

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APELLEE, VS. POCHOLO DEVELOS Y JABONETE, ACCUSED-APPELLANT.

Ponente: LAZARO-JAVIER, A.C., J.

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LAZARO-JAVIER, A.C., J.:

This appeal assails the Decision[1] dated October 29, 2012 of the Regional Trial Court (RTC), Branch 201, Las Piñas City, in Criminal Case No. 08-0955, finding appellant Pocholo Develos y Jabonete guilty of violation of PD 1612 (Anti-Fencing Law of 1979) and sentencing him to 6 years of prision correccional, as minimum, up to 7 years of prision mayor, as maximum.

By Information dated October 8, 2008, appellant was charged with violation of PD 1612, as follows:

That on or about the 13[th] day of November 2008, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above named accused did, then and there, willfully, unlawfully and feloniously possess, keep, acquire, sell, and dispose of a Honda ANF motorcycle bearing Plate No. TC7714, well knowing that the same was stolen, or should have been known to him to have been derived from the proceeds of the crime of theft or robbery.

CONTRARY TO LAW.[2]

On arraignment, appellant pleaded not guilty.[3]

During pre-trial, the parties agreed that:

- The trial court had jurisdiction over the case; and,
- Appellant Pocholo Develos y Jabonete was the same person accused in the Information.[4]

On August 26, 2009, the prosecution filed a Motion to Admit Amended Information, alleging that after preliminary investigation on Rene Areta, there existed probable cause to indict him for violation of PD 1612, in conspiracy with appellant. Thus, the prosecution moved to admit Amended Information dated July 16, 2009 which charged appellant with violation of PD 1612, in conspiracy with Areta.[5]

Appellant opposed and argued: He had already been arraigned under Information dated October 8, 2008 and trial of that case had already started. Sec. 14, Rule 110 of the Revised Rules of Court provided that “after the plea and during trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.” The amended Information sought to be admitted by the prosecution introduced a substantial amendment, i.e. conspiracy with Areta. This would violate his constitutional right to be informed of the nature and cause of accusation against him.[6]

By Order dated December 9, 2009, the trial court agreed with appellant and denied the motion to amend Information dated October 8, 2008.[7] Hence, trial on the original Information proceeded.

The prosecution presented SPO3 Esmer Cacho, PO3 Rodolfo Dela Cruz, and PO3 Jerry Sunga, members of the Anti-Carnapping Division of the Philippine National Police (PNP) Southern Police District, Bonifacio, Taguig

City. Their testimonies may be summarized, as follows:

On November 13, 2008, their office received information that there were persons in Las Piñas City, selling a stolen motorcycle. Their team leader P/I Dominador Pepino organized a buy bust operation consisting of the following members: PO3 Rodolfo Dela Cruz, as poseur buyer, and SPO3 Esmer Cacho and P/I Bopete, as back up members. PO3 Dela Cruz was able to set up a meeting place with the purported sellers at Sambayanang Village, Las Piñas City.

The team proceeded to the meeting place with the informant and waited for the sellers, which turned out to be appellant and Rene Areta. The latter arrived on board a Honda type motorcycle with plate number TC-7714. PO3 Dela Cruz approached the two and asked if they were selling the motorcycle, to which appellant answered in the affirmative. PO3 Dela Cruz then inquired how much they were selling the motorcycle and appellant replied P6,000.00.

When PO3 Dela Cruz asked if the motorcycle had papers, Areta, this time, explained that it was a “talahib” or something without any certificate of registration, thus, its low selling price of only P6,000.00. PO3 Dela Cruz handed the money to appellant and thereafter gave the pre-arranged signal by scratching his feet for the buy bust team to arrest appellant and Areta. When SPO3 Cacho approached their group, he saw appellant receive the money from PO3 Dela Cruz. The group then introduced themselves as police officers and arrested appellant. Areta, however, was able to evade arrest.

Then, appellant was informed of his constitutional rights, confiscated the boodle money from his possession, and brought to the police station along with the motorcycle. Appellant, the boodle money, and the motorcycle were turned over to the case investigator PO3 Jerry Sunga who prepared an Investigation Report dated November 17, 2008[8] and resolved to file the complaint for violation of PD 1612 against appellant.[9]

By Initial Verification dated November 14, 2008, the Land Transportation Office (LTO) stated that plate number TC-7714 belonged to a certain Javier Espinola Jr..[10] Further, per Physical Identification No. PTR-885-2008 of even date, the PNP crime laboratory found that the motorcycle's plate number was tampered.[11]

Thereafter, under Final Verification dated April 23, 2009, the LTO authenticated its initial verification that the motorcycle bearing plate number TC-7714 belonged to a certain Javier Espinola Jr.. Further, plate number TC-7714 was found to be registered for a Hyosung EZ 100 type motorcycle, not to the confiscated Honda ANF 125 type motorcycle.[12]

After the prosecution had rested its case, appellant filed a Motion for Leave to file Demurrer to Evidence dated September 16, 2010. He alleged that the prosecution failed to establish his guilt with moral certainty because: 1) The owner of the alleged stolen motorcycle was never presented in court to prove the crime of robbery or theft. 2) The prosecution failed to show that the boodle money contained appellant's fingerprints. 3) There was no evidence that appellant knew or should have known that subject motorcycle came from the proceeds of robbery or theft.[13]

In its Opposition dated October 15, 2010, the prosecution countered that based on the evidence presented, appellant's guilt for violation of PD 1612 was duly established because mere possession of the proceeds of the crime of robbery or theft was enough to give rise to a presumption of fencing.[14]

Under Order dated October 19, 2010, the trial court denied the demurrer to evidence and ruled that since the law created a presumption that mere possession of any goods, article, item, object, or anything of value which had been the subject of robbery or theft shall be prima facie evidence of fencing, appellant should be given the opportunity to rebut the same presumption.[15]

Thereafter, trial continued for presentation of defense evidence.

Appellant took the stand and testified:

On November 13, 2008, he was at home in Sambayanihan Peoples Village, C.A.A., Las Piñas City watching television when two men suddenly arrived. They shouted his nickname “Purong”, thus, he went out to see who they were. One of the men introduced himself as PO3 Rodolfo Dela Cruz and pointed at the motorcycle parked in front of his house. PO3 Dela Cruz showed him a document form Camp Fort Bonifacio stating that the motorcycle was stolen. He was surprised because he did not know that the motorcycle was carnapped as Rene Areta only asked his permission to park it in front of his house and promised to return in just a short time. Appellant noticed that the key of the motorcycle was left on the ignition, thus, he took the key for safekeeping.

Despite, Areta's representation, he did not return to retrieve his motorcycle for four days, or until police officers came and said the same was stolen. The police officers then invited him for questioning about the alleged stolen motorcycle at the Anti-Carnapping Office in Fort Bonifacio. There, he was forced to admit that the motorcycle was stolen and forced to touch the boodle money.

He denied the accusation against him and refused to touch the boodle money by hiding his hands inside his shirt. He was also asked to sign and affix his thumb mark on a piece of paper but was not able to read the contents thereof. Thereafter, he was detained and charged with violation of PD1612.[16]

Sheena Marie Jabonette Develos, appellant's sister, also testified and corroborated appellant's testimony.[17]

By Decision dated October 29, 2012, the trial court found appellant guilty as charged.[18]

Appellant now faults the trial for the prosecution's alleged failure to prove his guilt beyond reasonable doubt. He argues: 1) the prosecution witnesses' testimonies were full of inconsistencies making them doubtful; 2) the prosecution failed to present proof that he knew that the motorcycle was derived from the proceeds of the crime; and 3) the prosecution failed to prove that he had any intent to gain.[19]

The People, through Solicitor General Francis Jardeleza, Senior State Solicitor Maria Hazel Valdez-Acantilado, and John Dominic Obias, counters that the trial court correctly convicted appellant, the prosecution having established his guilt beyond reasonable doubt. It argues: 1) Fencing is *malum prohibitum* and possession of any item from the proceeds of the crime of robbery or theft creates a presumption of fencing. 2) Appellant knew that the motorcycle was “*talahib*”, and knowing this, he tried to sell it for a cheap price and, thus, gain therefrom. 3) Appellant's denial must fail over the positive identification of the prosecution witnesses. 4) According to PD 1612, “any person guilty of fencing shall be punished by xxxx prision correccional in its minimum and medium periods, if the value of the property involved is more than 200 pesos but not exceeding 6,000 pesos.” Since the stolen motorcycle here was valued at P6,000.00, the applicable penalty is prision correccional in its minimum and medium periods. Applying the Indeterminate Sentence Law, and absent any mitigating or aggravating circumstances, the penalty should be the medium or maximum period of *arresto mayor*, as minimum, up to prision correccional in its minimum and medium periods, as maximum.[20]

In lieu of Reply, appellant filed a Manifestation dated January 22, 2014, stating that in view of the exhaustive discussion of the assigned errors in the appellant's brief, a reply brief will no longer be filed as the latter would only be a rehash of his previous discussion.[21]

We affirm.

Section 2(a) of P.D. 1612 defines fencing as “the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft.”

The elements of fencing are: 1) robbery or theft has been committed; 2) the accused, who took no part in the robbery or theft, “buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article or object taken” during that robbery or theft; 3) the accused knows or should have known that the thing derived from that crime; and 4) he intends by the deal he makes to gain for himself or for another.[22]

These elements are all present in this case.

First. The prosecution witnesses testified that on November 13, 2008, the PNP-Southern Police District, Anti-Carnapping Division received information that a stolen motorcycle was being sold at Las Piñas City. This led to a buy bust operation wherein appellant was arrested, and the motorcycle, confiscated from appellant. The fact that the confiscated motorcycle came from the crime of theft or robbery was corroborated by Physical Identification Report No. PTR-885-2008, where the PNP crime laboratory found its plate number TC-7714, tampered. Also, the confiscated motorcycle was a Honda ANF but subsequent verification from the LTO revealed that what was registered with their office was a Hyosung EZ 100 motorcycle owned by a certain Ernesto Javier. The prosecution witnesses' testimonies, coupled by the PNP crime laboratory report and LTO verification report established the fact that neither appellant, nor Areta, owned the motorcycle, and its plate number was tampered, to the prejudice of its real owner. In *First Nationwide Assurance Corporation v. Court of Appeals*[23], involving a similar case of fencing, the Supreme Court considered the damaging testimony and the documents of the prosecution, and accused's failure to rebut such evidence to have indubitably established that the accused/seller's purported ownership of the vehicle was a sham, and the vehicle, a stolen item.

Appellant, nonetheless, claims that the testimonies of the prosecution witnesses are inconsistent, to whether PO3 Dela Cruz and SPO3 Cacho went together to approach appellant and Areta during the buy bust operation; whether there was a pre-arranged signal to arrest appellant; whether it was Areta or appellant who answered when asked about the selling price; and whether it was appellant and Areta who approached the buy bust team or the other way around.

These inconsistencies, if at all, pertain to trivial matters which do not affect appellant's culpability for violation of PD 1612. *People v. Harovilla*[24] stated that inconsistencies in the testimonies of witnesses with respect to minor details and collateral matters do not affect the substance of these testimonies, as they even serve to strengthen rather than destroy the witnesses' credibility. More, the assignment of values to the testimonies of witnesses is virtually left, almost entirely, to the trial court which has the opportunity to observe their demeanor on the stand. Unless there are substantial matters that might have been overlooked or discarded, the trial court's findings of credibility will not generally be disturbed on appeal.

Second. Appellant sold the motorcycle to PO3 Dela Cruz who testified:

Prosecutor: You said they arrived, when they arrived what happened?

A:

When I saw them, I approach(ed) and asked them if they (we)re selling a motorcycle.

Q:

And what was the answer of (appellant) if any?

A:

Yes, xxxx.

Q:

And when he answered yes what did you do?

A:

I asked him how much (wa)s the motorcycle, and he told me that it's P6,000.00.

Q:

Did he point to you where the motorcycle for sale was?

A:

Yes, ma'am.

x x x

x x x[25]

In *Dizon-Pamintuan v. People*[26], the Supreme Court considered the second element of fencing established since the accused therein was found to have sold the stolen jewels.

Third. Appellant maintains that he did not know that the motorcycle was stolen and the prosecution purportedly failed to prove otherwise.

We disagree. *Dizon-Pamintuan*[27] explained that one is deemed to know a particular fact if he has the cognizance, consciousness or awareness thereof, or is aware of the existence of something, or has the acquaintance with facts, or if he has something within the mind's grasp with certitude and clarity. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence unless he actually believes that it does not exist. On the other hand, the words "should know" denote the fact that a person of reasonable prudence and intelligence would ascertain the fact in performance of his duty to another or would govern his conduct upon assumption that such fact exists. Knowledge refers to a mental state of awareness about a fact. Since the court cannot penetrate the mind of an accused and state with certainty what is contained therein, it must determine such knowledge with care from the overt acts of that person.

Here, appellant knew or should have known that the motorcycle came from the proceeds of robbery or theft. PO3 Dela Cruz testified:

Q: Where was the motorcycle during your conversation?

A: In their possession, ma'am.

Q: When they arrived, were they on board any vehicle?

A: They are riding on the said motorcycle.

Q: When you were told that the price of the motorcycle (wa)s P6,000.00, was Areta there?

A: Yes, ma'am, he (was) there.

Q: And after you were told that the price (wa)s P6,000.00, what happened next?

A: I asked Areta if there is a paper.

Q: And what was the response of Areta?

A: He told me that it (wa)s a “talahib” that why (he was) selling it (for) a cheaper price.[28]

Appellant knew that the motorcycle was not properly documented and he was selling it at a lower price. This logically shows that appellant knew it was a stolen item. In any case, appellant never denies that the motorcycle was found in his possession. P.D. No. 1612 expressly provides that "mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing". Therefore, appellant is presumed to have knowledge of the fact that the motorcycle found in his possession was the product of robbery or theft.

Fourth. Appellant further argues that even if he had the motorcycle in his possession, the prosecution failed to establish any intent to gain for himself.

The argument must fail. Contrary to appellant's allegation, there was evident intent to gain on his part considering that during the buy bust operation, he was caught selling a stolen motorcycle and receiving P6,000.00 as purchase price therefor. PO3 Dela Cruz testified:

Q:

After that what happened about the sale?

A:

I handed the money to (appellant), ma'am.

Q:

And when you handed the money to him did he receive it?

A:

Yes, ma'am he receive(d) it.

Q:

After he received the money what took place?

A:

We introduced ourselves as police officers and other company approach us and then we fix the arrest.

Q:

After that what happened, after the arrest?

A:

We inform(ed) him (of) his right to remain silent to get a counsel and we brought him to the office.

Q:

What about the vehicle, what happened to it?

A:

We also brought the motor vehicle, as evidence, ma'am.

Q:

Where did you bring it?

A:

In our office at Fort Bonifacio.

Q:

While it was there, what happened to the vehicle?

A:

We requested for a macro etching on the same day, ma'am.

Q:

And was there any result of that macro etching?

A:

According to the result the engine number was tampered.

Q:

And after you learned that it was tampered, what step did you take if any?

A:

When we (knew) that it was tampered we filed a case here.

xxxx

xxxx

Q:

You said you gave the money to the accused?

A:

Yes, ma'am.

Q:

During the arrest what happened to the money?

A:

We (got) the money (from) his possession xxxx.[29]

Too, PD 1612 states that “mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing.” It was incumbent upon appellant to overthrow this presumption by sufficient and convincing evidence. This appellant failed to do. Appellant's mere alibi that the motorcycle was left in front of his house by Areta who promised to return to retrieve it is highly doubtful and must fail in the face of the prosecution witnesses' testimony and documentary evidence. *Dunlao Sr. v. Court of Appeals*[30] held that the presumption of fencing under PD 1612 must be upheld in light of appellant's shallow denial and alibi, since a disputable presumption on this score is sufficient until overcome by

contrary evidence. The narration of how the items were simply dumped at the accused's compound by someone; that the latter did not return thereafter; that the accused took it upon himself to protect and transfer the items inside his compound items left by that person without any agreement,

the entire transaction with an aura of illegitimacy, as in this case.

All told, the trial court did not err in finding appellant guilty of violation of PD 1612, albeit, We must modify the penalty.

Sec. 3, PD 1612 provides:

Section 3. Penalties. Any person guilty of fencing shall be punished as hereunder indicated:

xxxx xxxx

c) The penalty of prision correccional in its minimum and medium periods, if the value of the property involved is more than 200 pesos but not exceeding 6,000 pesos.

We agree with the OSG that since the stolen motorcycle was valued at P6,000.00, the applicable penalty is prision correccional in its minimum and medium periods ranging from 6 months and 1 day to 4 years and 2 months. Applying the Indeterminate Sentence Law, in the absence of any mitigating or aggravating circumstance, the imposable penalty should be 2 months and 1 day to 6 months of arresto mayor, as minimum, up to 6 months and 1 day to 4 years and 2 months prision correccional, as maximum.

ACCORDINGLY, the appeal is DENIED and the Decision dated October 29, 2012, AFFIRMED with MODIFICATION, sentencing Pocholo Develos to 6 months of arresto mayor, as minimum up to 4 years of prision correccional, as maximum .

SO ORDERED.

Castillo, (Chairperson) and Galapate-Laguilles, JJ., concur.

[1] Rollo, pp. 40-42.

[2] Record, p. 1.

[3] Id., p. 86.

[4] Id., p. 109.

[5] Id., p. 189.

[6] Id., pp. 186-188.

[7] Id., pp. 181-182.

[8] Id., pp. 257-259.

[9] TSN, April 20, 2009, pp. 4-10, May 4, 2009, pp. 3-22., July 24, 2009, pp. 5-12, February 12, 2010, pp. 10-11, May 21, 2010, p. 3.

[10] Id., p. 12.

[11] Id., p. 263.

[12] Id., p. 261.

[13] Id., pp. 329-336.

[14] Id., pp. 345-346.

[15] Id., p. 328.

[16] TSN, January 24, 2011, pp. 3-4, February 7, 2011, pp. 2-13, March 14, 2011, pp. 3-6, May 9, 2011, pp. 3-11, July 6, 2011, pp. 5-7.

[17] TSN, October 1, 2012, pp. 2-8.

[18] Rollo, pp. 40-42.

[19] Id., pp. 51-65.

[20] Id., pp. 81-100.

[21] Id., p. 101.

[22] Dimat v. People, G.R. No. 181184, January 25, 2012.

[23] G.R. No. 128797, November 19, 1999.

[24] G.R. No. 145719, August 20, 2002.

[25] TSN, July 24, 2009, pp. 8-9.

[26] G.R. No. 111426. July 11, 1994.

[27] Ibid.

[28] TSN, July 24, 2009, pp. 9-10.

[29] TSN, July 24, 2009, pp. 10-13.

[30] Ibid.

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