

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO JAVIER, ACCUSED-APPELLANT.

G.R. No. L-36509. February 25, 1982

Ponente: ERICTA, J.

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ERICTA, J.:

The accused, Gregorio Javier, Orlando Sagun, Manuel Navarro and three other unidentified persons were accused in the Court of First Instance of Quezon City of theft of motor vehicle valued at P27,000.00. After trial, Orlando Sagun and Manuel Navarro were acquitted. Gregorio Javier was convicted and was sentenced to reclusion perpetua.

Gregorio Javier appeals to this Court.

The facts established by the evidence of the prosecution, as found by the trial court, were not disputed by the appellant. In his narration of facts in his brief, the appellant quotes the following portion of the decision of the lower court:

On or about August 8, 1971, one Morley Lim drove the car in question to the Saint Luke's Hospital to visit a friend. He parked it at the parking lot of the hospital. On leaving the hospital he saw four unknown individuals get inside the car and drive it away. He reported the incident to the TRAFCON ANCAR Group (PC) which flashed an alarm. On or about August 10, 1971 because of a tip from an informer, the Commanding Officer of the Trafcon ordered Sgt. Domingo Lising and Sgt. Pasion to proceed to San Jose Street, Barrio Hulo, Mandaluyong, Rizal to verify if the tip it received that the car in question may be found thereat, is correct. On reaching the place, Sgt. Lising and his companion saw the car in question in an open garage being scraped of its paint for repainting, by the accused Orlando Sagun y Valenzuela. On being interrogated by the police officers Orlando Sagun said he was only hired by the accused Manuel Navarro y Lacdan to scrape the car of its paint for repainting. He informed the authorities that Manuel Navarro could be found at the Insular Sugar Refinery Company, also at Mandaluyong, Rizal. After getting hold of the car Sgt. Lising and his companion proceeded to the Insular Refinery Company, to interview the accused Manuel Navarro whom they found to be cooperative. The latter informed them that the car was delivered at his shop by the accused Gregorio Javier, a brother of Felimon Javier, the then municipal mayor of Mandaluyong, Rizal. He accompanied them to the house of Gregorio Javier but the latter was not around and could not be located. x x x (Decision, pp. 1-2, APPENDIX)[1]

The evidence for the defense will be narrated in the course of our discussion.

There is nothing in the evidence of the prosecution to show that the appellant was one of the four persons who took the Ford Mustang car which was parked in the compound of Saint Luke's Hospital on August 8, 1971. Thus, as correctly stated by the appellant in his brief:

Defendant-appellant was convicted upon finding of the lower court that it was he who delivered the stolen car for repainting to his co-accused Manuel Navarro and that he has no satisfactory explanation for his erstwhile possession of the same.

In fine, he was convicted on the basis alone of a lamentable but settled rule in our jurisprudence that unexplained possession of recently stolen property is prima facie evidence of guilt of theft (People vs. Magbanua, 77 Phil. 79; People vs. Tanchoco, G.R. L-38, April 6, 1946; U.S. vs. Tapan and De Leon, 20 Phil. 212, U.S. vs. Ungal 37 Phil. 835; and U.S. vs. Espia, 16 Phil. 506).[2]

This is not disputed by the Solicitor. The Solicitor states in his brief:

It is respectfully submitted that the lower court did not err in finding appellant Gregorio Javier as one of the unquestionable authors of the theft of the Mustang car mainly on appellant's failure to explain satisfactorily how he came into the possession of the stolen vehicle (pp. 5-15, appellant's brief).[3]

Stated otherwise, the main issue is, has the appellant satisfactorily explained how he came into the possession of the stolen vehicle?

Rule 131, Section 5, sub-paragraph J, reads as follows:

The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence;

x x x x x x x x

(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act.

From the foregoing provision, it is clear that the possessor of a recently stolen article is considered a principal, not merely as an accessory or an accomplice as contended by the appellant, unless he proves in a satisfactory manner that he is but an accessory or an accomplice thereto and that another person, from whom the article came, is the one who stole it from the owner thereof.[4]

In his testimony, the appellant endeavored to explain how he came into the possession of the stolen car by narrating that on August 7, 1971, while he was campaign-ing for the re-election of his brother, Mayor Filemon Javier of Mandaluyong, Rizal, he passed Lerma Street on his way to F. Cruz Street and saw many people at Lala's canteen. Believing that this would be a good opportunity to campaign for his brother, he dropped by said canteen together with some companions. While he was seated inside the canteen, a certain Lory Duran approached him and introduced himself as the owner of said canteen. Duran then noticed the nice paint on the Hillman car of the appellant and asked the latter if he knew somebody who could extend to him a good bargain for the repainting of his car. Appellant replied "Yes, because he is my compadre" (referring to Manuel Navarro).[5] The following day, the appellant and Lory Duran allegedly went to see Navarro at the Insular Sugar Refinery Company to engage the services of the latter in the repainting of a car which was going to be used in the campaign. The appellant further told Navarro that he was already committed to Lory Duran to have the car repainted by him because it would be used to register persons for the election.[6] Because of appellant's insistence, coupled with the fact that he made Navarro understand that his brother, the Mayor, sent word through him for Navarro to paint said car for his use during the election, Navarro acceded to appellant's request.[7]

We agree with the trial court that the foregoing explanation of the appellant is unsatisfactory and does not overcome the legal presumption aforequoted. The appellant did not present Lory Duran to corroborate his statement notwithstanding the fact that Duran's testimony could possibly exculpate him. Except for his bare declaration, there was no evidence presented to the effect that Duran was the owner of the car. In this connection, the lower court stated:

He (appellant) could not, however direct the authorities to the whereabouts of Lory Duran. Neither did he present Lory Duran to corroborate his explanation at the trial. The Court has reasons to doubt the existence of

Lory Duran. It is like trying to lay the blame on a dead man. His explanation is not consistent with the circumstance surrounding the case. Unlike Orlando Sagun and Manuel Navarro both of whom explained how they happened to have the car in their possession and cooperated with the authorities by accompanying Sgt. Domingo Lising and his companion to the house of Gregorio Javier, he (appellant) disappeared from Mandaluyong, Rizal right after the recovery of the car by the authorities became known. His claim that he did not leave Mandaluyong during all that period is incredible. If that were true, the authorities would have found him. They had his house under surveillance for months. True, he surrendered to the authorities but he did it only after his brother ceased to be the municipal mayor of Mandaluyong, Rizal.[8]

The investigators confiscated from the motor shop the stolen motor vehicle on August 10, 1971. It was only after the information was filed and after he procured a bail bond on April 5, 1972, that is to say, about eight months after the recovery of the car from the motor shop, that the appellant surrendered himself to the court. If the appellant was not the culprit, he should have presented himself to the authorities immediately upon the recovery of the car on August 10, 1971 to shed light on the circumstances surrounding the painting of the car in Navarro's motor shop. The appellant could have accompanied the PC investigators to Lala's Canteen, which allegedly belongs to Lory Duran, in order to look for the latter.

It further appears that Manuel Navarro was hesitant to repaint the car because he was occupied, but the appellant was insistent. So finally, Navarro acceded.[9] It was also the appellant who gave Navarro money for the purchase of painting materials. Thus, Navarro testified:

"Q What took place when you met Mr. Javier (appellant)?

A He gave me P20.00 sir.

Q Do you know for what purpose this money was handed you?

A Yes sir.

Q For what?

A Since I was asking for some money with which to buy waterproof, sandpaper, lacquer, thinner and primer sir.

Q What were you going to use these materials for?

A For the painting of his (appellant) car sir.

Q Which car?

A The Mustang car sir."[10]

The foregoing circumstances indicate the guilt of the appellant as charged in the information.

The appellant claims that he is entitled to the mitigating circumstance of voluntary surrender. The record shows that the information was filed on April 6, 1972 and the warrant of arrest was issued on April 7, 1972. The defendant surrendered himself and posted his bail bond on April 5, 1972, that is to say, two days before the issuance of the warrant of arrest. Under the foregoing circumstances, the mitigating circumstance of voluntary surrender may be appreciated.

In one case where the defendant surrendered and at the same time posted his bond 18 days after the commission of the crime and 14 days and 16 days, respectively, after the first and second warrants of arrest were issued, this Court appreciated the mitigating circumstance of voluntary surrender holding that the law does not require that surrender must be before or after the issuance of a warrant of arrest.[11]

In another case, *People vs. Yecla and Cahilig*, 68 Phil. 740, where the defendant surrendered five (5) days after the commission of the crime and two (2) days after the issuance of a warrant of arrest, the mitigating circumstance of voluntary surrender was also appreciated.

The lower court erroneously imposed the penalty of reclusion perpetua. The value of the stolen car is P27,000.00.

Article 309, paragraph 1 and Article 310 of the Revised Penal Code read as follows:

"Art. 309. Penalties. -- Any person guilty of theft shall be punished by:

1. The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be."

"Art. 310. Qualified Theft. -- The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, or fish taken from a fishpond or fishery."

Under Article 309, the penalty for ordinary theft or simple theft of property valued at P27,000.00 is prision mayor in its minimum and medium periods to be imposed in its maximum period. Since the theft is qualified, the penalty is two degrees higher.

This brings Us to the question: what penalty is two degrees higher than the penalty of prision mayor in its minimum and medium periods to be imposed in its maximum period?

In going up two degrees higher, should the starting point be the maximum period of prision mayor in its minimum and medium periods, or should the starting point be the entire penalty of prision mayor in its minimum and medium periods?

In a similar case where the problem was how to go one degree lower, this Court held:

"In the instant case, the penalty provided by law is prision mayor which should be applied in its maximum period because of the complex nature of the offense charged. x x x For the purpose of determining the penalty next lower, the penalty that should be considered as a starting point is the whole prision mayor, it being the penalty prescribed by law, and not prision mayor in its maximum period which is only the penalty actually applied because of an attending circumstance. The penalty next lower to prision mayor is prision correccional and this latter penalty should be applied in its maximum because of the circumstance abovementioned." [12]

By analogy, in going up two degrees higher the start-ing point should be the penalty of prision mayor in its minimum and medium periods and not the maximum period of the said penalty. The penalty two degrees higher than prision mayor in its minimum and medium periods is reclusion temporal in its medium and maximum periods ranging from 14 years, 8 months and 1 day to 20 years. The penalty to be imposed upon the defendant should be the maximum period of this penalty and said maximum has a range of 18 years, two months and 21 days to 20 years.

In determining one degree lower, for the purpose of applying the Indeterminate Sentence Law, the same principle enunciated in the aforecited case of *People vs. Gonzales*, supra, should be applied.

WHEREFORE, the judgment of the lower court is hereby modified and instead of imposing upon him the penalty of reclusion perpetua, and appreciating the mitigating circumstance of voluntary surrender, We hereby sentence the defendant to an indeterminate sentence of eleven (11) years of prision mayor as minimum to eighteen (18) years two (2) months and twenty-one (21) days of reclusion temporal as maximum with costs.

Barredo, (Chairman), Aquino, Concepcion, Jr., and De Castro, JJ., concur.

Abad Santos, J., see separate opinion.

Escolin, J., no part.

[1] pp. 3-4, Appellant's Brief.

[2] p. 6, Appellant's Brief.

[3] p. 6, Solicitor's Brief.

[4] U.S. vs. Soriano, 9 Phil. 441; U.S. vs. Jamero, 10 Phil. 137.

[5] pp. 15-16, tsn, October 27, 1972.

[6] p. 10, tsn, October 27, 1972.

[7] tsn, p. 18, November 10, 1972.

[8] pp. 31-32, Appellant's Brief.

[9] tsn, p. 18, November 10, 1972.

[10] tsn, p. 19, November 10, 1972.

[11] People vs. Valera, 5 SCRA 910.

[12] People vs. Gonzales, 73 Phil. 549-551.

CONCURRING AND DISSENTING OPINION

ABAD SANTOS, J.:

I agree with the main opinion that the penalty which is two degrees higher than prision mayor minimum and medium will be reclusion temporal medium and maximum. This penalty has the following periods: Minimum - 14 years, 8 months and 1 day to 16 years, 5 months and 10 days; Medium - 16 years, 5 months and 11 days to 18 years, 2 months and 20 days; Maximum - 18 years, 2 months and 21 days to 20 years.

Art. 309 of the Revised Penal Code stipulates the application of the maximum period for the case at bar. But since the appellant is entitled to the mitigating circumstance of voluntary surrender, the maximum imposable penalty should be within the range of the medium period, i.e. 16 years, 5 months and 11 days to 18 years, 2 months and 20 days. The maximum of the penalty imposed in the judgment is within the range of the maximum period which I believe is not correct.

Accordingly, while I concur in the finding that the appellant is guilty as charged, I dissent in respect of the penalty imposed in the main opinion.

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