

CESARIO DIONG-AN AND SANTIAGO LAPUJE, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-45967. August 05, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari of the decision of the respondent Court of Appeals, now Intermediate Appellate Court, affirming in toto the decision of the Court of First Instance of Misamis Occidental, Branch I convicting the petitioners Cesario Diong-an and Santiago Lapuje of the crime of qualified theft.

Cesario Diong-an, Santiago Lapuje, Antonio Florin and Roman Monding were charged with qualified theft before Branch I of the Court of First Instance of Misamis Occidental in an information which reads:

"That on or about the 25th day of July, 1968, in barrio Luneta, municipality of Sapang Dalaga, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together in their common intent of gain and taking advantage of the absence of the tenants of Filemon Bation, did then and there enter the coconut plantation of the latter and wilfully, and criminally and feloniously harvest around 4,000 nuts valued at P600.00 which they took and carried away, to the damage and prejudice of Felimon Bation in the same amount.

"Contrary to Art. 310 of the Revised Penal Code."

During the trial, the Provincial Fiscal filed a motion to dismiss the case against Roman Monding and Antonio Florin on the ground of insufficiency of evidence. The motion was granted by the trial court in its order dated July 2, 1970.

Thus, trial proceeded only against petitioners Cesario Diong-an and Santiago Lapuje.

The evidence for the prosecution which was accepted by the trial court as basis for the judgment of conviction is summarized in the People's memorandum as follows:

"On February 8, 1953, one Carlos Gumati sold for P400.00 in favor of Anastacio Baldero a parcel of land with an area of about eight (8) hectares located in barrio Luneta, Municipality of Sapang Dalaga, Misamis Occidental, with right to repurchase the same within 5 years from the execution of the sale (Exh. "3"). When Baldero refused to accept the repurchase amount of Four Hundred (P400.00) Pesos without any cause, Carlos Gumati deposited the aforementioned amount with the Clerk of Court of the Court of First Instance of Misamis Occidental (Exh. "G"). Baldero did not withdraw such deposit despite notice to him, but neither did he institute any court proceedings for the consolidation of his ownership as vendee a retro under Art. 1607 of the New Civil Code, despite notice to him by Carlos Gumati that the latter will sell the land to another person (Exh. "G").

"On July 5, 1956 the parcel of land in question was subsequently sold by Carlos Gumati to Francisco Dumat-ol

and the corresponding Deed of Absolute Sale was duly registered on July 14, 1956 with the Registry of Deeds of Misamis Occidental. Then, on September 6, 1958, Francisco Dumat-ol in turn sold this land to complainant Felimon Bation under a public document (Exh. "B"). Complainant immediately took possession of the said land by constructing thereon a house (Exh. "J") a fence, a shed for his sheep, and planting it to coconuts and other fruit bearing trees (t.s.n., 13,14, July 2, 1970). Complainant harvested the coconuts gathered from the land (p. 139, t.s.n., Jan. 14, 1972).

"In February 1968, petitioners together with Baldero and several others entered the land in question and gathered about 6,000 nuts against the will of complainant's tenants. At the instance of complainant, the Office of the Provincial Fiscal sent a subpoena to Baldero and his men for investigation. During the investigation, Baldero was advised by the Provincial Fiscal in the presence of herein petitioners that whatever claim or right he has as vendee a retro was lost and superseded by the superior right of Francisco Dumat-ol who registered his deed of sale, as against his (Baldero's unregistered pacto de retro conveyance because of the legal provision which was explained to him and his men, herein petitioners (pp. 124-125, Record).

"At about 8:00 o'clock in the morning of July 25, 1968, complainant Felimon Bation, his wife, Sgt. Carpio of the Philippine Constabulary, and Engineer Reno Yap were in a jeep bound for Barrio Medallo, Sapang Dalaga, Misamis Occidental (t.s.n., 11-12, Mar. 2, 1970). When they passed his coconut plantation (the land in question) in Sitio Luneta, Sapang Dalaga, Misamis Occidental, complainant saw petitioners Cesario Diong-an and Santiago Lapuje with other persons gathering coconuts therefrom (t.s.n., p. 10, id.) Whereupon, through one of his tenants' son, complainant ordered petitioners to stop gathering coconuts but the latter did not heed him (t.s.n., 16, id.). Complainant got angry and then and there was about to confront petitioners, but was prevented from doing so by Engineer Yap who feared that complainant might suffer the same fate as his former tenant, Faustino Martillano, who was fatally stabbed in the same plantation on February 25, 1968 (t.s.n., 15-17, 40 id.). Furthermore, Engineer Yap and Sgt. Carpio advised complainant not to take the law into his own hands but to leave the matter for the courts of justice to decide (t.s.n., 15, 40-41, id.). Accordingly, they proceeded to Barrio Medallo, Sapang Dalaga, Misamis Occidental (t.s.n., 18, id.).

"On their way back from the said barrio at around 3:00 o'clock in the afternoon of the same day, the complainant saw the same persons still gathering coconuts from his said plantation (t.s.n., 18, id.) He estimated the harvest to be about 4,000 coconuts valued at P600.00 (t.s.n., 24, id.).

"Forthwith, a criminal complaint for qualified theft was filed against petitioners and several others in the Municipal Court of Sapang Dalaga, Misamis Occidental (p. 1, Record)."

On the other hand, the petitioners presented their own version of the facts. The defense evidence is summarized in the petitioners' memorandum as follows:

"In their brief, the petitioners argued that their landlord, Anastacio Baldero, was still the owner of the land in question despite the consignment of the repurchase price of the land by Francisco Dumat-ol, for the act of consignment did not automatically divest Anastacio Baldero of his ownership over the land, hence what Francisco Dumato-ol or his successor-in-interest, Felimon Bation, the complainant in the criminal case, should have done was to file a civil case against Anastacio Baldero to compel him to reconvey the land; that the refusal of Anastacio Baldero to consent to the repurchase of the land was not without reason, for the homestead application of Carlos Gumati, from whom Francisco Dumat-ol acquired said land, was cancelled and the transfer of rights executed by the former in favor of the latter was not approved by the Secretary of Agriculture and Natural Resources as required by the Public Land Law (Sec. 20, Com. Act 141); and that, moreover, the land was advertised for sale by the Director of Lands pursuant to the provisions of the Public Land Law and one of the applicants for the purchase of the land was Anastacio Baldero, who was at that time in actual possession of the land; and that the trial court, in determining the guilt or the innocence of the accused, should not have engaged in legal hair-splitting, for the case being criminal in nature, it should have only determined whether intent to steal was in the minds of the accused when they gathered the nuts as tenants or hired laborers

of Anastacio Baldero."

On November 14, 1970, the Court of First Instance of Misamis Occidental convicted the petitioners of the crime of qualified theft. The dispositive portion of the decision reads:

"WHEREFORE, the accused Cesario Diong-an and Cesar Lapuje are found guilty beyond reasonable doubt of the crime of qualified theft of coconuts as charged in the information.

"Article 309 of the Revised Penal Code penalizes persons guilty of ordinary theft with *arresto mayor* in its medium period to *prision correccional* maximum period if the value of the property stolen is over P50.00 but does not exceed P200.00. Under Article 310, for qualified theft, under the same Code, since the coconuts were taken from the premises of a plantation, the ordinary penalty stated in the preceding sentence is increased by two degrees. Two degrees higher is *prision mayor* in its medium and maximum period. Taking into consideration the Indeterminate Sentence Law, accused Cesario Diong-an and Santiago Lapuje are each sentenced to undergo an indeterminate sentence of two (2) years, and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum, to indemnify Felimon Bation the owner of the stolen coconuts, the amount of P150.00 without subsidiary imprisonment in case of insolvency, with the accessories of the law, and, to pay the cost. Each accused is hereby credited the preventive imprisonment he had undergone."

On December 3, 1976, the respondent Court of Appeals affirmed the above judgment of conviction.

A motion for reconsideration dated December 27, 1976 was denied by the appellate court in a resolution dated March 9, 1977.

The main issue raised by the petitioners is whether or not they had any criminal intent when they harvested the coconuts considering that they are only hired laborers/tenants of Anastacio Baldero following the latter's instruction to gather the coconuts.

The petitioners submit that they did not have any intent to steal when they harvested the coconuts in question. They claim that the evidence presented in the trial court shows that they harvested the coconuts in broad daylight, upon the instruction of their landlord/ employer, and in the belief that at the time of the harvesting, their landlord was still the owner and/or possessor of the land.

Petitioners Diong-an and Lapuje were mere laborers working for Anastacio Baldero. It is clear from the records that they were only acting for Baldero and not in their own personal capacities. They were not claiming the coconuts for themselves and the proceeds from any sales would not accrue to them. They would be paid by Baldero with his own money and not necessarily from the sale of the harvested nuts. It is difficult to reconcile criminal intent to steal with the facts of the case. And it is harder still to explain why two laborers acting under instructions from one who claims to be the owner of the land should be convicted of qualified theft while the instigator of the act should not even be prosecuted.

In convicting the petitioners, the trial court relied heavily on their alleged knowledge of Bation's ownership over the coconut land.

Knowledge refers to a mental state of awareness about a fact. Since the court cannot enter the mind of an accused and state with certainty what is contained therein, it should be careful in deducing knowledge from the overt acts of that person. Given two equally plausible states of cognition or mental awareness, the court should choose the one which sustains the constitutional presumption of innocence.

The petitioners' knowledge that their employer Baldero no longer owned the land when they harvested the coconuts may be drawn from the facts. However, the same facts can also support a conclusion that what the

petitioners knew was a dispute over the ownership of the land, not that their employer no longer owned it.

The petitioners knew that Baldero purchased the land from Gumati, the original owner. They must have known that Gumati tried to get back the land but Baldero refused to accept the repurchase price. It is possible that the two laborers did not understand the legal niceties of a pacto de retro sale and the need for the buyer to consolidate his title. The records do not show an awareness on their part that Gumati deposited the repurchase money with the clerk of court after Baldero rejected it. When Baldero, therefore, ordered them to harvest coconuts on the land, they were not necessarily following an order to steal property from another person's land. They were simply obeying their boss who assured them that he owned the nuts.

The other grounds indicating knowledge apply only to Baldero and not to his laborers. Anastacio Baldero claimed a right of possession and ownership over the land because Gumati's homestead application was cancelled. However, Baldero's sales application for the same parcel had also been denied by the Bureau of Lands. It is true that the Bureau of Lands recognized the rights of Felimon Bation to the improvements on the disputed land and even advised him to buy out the claims and improvements of Carmelo Bolosan and Enopinio Lumutan in the property thus subrogating himself to their rights. It is another thing to conclude that the two laborers knew about this subrogation.

Bation states that he had lived on and possessed the land from the time he bought it from Dumat-ol. But the petitioners Diong-an and Lapuje also lived on a portion of the eight hectare property, in the house of Baldero built on the same land.

The information given by the Provincial Fiscal to Baldero that he should give up the land, which statement was overheard by the two petitioners is not conclusive proof. Baldero did not follow the Fiscal's advise. He did not give up his claim of ownership. Assuming the claim of ownership lacks legal basis, this fact does not lead to a conclusion of qualified theft on the part of the petitioners and to an eight years and one day maximum prison sentence.

WHEREFORE, the petition for review is hereby granted. The judgment of conviction is set aside. Petitioners Cesario Diong-an and Santiago Lapuje are acquitted of the charges of qualified theft.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, De La Fuente, and Alampay, JJ., concur.

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