

FEDERICO SORIANO, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G. R. No. L-3008. March 19, 1951

Ponente: JUGO, J.

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JUGO, J.:

Federico Soriano was charged on August 22, 1945, with the crime of theft of one electric motor marked "Cyclix," with Western Electric Company cable, and one lantern slide projector, with their corresponding accessories, for the operation of motion pictures, valued at P6,000, belonging to the Eagle Cinema Co., Inc., represented by its President-Manager, Teodoro S. Benedict©.

After trial he was convicted by the Court of First Instance of Iloilo and sentenced to suffer an indeterminate penalty of from six (6) months of arresto mayor to two (2) years, eleven (11) months and eleven (11) days of prision correccional, with the accessory penalties of the law, and to pay the costs. He appealed to the Court of Appeals, which modified the above judgement and sentenced him to three (3) months of arresto mayor, as minimum, to one (1) year, eight (8) months and twenty-one (21) days of prision correccional, as maximum, with the accessory penalties of the law, and to pay the costs, ordering that the lantern slide projector (Exhibit C) and the "Cyclix" motor generator (Exhibit D) be returned to the owner, the Eagle Cinema Co., Inc.

The defendant filed a petition for certiorari in this Court against the Court of Appeals. Only questions of law are raised which may be reduced to the issue whether or not the acts of the accused, as found by the Court of Appeals, constitute theft.

The Court of Appeals, in a carefully prepared opinion, held as follows:

"Taking into account the respective contentions of the parties and the evidence produced in support thereof, We are of the opinion despite Emilia Saenz' letter (Exhibit E) where she writes to Benedicto that Federico Soriano was only in charge of collecting the rents and of transmitting them to her, that appellant was their representative and duly appointed substitute administrator in her stead. It seems also clear that, because of the disturbance caused by the war, the Eagle Cinema Co., Inc., was indebted to the Saenz for rents due on account of the lease; and that appellant in the exercise of the powers conferred upon him (Exhibit 16) could have sued said debtor to foreclose the mortgage executed by the Eagle Cinema Co., Inc., in favor of his principals, if he could not have come to a better understanding with Teodoro S. Benedicto. It is no longer disputed that the properties of the Eagle Cinema Co., Inc., in the building were lost, and that the lantern slide projector (Exhibit C) and the "Cyclix" motor generator (Exhibit D) have been found in the house and in the possession of the appellant after having repeatedly denied any knowledge of the equipment and accessories of the Cine and disclaimed any responsibility for their loss. Considering these facts that have been fully established in the case, and particularly the manner and circumstances under which said projector and generator were taken from the building of the Eagle-Theater, can appellant be held liable for the crime of theft of such properties?

"Counsel for appellant contends that the latter is entitled to an acquittal, because in the case at bar

"1. All the elements of theft are not present;

"2. There was no criminal intent (on the part of the appellant) ;

"3. The action of the appellant is susceptible of two interpretations, both consistent with his innocence or guilt. Therefore, he should be acquitted; and

"4. The guilt of the appellant has not been proven beyond reasonable doubt.

"The crime of theft of which appellant stands charged and convicted, is covered by the 1st paragraph of Article 308 of the Revised Penal Code, which read as follows:

'Art. 308. Who are liable for theft.—Theft is committed by any person who, with intent of gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.'

and we agree with counsel for appellant that in order to justify a conviction for theft the following elements must concur, namely: (a) that a chattel or personal property must have been taken or abstracted; (b) that there be intent of gain when the taking away of the article took place; (c) that the property stolen be owned by another; and (d) that in the taking, neither violence or intimidation against persons or force upon things be employed.

"With regard to the 'taking,' appellant contends that he did not execute this element of theft because being an attorney-in-fact of the heirs of Saenz, he acted for his principals, and for all intents and purposes of the power conferred upon him, he was the principal himself and, naturally, he could not steal something belonging to him under the principle that 'Rei nostrae furtum facera rum possumtis'. The power of attorney (Exhibit 16) clearly empowered the appellant 'to ask, demand, sue for, recover, collect and receipt for any and all sums of money * * * and other things of value of whatsoever nature or kind,' and gave him 'full power to do anything requisite and necessary to be done in the premises as fully as I (Emilia Saenz) could if personally present, hereby ratifying and confirming all that my said attorney and substitute attorney shall lawfully do or cause to be done by virtue hereof.' But appellant fails to take two important factors into consideration, to wit: firstly, that when he took, as he finally admitted to have taken, the lantern slide projector and the 'Cyclix' motor generator from the Eagle-Theater, he did not really act in behalf and representation of his principals, for otherwise he would not have repeatedly denied having taken said properties and insinuated that they had been taken by the Japanese; and secondly, that even his principals could not have taken and appropriated said properties for themselves without previous and proper action in court, because no mortgage creditor can foreclose the property mortgage to him without judicial proceedings. Thus, the doctrines laid down by the Supreme Court in the case of United States vs. Reyes, (Phil., 441); People vs. Soriano, (50 Phil., 203) Manila Mercantile Co. vs. Flores (50 Phil., 759) and Levy Hermanos, Inc., vs. Ramirez (60 Phil., 978), on which appellant builds up his contention, are of no bearing on the case at bar.

"Discussing further this element of 'taking,' it can be added that the projector (Exhibit C) and the generator (Exhibit D) were in the premises of the Eagle Theater, and that sometime in September, 1944, when the Japanese Ishii ceased to operate the Cine, appellant received the keys of the building where said equipment was stored. So, the question that remains to be determined in connection with this point is whether appellant, having received those properties, could, for the purposes of the crime of theft, take things already in his possession. It is to be remembered that the apparatus, accessories and equipment of the Cine belonged to the Eagle Cinema Co., Inc., though they were mortgaged to appellant's principals; that the mortgage was never foreclosed, and that neither Teodoro S. Benedicto, as President, General Manager and majority stockholder of said corporation, nor any other duly authorized person in his stead, had ever entrusted said properties to him for the execution of the mortgage, or for any other purpose. And even conceding for the sake of argument that with the return of the keys and the delivery of the building to appellant, he would have received the physical possession of the machinery therein located, yet, the acquisition of such possession did not carry with it the power to exercise any act of dominion over said chattels. Among the leading cases that can be cited to illustrate this phase of the problem, we quote the

following from Question No. XXXI of Viada (vol. 3, page 433, 4th ed.) ;

"Is the shepherd, who takes away and converts to his own use several head of cattle under his care, guilty of the crime of estafa within case No. 5 of article 548, or of theft, defined and punished in article 533, No. 2, of the Spanish Penal Code'— The Supreme Court has decided that it was this latter and more serious crime that was committed: 'Considering that the crime of theft is committed when one, with intent of gain, and without using violence or intimidation against persons, or force upon things, takes away personal property of another without the owner's consent; and in the present case Manuel Diaz Castilla undoubtedly committed the crime defined, for, with intent of gain, he took away two bucks and a female goat, against the will of his master, the owner of said animals, which were under his care as shepherd; Considering that, in holding that the crime committed was that of theft and not of estafa, as claimed by the appellant, ignorant of the true elements which constitute the latter crime, the lower court did not commit any error of law, nor violate any legal provision, as contended by defendant's counsel in support of this appeal.' (Decision rendered on June 23, 1886, published in the Gazette of September 16, p. 189.)

"And this is so, because as stated in the case of United States vs. Nieves de Vera, (43 Phil. 1000):

'When the delivery of a chattel or cattle 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 net of disposing thereof with intent of gain and without the consent of the owner constitutes the crime of theft'

"As to the element of 'intent of gain,' We further declare that whenever a cattle or other personal property value is abstracted without the consent of the owner, and the evidence on record does not show any other reason for the abstraction, it is to be presumed and logically inferred that such act was motivated by an intent of gain." (Decision, pp. 7-12.)

The petitioner shields himself behind the power-of-attorney, Exhibit 16, granted to him by Emilia Saenz, the owner of the building which was rented by the Eagle Cinema Co., Inc., the essential part of which reads as follows:

"To ask, take, sue for, recover, collect and receive any and all sums of money, debts, dues, accounts, interests, demands, and other things of value of whatsoever nature or kind as may be or hereafter be due, owing, payable or belonging to the community entrusted to me (Emilia Saenz) in the City of Iloilo and to have, use, and take any and all lawful ways and means for the recovery thereof by suit, attachment or otherwise, and to compromise, settle and agree for (Decision, 5-6.)

It is clear that said power of attorney did not authorize the petitioner to take away the projector and the generator, hiding them in his house and denying to the owner and the police authorities that he had them in his possession, which was an illegal act, not covered by his power-of-attorney. He was authorized only to ask, take, sue for, recover, collect, etc., sums of money, debts, dues, accounts and other things which were or might thereafter be due, etc., to his principal Emilia Saenz. This authority referred mainly to the collection of the rents of the building rented by the Eagle Cinema Co., Inc. The projector and the generator were not due or owing to Emilia Saenz. It is not to be supposed that Saenz herself would have denied the possession of those articles. If it was the purpose of the petitioner only to protect those instruments from looting, there is no reason why he should have concealed them from the owner and denied having them.

Even though the equipment, including those articles, were mortgaged to Saenz to guarantee the payment of the rents due on the building, yet there had been no foreclosure and neither she nor the petitioner had the authority to take away and conceal those articles from the owner or the police authorities. The Eagle Cinema Co., Inc., had the right to possess said articles.

With regard to the element of taking or asportation, there is no doubt that it existed, notwithstanding that the petitioner had been entrusted with the keys of the building where they were kept. This point has been settled by Viada, numerous decisions of the Supreme Court of Spain and of the Philippines, some of which authorities are cited above.

As to the element of intent, it is clear that when the petitioner carried away and concealed from the owner and the police authorities the above-mentioned articles, he acted with intent of gain. Intent is a mental state, the existence of which is shown by the overt acts of a person, which in the present case unmistakably point to that intent.

In view of the foregoing, the petition for the writ of certiorari is denied, with costs against the petitioner. So ordered.

Moran, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor and Reyes, JJ., concur.

DISSENTING

PARAS, J.,

I dissent.

Under the facts of this case, as found by the Court of Appeals, the petitioner cannot rightly be convicted of the crime of theft, because he had not acted with intent of gain. The Eagle Cinema Co., Inc. was indebted to the Saenz heirs (represented by Emilia Saenz) for rents of a building leased by the company. The apparatus, accessories and equipment of the Eagle Cinema Co., Inc, contained in the leased building, were mortgaged to Saenz to secure the payment of said rents. The petitioner was the representative and duly appointed substitute administrator of the premises, in place of Emilia Saenz. Indeed, the petitioner could have sued the Eagle Cinema Co., Inc., and foreclosed its mortgage.

The fact that the lantern slide projector and the "Cyclix" motor generator forming part of the equipment of the Eagle Co., Inc., were taken by the petitioner (after the Japanese Ishii, who had ceased to operate the business, delivered to the petitioner the keys of the building where said equipment was stored) and removed to and kept in petitioner's house, is consistent with the theory that the petitioner, to protect the interest of his principals, in good faith believed that he had the right to do so under his powers and by virtue of the mortgage covering said equipment, especially because the petitioner was empowered not only to recover, collect or receive money, debts or dues, but also to take or recover "other things of value of whatsoever nature or kind" that may be due from the lessee. That the petitioner was wrong in his belief, or had been so over-zealous in the matter as to have even denied that the articles in question were in his possession, made him at most civilly liable but does not go to show that he acted with intent of personal profit. The intent of gain cannot be inferred from the bare acts of the petitioner, in view of the peculiar circumstances of the case that supply plausible reasons for said acts. Had he sold or tried to dispose of the articles, intent of gain would have been established.

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