offended party filed a petition asking that the 700 galvanized iron sheets, which were deposited with the Manila Police Department, be returned to him, as owner of the Youngstown Hardware. Petitioner herein opposed the motion with respect to the 100 sheets that he had bought from Soto. Notwithstanding the opposition, the court ordered the return of the galvanized iron sheets to Ong Shu. Petitioner then presented a motion to reconsider the order, alleging that by the return thereof to the offended party, the court had not only violated the contract of deposit, because it was in that concept that petitioner had delivered the 100 sheets to the Manila Police Department, and that said return to Ong Shu amounted to a deprivation of his property

without due process of law. It is also claimed that Article 105 of the Revised Penal Code, under whose authority the return was ordered, can be invoked only after the termination of the criminal case and not while said criminal case is still pending trial.

The court having given no heed to these protests on the part of the petitioner, the latter brought the present petition to this Court alleging that the order of the respondent judge constitutes a deprivation of petitioner's property without due process of law, violating the contract of deposit under which the sheets were delivered to the police department of the City of Manila, and determining the respective rights of petitioner and respondent Ong Shu without a previous trial of the criminal case—all of which constitute a grave abuse of discretion and excess of jurisdiction. In answer to the petition, it is claimed that as respondent Ong Shu is the owner of the property, he has the right to recover possession thereof even if said property appears to have fallen into the possession of a third party who acquired it by legal means, provided that said form of acquisition is not that provided for in Article 464 of the Civil Code (where property has been pledged in a monte de piedad established under authority of the Government) ; that even if the property was acquired in good faith, the owner who has been unlawfully deprived thereof may recover it from the person in possession of the same unless a person in possession acquired it in good faith at a public sale. (Art. 559, Civil Code of the Philippines). It is also claimed that under the provisions of Article 105 of the Revised Penal Code, under which restitution is made by a return of the thing itself whenever possible, the galvanized iron sheets in question should be returned to the offended party, the owner, and that there is no provision of law requiring that the criminal case must first be finally disposed of before restitution of the goods swindled can be ordered returned to the owner. In answer to the allegation that petitioner has been deprived of his property without due process of law, it is alleged that same is without foundation because the petitioner was given ample time to be heard. As to the claim that the galvanized iron sheets in question were deposited with the Manila Police Department, it is argued that the delivery to the Manila Police Department was by virtue of the order of the court, because the said sheets were the subject of or are the instruments of the commission of the crime of estafa, and the court had the power to order the return thereof to the owner after it had satisfied itself of the ownership thereof by the offended party. It is also alleged in defense that petitioner's rights, if any, are sufficiently protected by the bond that the court has required to be filed.

We find the case meritorious, since petitioner's good faith is not questioned. To deprive the possessor in good faith, even temporarily and provisionally, of the chattels possessed, violates the rule of Art. 559 of the Civil Code. The latter declares that possession of chattels in good faith is equivalent to title; i.e., that for all intents and purposes, the possessor is the owner, until ordered by the proper court to restore the thing to the one who was illegally deprived thereof. Until such decree is rendered (and it can not be rendered in a criminal proceeding in which the possessor is not a party), the possessor, as presumptive owner, is entitled to hold and enjoy the thing; and "every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court." (Art. 539, New Civil Code).

The decision of the court below, instead of conforming to Arts. 559 and 539 of the Civil Code, directs the possessor to surrender the chattel to the claimant Ong Shu before the latter has proved that he was illegally deprived thereof, without taking into account that the mere filing of a criminal action for estafa is no proof that estafa was in fact committed. Instead of regarding the possessor as the owner of the chattel until illegal deprivation is shown, the court below regards the possessor of the chattel not as an owner, but as a usurper, and compels him to surrender possession even before the illegal deprivation is proved. We see no warrant for such a reversal of legal rules.

It can not be assumed at this stage of the proceedings that respondent Ong Shu is still the owner of the property; to

do so it take for granted that the estafa was in fact committed, when so far, the trial on the merits has not even started, and the presumption of innocence holds full sway.

In the third place, the civil liability of the offender to make restitution, under Art. 105 of the Revised Penal Code, does not arise until his criminal liability is finally declared, since the former is a consequence of the latter. Art. 105 of the Revised Penal Code, therefore, can not be invoked to justify the order of the court below, since that very article recognizes the title of an innocent purchaser when it says:

"ART. 105. Restitution— * * *

The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him.

This provision is not applicable in cases in which the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery." (B.P.C.) (Italics supplied)

The last paragraph of Article 105 plainly refers to those cases where recovery is denied by the civil law, notwithstanding the fact that the former owner was deprived of his chattels through crime. One of these cases is that provided for in Art. 85 of the Code of Commerce:

"ART. 85.—La compra de mercaderias en almacenes o tiendas abiertas al publico causara prescripcion de derecho a favor del comprador respecto de las mercaderias adquiridas, quedando a salvo en su caso los derechos del propietario de los objetos vendidos para ejercitar las acciones civiles o criminales que puedan corresponderle contra el que los vendiere indebidamente. (Civ. 464)

Para los efectos de esta prescripcion, se reputaran almacenes o tiendas abiertas al publico:

- ° Los que establezcan los comerciantes inscritos.
- ° Los que establezcan los comerciantes no inscritos, siempre que los almacenes o tiendas permanezcan abiertos al publico por espacio de ocho dias consecutivos, o se hayan anunciado por medio de rotulos, muestras o titulos en el local mismo, o por avisos repartidos al publico o insertos en los diarios de la localidad."

Notwithstanding the claim of some authors that this Art. 85 has been repealed, the fact is that its rule exists and has been confirmed by Article 1505 of the new Civil Code:

"ART. 1505. Subject to the provisions of this Title, where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Nothing in this Title, however, shall affect:

* * * * *

(3) Purchases made in a merchant's store, or in fairs, or markets, in accordance with the Code of Commerce and special laws." (C.C.)

But even if the articles in dispute had not been acquired in a market, fair or merchant's store, still, so far as disclosed, the facts do not justify a finding that the former owner, respondent Ong Shu, was illegally deprived of the iron sheets, at least in so far as appellant was concerned. It is not denied that Ong Shu delivered the sheets to Solo upon a perfected contract of sale, and such delivery transferred title or ownership to the purchaser. Says Art. 1496:

"ART. 1496. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him

in any of the ways specified in articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee." (C.C.)

The failure of the buyer to make good the price does not, in law, cause the ownership to revest in the seller until and unless the bilateral contract of sale is first rescinded or resolved pursuant to Article 1191 of the new Civil Code.

And, assuming that the consent of Ong Shu to the sale in favor of Sotto was obtained by the latter through fraud or deceit, the contract was not thereby rendered void ab initio, but only voidable by reason of the fraud, and Article 1390 expressly provides that:

"ART. 1390. The following contracts are voidable or annulable, even though there may have been no damage to the contracting parties:

- (1) Those where one of the parties is incapable of giving consent to a contract;
- (2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud. These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification." (C.C.)

Agreeably to this provision, Article 1506 prescribes:

"ART. 1506. Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title." (C.C.)

Hence, until the contract of Ong Shu with Soto is set aside by a competent court (assuming that the fraud is established to its satisfaction), the validity of appellant's claim to the property in question can not be disputed, and his right to the possession thereof should be respected.

It is no excuse that the respondent Ong Shu was required to post a redelivery bond. An indemnity bond, while answering for damages, is not, by itself alone, sufficient reason for disturbing property rights, whether temporarily or permanently. If the invasion is not warranted, the filing of a bond will not make it justifiable.

Questions of ownership and possession being eminently civil in character, they should not be settled by exclusive reference to the Revised Penal Code. If Ong Shu has reason to fear that petitioner Chua Hai may dispose of the chattels in dispute and thereby render nugatory his eventual right to restitution, then the proper remedy lies in a civil suit and attachment, not in an order presuming to adjudicate in a criminal case the civil rights of one who is not involved therein.

Summing up, we hold:

- 1) That the acquirer and possessor in good faith, of a chattel or movable property is entitled to be respected and protected in his possession, as if he were the true owner thereof, until a competent court rules otherwise;
- 2) That being considered, in the meantime, as the true owner, the possessor in good faith can not be compelled to surrender possession nor to be required to institute an action for the recovery of the chattel, whether or not an Indemnity bond is issued in his favor;
- 3) That the filing of an information charging that the chattel was illegally obtained through estafa from its true owner by the transferor of the bona fide possessor does not warrant disturbing the possession of the chattel against the will of the possessor; and
- 4) That the judge taking cognizance of the criminal case against the vendor of the possessor in good faith has not

right to interfere with the possession of the latter, who is not a party to the criminal proceedings, and such unwarranted interference is not made justifiable by requiring a bond to answer for damages caused to the possessor.

Wherefore, the writ of certiorari is granted, and the order of the Court of First Instance of Manila in Criminal Case No. 34250, dated July 31, 1956, is hereby revoked and set aside, as issued in abuse of discretion amounting to excess of jurisdiction. Costs against appellant Ong Shu.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Endencia, JJ., concur.

CONCURRING

FELIX, J.,

The issue in this case revolves around the proposition of whether or not "goods purchased by an accused, for which he paid with a rubber check, can be seized from a third party who bought the same in good faith and for a valuable consideration before the offender, who was charged with estafa, is tried and convicted."

I concur with the reasons adduced in the majority decision but the main basis of my vote with the majority of the Court is based on the principle that Article 105 of the Revised Penal Code relied upon by the lower Court for the issuance of the order which We revoked and set aside in this instance, cannot be invoked and made applicable to the case at bar.

As it is known, among the civil liabilities established by Articles 100 to 103 of the Revised Penal Code restitution is included and Article 105 of the same Code dealing on restitution, provides the following:

ART. 105. Restitution. How Made.—The restitution of the thing itself must be made whenever possible, with allowance for the deterioration or diminution of value as determined by the court.

The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him.

This provision is not applicable in cases in which the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery.

There is no dispute that petitioner herein, Chua Hai, purchased from Roberto Sotto 100 sheets of galvanized iron roofing in good faith and for value, and there is no denial either that this stock comes from and is a part of the 700 sheets that Roberto Sotto bought and paid with a check that bounced for lack of funds. Under such circumstances, there is no question that the purchase was perfected by the agreement of the respondent Ong Shu and defendant Sotto and as a consequence of the transaction, upon delivery of the sheets to the latter, ownership of the same was conveyed and transferred legally to the purchaser who, from that moment, with or without payment of the consideration therefor was in turn entitled to sell and convey all or a portion of the property in question to a third party who definitely acquired said goods, specially when he acted in good faith and for value. Had those goods been sold on credit by Ong Shu to Roberto Sotto, the failure of the latter to pay the purchase price thereof would not entitle the vendor, under the circumstances obtaining in the instant case, to take the goods from Chua Hai and much less without a previous court action. And the same thing can be said in the case at bar where the vendor was induced to part with his property by the issuance of a rubber check. Both in the case of sale on credit as well as in the case of sale through the payment with rubber check, the transaction is perfected and the transfer of ownership verified, the difference being only circumscribed to the liability of the first purchaser (Sotto) which in the first case would be merely civil, while in the latter case is also criminal.[1] The first sale of the property having been

legally consummated, the 100 sheets of galvanized iron herein involved could not be recovered from Chua Hai even in case of Sotto's conviction of estafa, because under the terms of Article 105 of the Revised Penal Code, the restitution of the thing is not possible for the reason that said thing has been acquired by the third persons (Chua Hai) in the manner and under the requirements which (in addition to the other means enumerated in the majority decision) bar, by law, an action for its recovery. I am, therefore, of the opinion and thus hold that in cases where the ownership of the effects of the crime has already been transferred by the offender to an innocent third party, the restitution of the thing itself referred to in Article 105 of the Revised Penal Code must necessarily be limited to cases in which the offended party was illegally deprived of the property involved in the crime committed, such as in cases of robbery and theft, but not to cases wherein the offended party has not been deprived of his property which he delivered to the purchaser with the expectation, of course, of receiving the consideration of the sale.

I, therefore, concur in the majority decision penned by Mr. Justice J. B. L. Reyes.

[1]See *People vs. Ma Su (Chino)*, 90 Phil., 706.

DISSENTING

LABRADOR, J.,

I dissent. Before proceeding to the discussion of the facts it seems necessary for an understanding of this dissent that this is a certiorari originally instituted in this Court against an order of Judge Ruperto Kapunan, Jr. of the Court of First Instance of Manila. As a case of certiorari, not a petition for review, the only pertinent issue, as I see it, is whether under the facts and circumstances of the case the order against which the petition is instituted was issued in excess of jurisdiction or with grave abuse of discretion. The order issued by the respondent judge was provisional in character, subject to the outcome of the criminal case and any other future litigation respecting the property subject of the proceedings. The certiorari seeks to set aside the order for the return to the complainant in criminal case No. 34250, *People vs. Roberto Soto*, of 100 sheets of galvanized iron roofing which had been sold by the accused in said case to petitioner herein, Chua Hai. The order is as follows:

"Counsel for the complainant in this case seeks the return of the 700 sheets of galvanized iron now with the Manila Police Department which form part of the hardware materials involved in this case. Chua Hai, one of the persons who purchased from the accused one hundred (100) pieces of the said galvanized iron sheets, opposes the said motion on the ground that the question of ownership should be determined in the proper proceedings, claiming that he has a valid title to the 100 pieces, having bought them from the accused Roberto Soto on February 1, 1956. Roberto Soto is presently at large, his arrest having been ordered by this Court on June 13, 1956, for failure to appear for trial." Considering the provisions of Article 105 of the Revised Penal Code, the said 700 sheets, except five of them which are to be retained for purposes of evidence, are hereby ordered returned to the complainant, subject, however, to the condition that the complainant post a bond in an amount equal to twice the value of 100 sheets in favor of Chua Hai who has a claim of ownership to the said 100 sheets, and without prejudice on the part of said Chua Hai to file the corresponding action on the matter of ownership thereof by virtue of his purchase from the herein accused."

From the facts alleged in the pleadings prescribed in this case, we gather the following: On January 31, 1956, Roberto Soto purchased from Youngstown Hardware, owned by Ong Shu, 700 corrugated galvanized iron sheets and 249 pieces of round iron bar for P6,137.70, and in payment thereof he issued a check drawn against the Security Bank and Trust Company for P7,000.00, without informing Ong Shu that he had no sufficient funds in said bank to answer for the same. When the check was presented for payment it was dishonored for insufficiency

of funds. Soto sold 165 sheets in Pangasinan and 535 sheets in Calapan, Mindoro. Of those sold in Pangasinan, 100 was sold to petitioner Chua Hai. When the case was filed in the Court of First Instance of Manila against Roberto Soto, for estafa, the offended party filed a petition asking that the 700 galvanized iron sheets which were deposited with the Manila Police Department be returned to him, as owner of the Youngstown Hardware. Petitioner herein opposed the motion with respect to the 100 sheets that he had bought from Soto. Notwithstanding the opposition the court ordered the return of the galvanized iron sheets to Ong Shu. Petitioner then presented a motion to reconsider the order, alleging that by the return thereof to the offended party, the court had not only violated the contract of deposit, because it was in that concept that petitioner had delivered the 100 sheets to the Manila Police Department, and that said return to Ong Shu amounted to a deprivation of his property without due process of law. It is also claimed that Article 105 of the Revised Penal Code, under whose authority the return was ordered, can be invoked only after the termination of the criminal case and not while said criminal case is still pending trial. The court giving no heed to these protests on the part of the petitioner, the latter brought the present petition to this Court alleging that the order, of the respondent judge constitutes a deprivation of petitioner's property without due process of law, violating the contract of deposit under which the sheets were delivered to the police department of the City of Manila, and determining the respective rights of petitioner and respondent Ong Shu without a previous trial of the criminal case—all of which constitute a grave abuse of discretion and excess of jurisdiction. In answer to the petition it is claimed that as respondent Ong Shu is the owner of the property, he has the right to recover possession thereof even if said property appears to have fallen into the possession of a third party who acquired it by legal means, provided that said form of acquisition is not that provided for in Article 464 of the Civil Code (where property has been pledged in a monte de piedad established under authority of the Government); that even if the property was acquired in good faith, the owner who has been unlawfully deprived thereof may recover it from the person in possession of the same unless a person in possession acquired it in good faith at a public sale (Art. 559, Civil Code of the Philippines). It is also claimed that under the provisions of Article 105 of the Revised Penal Code, under which restitution is made by a return of the thing itself whenever possible, the galvanized iron sheets in question should be returned to the offended party, the owner, and that there is no provision of law requiring that the criminal case must first be finally disposed of before restitution of the goods swindled can be ordered returned to the owner. In answer to the allegation that petitioner has been deprived of his property without due process of law, it is alleged that same is without foundation because the petitioner was given ample time to be heard. As to the claim that the galvanized iron sheets in question were deposited with the Manila Police Department, it is argued that the delivery to the Manila Police Department was by virtue of the order of the court, because the said sheets were the subject of or are the instruments of the commission of the crime of estafa, and the court had the power to order the return thereof to the owner after it had satisfied itself of the ownership thereof by the offended party. It is also alleged in defense that petitioner's rights, if any, are sufficiently protected by the bond that the court has required to be filed. I find no merit in the contention that petitioner was deprived of the possession and ownership of the galvanized iron sheets without due process of law, it appearing that sufficient opportunity was given him to explain his right to the possession and ownership thereof when he presented him motion for reconsideration which the court heard and which it finally denied. The claim that the respective rights of the petitioner and the respondent owner can only be decided in the final criminal action is also without merit. The criminal case seeks to determine the fact of the commission of the crime by the accused. When as in this case it cannot be seriously contended that the galvanized iron sheet in question were not the ones that the accused had taken away from the offended party by illegal means, there is no advantage to be gained by postponing the determination of the ownership of the stolen property as between the offended party and the purchaser. Anyway, the order of the court is merely provisional in character and it is expressly provided therein that the claims of the parties to the property are to be determined in the final action that the petitioner may file, if he desires to do so. The decision of the

majority supposedly rests on the provisions of Article 599 of the Civil Code, which is as follows:

"The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same.

"If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner can not obtain its return without reimbursing the price paid therefor."

We fully agree with the majority that this Article covers the case, but we are of the humble opinion that the provision that is applicable is not paragraph 1, but paragraph 2. Granting that the petitioner was a possessor in good faith, the facts disclosed not by the information alone, but by the motion for the return of the goods and other parts of the record show that these movable properties used to belong to the respondent Ong Shu and that he was deprived thereof unlawfully because a certain person purchased it with a bogus check. As between the purchaser and Ong Shu, the lawful owner, even if the former is clothed with all the good faith, the owner of the property Ong Shu has a better right to recover possession thereof. The criminal law provides that the subject of a crime can always be recovered from whoever is in possession of the same, irrespective of the good faith of the possessor. Were we to adopt the ruling of the majority, we will be encouraging crooks because by artful connivance with supposed buyers in good faith (and the worst part of it is good faith is always presumed), we will have a holiday for crooks, thieves and robbers. While it is true that the information does not deny the good faith of petitioner, but as against that of the lawful owner, Ong Shu, the latter should be given preference. It is not disputed that the respondent Ong Shu was originally the lawful owner. If that is so and he was deprived of the property by a criminal act, how can such ownership now have been destroyed and can now be denied. The only way by which the petitioner, the buyer from the thief, can be protected in his possession is by applying the provisions of paragraph 2 of Article 599 of the Civil Code, which reads:

"If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner can not obtain its return without reimbursing the price paid therefor."

Note that we have underlined the words public sale. This he has not proved and no evidence has been shown or is insinuated in the record. Even if he had acquired it at public sale, the right for reimbursement of the price still remains. The price is fully guaranteed by the bond approved by the court.

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