

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICASIO BUCO, DEFENDANT-APPELLANT.

G.R. No. L-2633. February 28, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

In the court of first instance of Manila, Nicasio Bucu, Manuel Abad and Gabino Madamba were charged with qualified theft, the information alleging:

"That on or about the 29th day of July, 1948, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, 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 one jeep valued at P1,500, bearing serial No. 96380 and plate No. 6596, belonging to the Ram Car, Inc., to the damage and prejudice of the said owner in the aforesaid sum".

At the arraignment on August 95 all the defendants pleaded not guilty. On August 27, 1943, the prison officer was directed to produce the body of Nicasio Duco before the court of first instance for trial on the next day. The record slums a decision dated August 30, 1948, signed by Judge Buenaventura Ocampo reciting that Nicasio Bucu pleaded guilty, and sentencing him accordingly to "suffer an indeterminate sentence of from six months and one day to four years, two months and one day of prision correccional, with the accessory penalties provided by law, and to pay 1/3 of the costs". The accused was not ordered to return the stolen property because it had been duly recovered.

The defendant appealed in due time.

His attorney de-officio, pointing out that the case against the other two coaccused had subsequently been dismissed, argues that herein appellant may not be convicted. He cites a portion of our decision in *People v. Ong Chiat Lay*, 60 Phil., 788, wherein we stated:

"Appellant was prosecuted on the theory that he induced his said co-defendants to set fire to the building. Hence the three were jointly charged on an information alleging conspiracy among them. This allegation of conspiracy, however, has been negatived by the acquittal of appellant's co-defendants. The same may be said with regards to the theory that appellant had induced his co-defendants to perpetrate the unlawful deed; for it seems clear that one cannot be held guilty of having instigated the commission of a crime without its first being shown that the crime has been actually committed by another". (Underscoring by appellant).

That precedent is inapplicable. The accused therein did not plead guilty. Wherefore, the conspiracy had to be proven as a question of fact. Here, the appellant, by Ms plea of guilty, admitted all the allegations of fact made in the information, among them, the conspiracy. Anyway he admitted having stolen and carried away one jeep valued at P1,500.00, etc. That is the essence of the crime, enough to fasten liability upon him.

Counsel thereafter contends that the judgment should be reversed because the record does not show that in pleading guilty the appellant was informed of his right to be represented and advised by an attorney-at-law. This

Court has repeatedly held that the failure of the record to disclose affirmatively that the trial judge told the accused of his privilege to have counsel is not ground for reversal, the presumption being that the trial judge complied with his duty to so advise, and such presumption may only be overcome by affirmative showing to the contrary [1].

The crime is qualified theft punished by Article 310 (as amended) in connection with Article 309, paragraph 3 of the Revised Penal Code, inasmuch as the jeep was valued at P1,500.00. The penalty is prision mayor in its medium and maximum periods, which in view of the plea of guilty must be imposed in the minimum degree. Applying the Indeterminate Sentence Law, the appellant is sentenced to imprisonment for not less than 4 years 2 months and 1 day of prision correccional nor more than 8 years and 1 day of prision mayor. Thus modified, the appealed judgment will be affirmed. So ordered.

Moran, C.J., Ozaeta, Pablo, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

[1] U.S. v. Labial and Abuso, 27 Phil., 62; U.S. v. Custan, 28 Phil., 19; U.S. v. Kilayco, 31 Phil., 371; U.S. v. Escalante, 36 Phil., 743; People v. Abuyen, 52 Phil., 722; People v. Ocbina and Pamero, 63 Phil., 528; and People v. Javier, 64 Phil., 413.

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