

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER BALUYOT Y BUNOS, ACCUSED-APPELLANT.

Ponente: BARRIOS, M. M., J.

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BARRIOS, M. M., J.:

This is an appeal from the Decision dated 10 June 2011[1] of the Regional Trial Court, Branch 92, Quezon City where the dispositive portion reads:

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“WHEREFORE, IN THE LIGHT OF THE FOREGOING PREMISES, judgment is hereby rendered finding herein accused ELMER BALUYOT Y BUNOS, guilty of the offense charged and he is hereby sentenced to suffer an Indeterminate Penalty of TWELVE (12) years and ONE (1) day of Reclusion Temporal as minimum to FOURTEEN (14) years of Reclusion Temporal, as maximum. The period of detention shall be credited in favor of the accused in the service of this sentence.

The Jail Warden is hereby ordered to commit the accused to the Bureau of Corrections upon receipt of this Judgment, whether or not an appeal shall be made by the accused, pursuant to the SC Circular.

SO ORDERED.”

THE FACTS

In an Information[2] dated 07 August 2007, accused-appellant Elmer Baluyot y Bunos was charged for violation of R.A. No. 7832, otherwise known as “The Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994” as follows:

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“That on or about the 5th day of August 2007, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with five (5) other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another with intent of (sic) gain, did then and there willfully, unlawfully and feloniously cut, take/steal and carried (sic) away the fiber optic cable/line use (sic) for telecom along Commonwealth Avenue near AMA Computer, Brgy. Old Balara, this City, without its previous authority or consent, to the damage and prejudice of MERALCO represented by Nestor Carlos y Manuel in the amount of Php6, 670.50 Philippine Currency.

CONTRARY TO LAW.”

When arraigned,[3] accused-appellant pleaded not guilty to the charge. Thereafter, trial on the merits ensued.

The prosecution's evidence shows that at around 8:30 in the evening of 05 August 2007, Michael C. Lucero - a resident of Liwanag St., Old Balara, Quezon City - noticed that his telephone lost its dial tone. He went to a neighbor's store to make a call, but learned that the latter's telephone also went dead.

While Lucero was still at his neighbor's store, he saw accused-appellant with five (5) other individuals dragging

an estimated fifty (50) meters of fiber optic cable wire in front of AMA Computer College. Richard Tumambac – an operator of an internet shop in the same area – testified that at about the same time, the internet connection in his shop went dead. He went around the immediate vicinity to look for the cause and later saw six (6) malefactors cutting the telephone cable wire a short distance away from his shop.

Both Lucero and Tumambac reported the matter to the Barangay Office at Old Balara, Quezon City. Two (2) group were formed to apprehend the thieves at the site, but the malefactors were no longer there. They received information that the suspects moved towards a vacant lot at the back of Diliman Preparatory School. True enough, accused-appellant and his cohorts were there while handling the fiber optic cable wire. However, only accused-appellant was apprehended and the fiber optic cable loot was recovered. The other suspects scampered away but were later on apprehended. However, they turned out to be minors, and so were turned over to the Department of Social Welfare and Development.

Only accused-appellant was booked for violating R.A. No. 7832. MERALCO's security officer - Nestor Carlos - identified the recovered fiber optic cable wire as belonging to MERALCO which is specifically used for computers and telephones of all franchised areas interconnected thereat, and not used for transmitting electricity from power plants.[4]

In his defense, accused-appellant averred that at about 8:30 to 9:00 in the evening of 05 August 2007, he was at home cleaning the house. He heard a commotion and went outside where he saw several individuals being chased by barangay officials. At that point, however, he was apprehended and forcibly taken to the barangay hall. Thereat, his hand was beaten with a wooden club which forced him to admit the wrongdoing.

After trial, accused-appellant was found guilty as charged. Hence, this appeal raising the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT THE OBJECT OF THE ALLEGED CRIME IS NOT INCLUDED IN R.A. NO. 7832.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR AN ACT WHICH IS NOT ALLEGED IN THE INFORMATION.

IV.

THE TRIAL COURT GRAVELY ERRED IN ORDERING THE REOPENING OF THE CASE WITHOUT PRIOR HEARING, AND GIVING WEIGHT AND CREDENCE TO THE STATEMENTS OF THE WITNESSES THEREAT, WHO DID NOT TAKE THEIR OATH (sic), AND WHO WERE NOT SUBJECTED TO CROSS EXAMINATION.

V.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE FAILURE TO ESTABLISH THE IDENTITY OF THE OBJECT OF THE OFFENSE.

VI.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION WITNESSES' INCONSISTENT TESTIMONIES.

VII.

THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THE ILLEGALITY OF THE ACCUSED-APPELLANT'S ARREST.

OUR RULING

At the onset, it must be stressed that Republic Act No. 7832 is entitled “An Act Penalizing the Pilferage of Electricity and Theft of Electric Power Transmission Lines/Materials, Rationalizing System Losses By Phasing Out Pilferage Losses as a Component Thereof, and For Other Purposes.” It is basically the law that penalizes pilferage of electric power and theft of transmission lines or materials. Said law was also enacted to protect honest electricity users from the burden of paying the cost of pilfered electricity being passed on to them, and penalize pilferers of electricity and thieves of electrical lines or materials.

Section 3 (b) of R.A. No. 7832 specifically defines electrical transmission lines or materials as “electric power transmission steel towers, woodpoles, cables, wires, insulators, line hardwares, electrical conductors and other related items with a minimum voltage of sixty-nine kilovolts (69 kv) x x x.” Thus, the clear intent of the law is to punish pilferers of electricity and thieves of electrical lines or materials, and therefore, limits the application of R.A. No. 7832 to the unlawful taking of electrical transmission lines or materials, and thus excluding other kinds of cables or wires that do not transmit electricity.

In the case before Us, the wires stolen by accused-appellant were not the big electric power transmission wires, but rather the fiber optic cable wire owned and used by MERALCO for its own telecommunication purposes. In short, the stolen wire do not come within the ambit of R.A. No. 7832; hence, accused-appellant cannot be prosecuted and convicted under said law.

Without doubt, accused-appellant may be convicted of the crime of Theft under Article 308 of the Revised Penal Code. In this regard, Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure explicitly provides:

x x x

Sec. 4. Judgment in case of variance between allegation and proof. - When there is a variance between the offense charged in the information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved.

x x x

Sec. 5. When an offense includes or is included in another. - An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the information, constitute the latter; an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.

X X X

Since the crime of Theft of electrical transmission lines or materials, punished under R.A. No. 7832, necessarily includes Theft under Article 308 of the Revised Penal Code, accused-appellant can be convicted for simple Theft as defined in the latter provision. Incidentally, the Information here is sufficient to inform the accused-appellant of the nature and cause of the charge against him as would enable him to prepare for his defense. It sufficiently apprised him of his unlawful taking of the fiber optic cable wire owned by MERALCO without the latter's consent.

For prosecution of simple Theft under Article 308 of the Revised Penal Code, the following essential elements must be proven, namely: (1) that there be a taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and, (5) that the taking be accomplished without the use of violence or intimidation against persons or force upon things.[5]

After a careful review and assessment of the case records, We find that all the elements of Theft have been duly established by the prosecution. Witness Tumambac unequivocally testified that he saw accused-appellant and five (5) other male individuals cut and handle the fiber optic cable wire of MERALCO. Witness Lucero, on the other hand, saw accused-appellant pulling and dragging the cut cable wire. More importantly, accused-appellant was apprehended at the nearby vacant lot while in possession of the stolen wire. In this regard, a person found in possession of a stolen thing is presumed to be the taker thereof, and the author of the theft.[6] Moreover, witness Lucero readily and positively identified accused-appellant and his co-horts as the culprits. He knew them beforehand, being neighbors. In the face of prosecution witnesses' positive and unequivocal testimonies, appellants' plain denial of the accusation against him cannot prevail.[7]

The trial court may, indeed, have failed to strictly follow the procedure in the re-opening of cases under Section 24, Rule 119 of the Rules on Criminal Procedure as it issued an order, after the prosecution and defense have already rested its case, re-opening the case for clarificatory hearing as to the ownership and identity of the stolen fiber optic cable wire. In any event, it is observed that the ownership of MERALCO of the stolen property had already been established during trial. The same was identified by witness Carlos, authorized representative of MERALCO; besides, the name of MERALCO is inscribed on said fiber optic cable wire that was presented as evidence before the court.[8]

Moreover, We dismiss the argument of accused-appellant that even assuming that Theft is impliedly included in the offense charged, the trial court has no jurisdiction to hear the case. The jurisdiction of the court will not be affected after the determination of the offense proved during the trial. Case law has it that in order to determine the jurisdiction of the court in criminal cases, the complaint or information must be examined for the purpose of ascertaining the place where it was filed and whether the facts set out therein and the prescribed period provided for by law are within the jurisdiction of the court. Along this line, it has been consistently held that the jurisdiction of the court in criminal cases is determined by the allegations of the complaint or information and not by the findings based on the evidence of the court after trial.[9] Moreover, jurisdiction of the court is not determined by what may be meted out to the offender after trial or even by the result of the evidence that would be presented at the trial, but by the extent of the penalty which the law imposes for the misdemeanor, crime or violation charged in the complaint.[10]

Anent accused-appellant's warrantless arrest, it is the rule that an accused is estopped from assailing the regularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired

jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[11] Accused-appellant was duly arraigned, had entered a not guilty plea and had actively participated during trial; therefore, he is precluded from assailing any irregularity of his arrest and is deemed to have submitted himself to the jurisdiction of the court.

Now then, the imposable penalty for the crime of simple Theft as provided under Article 309 of the Revised Penal Code is prision correccional in its medium and maximum since, as in this case, the value of the stolen property is more than P6,000.00 but does not exceed P12,000.00, specifically, P6,670.50. Applying the Indeterminate Sentence Law, there being no modifying circumstances, the medium period is imposable, i.e. three (3) years, six (6) months and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days. The minimum penalty shall be taken from the penalty consisting in two periods down the scale, which is arresto mayor in its maximum period to prision correccional in its minimum period with a duration of six (6) months and twenty-one (21) days to two (2) years and four (4) months.

WHEREFORE, premises considered, the appeal is **PARTIALLY GRANTED**. The Decision dated 10 June 2011 is hereby **MODIFIED** in that accused-appellant is convicted of the crime of Theft defined and penalized under Article 308 and 309, respectively, of the Revised Penal Code, and is hereby sentenced to suffer the penalty of two (2) years and four (4) months of prision correccional medium, as minimum, and four (4) years, nine (9) months, and ten (10) days of prision correccional maximum, as maximum.

SO ORDERED.

Reyes, Jr., (Chairperson) and Pizarro, JJ., concur.

[1] Records, pp. 205-213.

[2] Records, pp. 1-2.

[3] Records, p. 40.

[4] TSN, 17 June 2008, pp. 26-27, 34.

[5] Laurel vs. Hon. Abrogar, G.R. No. 155076, 13 January 2009; Aoas v. People, G.R. No. 155339, 03 March 2008; People v. Puig, G.R. Nos. 173654-765, 28 August 2008; Cruz v. People, G.R. No. 176504, 03 September 2008.

[6] Lozano vs. People of the Philippines, G.R. No. 165582, 09 July 2010.

[7] People vs. Marquez, G.R. No. 181440, 13 April 2011.

[8] TSN, 11 August 2008, pp. 48-50.

[9] Mobilia Products, Inc. vs. Hajime Umezawa, G.R. No. 149357, 04 March 2005.

[10] People of the Philippines vs. Purisima, G.R. No. L-40902, 18 February 1976.

[11] Rebellion vs. People of the Philippines, G. R. No. 175700, 05 July 2010.

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