

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. ONOFRE SANTOS AND EXEQUIEL SANTIAGO, DEFENDANTS AND APPELLEES, ERLINDA N. JAVALERA, COMPLAINANT AND APPELLANT.

G.R. No. L-25413. October 31, 1969

Ponente: DIZON, J.

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DIZON, J.:

On March 23, 1964 and in the Municipal Court of Bocaue, Bulacan, Erlinda N. Javalera and Araceli N. Vistan, sisters, filed a complaint for qualified theft against Onofre Santos and Exequiel Santiago (Criminal Case No. 1547) alleging therein that on or about the third day of February 1964, in Taal, Bocaue, Bulacan and within the jurisdiction of said Court, ?

"x x x x x the said accused conniving and confederating, and helping one another, did then and there wilfully, unlawfully and feloniously, and with intent to gain, take, steal and carry away 150 cavaness of palay, valued at P2,250.00 without the knowledge and consent of the owners thereof;

"That at the time the accused Onofre Santos committed the offense, he was then the tenant of the undersigned complainants and the palay stolen was the 1963-64 harvest of the land he was tilling for the undersigned complainants and in the taking, stealing, and carrying away of the said property the said accused acted with serious breach of the confidence reposed on him by his employers, which fact was known to his co-accused Exequiel Santiago who aided, abetted, and urged the said taking for their mutual gain and benefit, and to the damage and prejudice of the undersigned complainants in the amount of P2,250.00."

After the corresponding preliminary examination, the Court, on March 31, 1964, issued the warrants for the arrest of the defendants and fixed their bail bonds at P2,000 each. When the case was called for the second stage of the preliminary investigation, the defendants waived their right to present exculpatory evidence, for which reason the Court forwarded the record of the case to the Court of First Instance for further proceedings. Upon receipt thereof in the latter court, Special Counsel Faustino T. Chiong, re-presenting the Provincial Fiscal of Bulacan, re-investigated the case, and thereafter, instead of an information against the defendants he filed a motion to dismiss the case on April 28, 1965, alleging therein that, upon the evidence presented before the Municipal Court and the additional evidence submitted to him by the complainants (photostatic copy of Tax Declaration No. 1402; Idem of Tax Declaration No. 1407, and Idem of Tax Declaration No. 1396), he had found no case of qualified theft against the defendants, for the following reasons:

"1. There was no theft between joint owners, a relationship existing between land-lord and tenant over the product of the land being tilled before liquidation.

"2. There was no taking or asportation of personal property on the part of the accused Onofre Santos, because what was delivered to his co-accused Exequiel Santiago was the produce of the land he is holding, and which he believes and was made to believe was owned by Exequiel Santiago, thru a sale from one of the complainants, Araceli N. Vistan.

"3. There was no intent to gain because the palay in question was never used by Onofre Santos for his personal benefit but was delivered to his co-accused Exequiel Santiago who has a claim over the property and still believes that the palay was threshed and harvested on the land he acquired from Araceli N. Vistan, one of the complainants in this case.

"4. There was no liquidation of the palay harvested from the land allegedly claimed by the complainants which will be the basis of the taking or asportation of personal property belonging to another which is one of the requisites for theft.

"5. Grave abuse of confidence which is a necessary element for qualified theft requires a special relation of intimacy and confidence which were not present between landlord and tenant."

The record discloses (original record, p. 32) that as early as March 2, 1965, another motion for dismissal had been filed by one of the complainants, namely, Araceli N. Vistan, assisted by her husband Atty. Manuel Vistan, Jr., based upon the following:

"That after examining closely and carefully the circumstances surrounding the filing of the instant case she discovered that the case or rather its filing arose merely out of a misunderstanding;

"That a careful examination also discloses that what the accused Exequiel Santiago took possession of is actually the parcel of land that I sold to her;

"That She also requests this Office to make the corresponding representation with proper Court for the dismissal of the instant case.

"WHEREFORE, it is most respectfully prayed that the instant case be dismissed."

Under date of May 14, 1965, the lower court issued an order dismissing the case, with costs de oficio and the cancellation of the bonds filed by the defendants, because it found the grounds relied upon in the motion to dismiss aforesaid to be well taken and in view of the further fact that the Fiscal had not up to that time filed the corresponding information. A motion for reconsideration of this order filed by the other complainant, Erlinda N. Javalera, on June 5, 1965, having been denied by the lower court, said complainant took the present appeal.

Appellant claims that, upon the undisputed facts borne out by her evidence, it was error for the trial court to dismiss the case; in other words, it is her contention that the evidence before the Court at the time it resolved the motion for the dismissal of the case was such that it was the duty: (a) of the prosecuting officer to file the corresponding information, and (b) of the trial court to proceed afterwards with the trial and adjudication thereof.

It is the law in this jurisdiction that the prosecuting officer is in duty bound to prosecute "all persons who appear to be responsible" for the commission of the offense charged, while, on the other hand, all criminal prosecutions shall be "under the direction and control of the Fiscal" (Rule 106, Sections 1 and 4, Rules of Court). These provisions, however, should not be construed to abridge the discretion of the prosecuting officer not to file any criminal charge against a person whose guilt he may not be able, in his opinion, to establish with sufficient evidence (People vs. Ong, 53 Phil. 544; People vs. Agasang, 60 Phil. 182). In determining who are the persons who "appear to be responsible" for the commission of the offense complained of, the prosecuting officer has to consider, examine and evaluate the incriminatory evidence submitted to him. Needless to say the weighing and evaluation thereof requires the exercise of discretion on his part - discretion that, for obvious reasons, must be free from pressure and other irrelevant considerations. It is not fair to compel the prosecuting officer to prosecute a person whose guilt may not, in his opinion, be established with the evidence submitted to him for consideration.

Speaking broadly, the ultimate relief sought by appellant in the present appeal is in the nature of a mandamus or, in plain language, in the nature of an order directing the prosecuting officer to file the information against the

defendants mentioned heretofore, in spite of his personal belief that such action is not justified or warranted by the evidence at hand. For this purpose appellant must show that she has a clear legal right to such relief, on the one hand, and, on the other, that the prosecuting officer has, on the basis of the evidence before him, an imperative duty to prosecute said defendants. Upon the evidence and facts of record, appellant's case for qualified theft against the latter is not entirely free from doubt. As a result, it is our view that the trial court did not err in dismissing the present case upon motion of the prosecuting officer. This, of course, will not bar the filing of a similar action if it may be sustained with stronger evidence of guilt.

In the view we take of the case, We deem it unnecessary to make any ruling on the specific question raised by the Solicitor General in his brief regarding appellant's right or sufficient personality to take and prosecute the present appeal.

WHEREFORE, the order appealed from being in accordance with law, the same is hereby affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

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