

ANTONIO AVECILLA, APPELLANT-PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND HON. COURT OF APPEALS, APPELLEES-RESPONDENTS.

G.R. No. L-46370. June 02, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

This is a petition for review on certiorari of the decision dated December 20, 1976 of the Court of Appeals in CA-G.R. No. 16628-CR entitled "People of the Philippines v. Antonio Avecilla" modifying the decision of July 16, 1973 of the then Court of First Instance of Rizal, Branch 1 at Pasig finding the accused-petitioner guilty of simple theft by convicting the accused-petitioner instead of qualified theft and imposing on him accordingly, a higher penalty.

The accused-petitioner, Antonio Avecilla and one Juana Doe were charged before the said lower court of the crime of theft, allegedly committed as follows:

"That on or about the 16th day of November, 1971, in the municipality of Mandaluyong, province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and mutually helping and aiding one another, with intent of gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away one Registered Letter number 247341, delivery number 3752, valued at \$500.00 belonging to one Lourdes Rodriguez de Lacson to the damage and prejudice of the latter in the aforementioned amount of \$500.00, U.S. Dollar.

Contrary to law."[1]

Upon arraignment, Antonio Avecilla entered a plea of not guilty to the crime charged.[2]

On the other hand, to prove his guilt, the prosecution presented the following witnesses:

1. Lourdes Rodriguez de Lacson, an employee of Litton Mills, Inc., testified that her sister, Maria Paz, a resident of Milwaukee, Wisconsin, U.S.A., sent her a registered letter containing a bank draft worth \$400.00 (not \$500.00 as alleged in the information). She came to know about this registered letter through another sister Carmencita Rodriguez, who, on December 17, 1971, also received another letter from Maria Paz, inquiring whether she (witness) had received Registered Letter No. 247341, which was addressed to her at Litton Mills, Inc.[3]

Since she did not receive the registered letter with the bank draft, Lourdes went to the Mandaluyong Post Office and inquired about it. She was informed by the Postmaster and the teller that Registered Letter No. 247341 addressed to her was claimed on November 16, 1971 by one Antonio Avecilla, whom they knew had been messenger of Litton Mills, Inc. for more than two years. That Avecilla got the subject letter was shown by the registry notice duly signed by him.[4]

Lourdes further testified that she filed a complaint in their office, as a result of which an investigation was

conducted by the personnel officer of Litton Knitting Mills. Antonio Avecilla admitted in her presence that he took the said registered letter, but when she demanded its return, he refused to do so. Hence, she filed a complaint with the police.[5]

On cross-examination, Lourdes stated that on December 23, 1971, she made an overseas call to her sister, Maria Paz, to request her to stop the payment of the bank draft. As a result, she was informed by Maria Paz through their sister, Carmencita Rodriguez, that a "stop payment" order had already been made to the drawee bank.[6]

2. Rosalinda Cervo, Clerk-in-charge of the registry section of Mandaluyong Post Office, declared that on November 15, 1971, she received a letter for Mrs. Lourdes Lacson, with a given address at "Litton Knitting Mills." She then issued the corresponding registry notice to the addressee which she sent through the letter carrier. The following day, November 16, 1971, Antonio Avecilla went to the post office to claim the registered letter. He presented the registry notice addressed to Lourdes Lacson with her signature appearing thereon, signed it in her presence and introduced to her a woman as Mrs. Lourdes Lacson who signed the control book.

She further testified that inasmuch as Antonio Avecilla had been the authorized messenger of Litton Knitting Mills since 1969, she entrusted Registered Letter No. 247341 to him. However, she got to meet the lady who seemed to be the true Mrs. Lacson when the latter went to the post office to complain about the letter that she (Mrs. Lacson) had not received. When shown the control book with her alleged signatures, Mrs. Lacson repudiated the same as hers.

Subsequently, when Rosalinda Cervo informed Avecilla about Mrs. Lacson's complaint, he declared that he had placed the letter on the table of Mrs. Lacson.[7]

3. Federico Rivera, Sr., Postmaster of Mandaluyong, Rizal, testified that Litton Mills, through George Litton, Sr., had previously written him a letter, authorizing one Antonio Avecilla to accept "registered mails, i.e., checks, parcels and letters" for their company and employees.[8] He recalled that on November 16, 1971, a registered letter addressed to Mrs. Lourdes Lacson c/o Litton Mills was delivered to Mr. Avecilla.[9]

The defense, before presenting the accused to testify in his own behalf, called Mrs. Lourdes R. Lacson to the witness stand and asked her to produce the letter of the cashier of Guardian State Bank, Milwaukee, Wisconsin, dated October 27, 1972 addressed to Maria Paz R. Prado, stating that "Cashiers Check No. 27166, payable to Miss Carmencita S. Rodriguez, has not been paid as of this date." [10]

4. Antonio Avecilla declared that as messenger of Litton Mills, it was his duty to get all the incoming and outgoing mails of both the Pasig and Mandaluyong branches of Litton Mills, Inc. He knew the complainant, Mrs. Lacson, because the latter was his co-employee at Litton Mills. He often mailed the letters of Mrs. Lacson for her and would also get her mail from the post office.

On November 16, 1971, he admitted having gotten from the Mandaluyong Post Office a registered letter addressed to Mrs. Lacson by signing the name of Mrs. Lacson and his name on the registry receipt. Once in the office, he left said letter on the table of Mrs. Lacson because at that time she was already out as it was past 5:00 o'clock in the afternoon. He also said that when he left the letter on the table, nobody was in the office.[11]

On July 16, 1973, the trial court[12] rendered its decision finding accused-petitioner guilty beyond reasonable doubt of simple theft. The dispositive part of the decision reads:

"WHEREFORE, finding the evidence sufficient to prove the guilt of the accused beyond reasonable doubt of the crime of Theft, pursuant to Article 308 and 309 of the Revised Penal Code, and applying the Indeterminate Sentence Law, he is hereby sentenced to an indeterminate penalty of SIX (6) MONTHS of arresto mayor as minimum to ONE (1) YEAR, EIGHT (8) MONTHS, TWENTY-ONE (21) DAYS of prision correccional as

maximum.

SO ORDERED."[13]

Not satisfied with the decision, petitioner appealed to the Court of Appeals, which on December 20, 1976, promulgated a decision finding accused-petitioner guilty of qualified theft instead of simple theft. The dispositive portion of the decision reads:

"WHEREFORE, the appealed decision is hereby modified in the sense that the crime committed is hereby designated as qualified theft; and that the appellant is hereby sentenced to suffer the indeterminate penalty of from FOUR (4) YEARS, TWO (2) MONTHS AND ONE (1) DAY of prision correccional as minimum to NINE (9) YEARS, FOUR (4) MONTHS AND ONE (1) DAY of prision mayor, as maximum. In all other respects, the decision is affirmed with costs against accused-appellant.

IT IS SO ORDERED."[14]

The motion for reconsideration having been denied,[15] petitioner elevated the case to the Supreme Court by way of the instant petition for review on certiorari.

Petitioner contends that his constitutional right to due process had been violated both substantially and procedurally. He was convicted of qualified theft instead of simple theft and imposed a penalty eight times longer than his original sentence, and his motion for reconsideration of the appellate court's decision was "denied in one stereo-typed sentence." [16] He adds that his constitutional right to be informed of the nature and cause of the accusation against him provided for in Art. IV, Sec. 19 of the 1971 Constitution and reiterated in Rule 115, Sec. 1, par. (c) of the Rules of Court had also been violated.

Petitioner further argues that the Court of Appeals erred in convicting him of qualified theft just because the information used the term "registered letter" when "not all registered letters is (sic) mail matter." Because the information alleges that the registered letter belonged to Lourdes Rodriguez de Lacson and considering Art. 723 of the Civil Code which provides that a letter becomes the personal property of the addressee after it has been delivered, the crime charged is only simple theft.

Petitioner bewails the vagueness of the information which resulted in his "bewilderment" as to what precisely he had allegedly stolen for a registered letter per se cannot be worth \$500.00. He notes that the information does not state that the registered letter contained a check. Moreover, he avers, the essential elements of theft, whether simple or qualified, had not been substantiated by the facts proven. Thus, petitioner adds, it had not been shown that he knew about the contents of the letter; there was no unlawful taking because the delivery of the letter was made in the manner prescribed by postal regulations; the allegedly stolen property had not been produced at all, and the prosecution relied solely on the "sheer self-serving testimony" of the complaining witness.[17]

Petitioner's allegations necessitate a scrutiny of the information imputing to him the commission of a crime. It need not be overly stressed that the averments in the complaint or information characterize the crime to be prosecuted and determine the court before which the case must be tried.[18] What controls is not the designation of the offense but the description thereof as alleged in the information.[19]

A thorough examination of the information reveals that it contains all the essential elements of the crime of theft, to wit: (1) that there be 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. [20]

While it is true that petitioner could not have been "bewildered" as to the nature of the charge against him had the

information been more accurately crafted, it nonetheless contains all the elements of the crime of theft. Thus, it is alleged therein that petitioner, with the aid of and in conspiracy with an unidentified woman, willfully took away Registered Letter No. 24341 belonging to Lourdes Rodriguez de Lacson to her damage and prejudice. Although intent to gain is not explicitly alleged in the information, it may be presumed from the allegation that the said mail matter was unlawfully taken.[21] Since there is no allegation that the taking was accomplished with violence or intimidation against persons or force upon things, it is apparent that the charge is for the crime of theft rather than robbery.

The allegation that the subject of the taking is a registered letter categorizes the theft as a qualified rather than a simple one. This is clear from the provision of Art. 310 of the Revised Penal Code which states that qualified theft is committed if the property stolen is mail matter. In this regard, petitioner's contention that not all registered letters are mail matter is incorrect. Under Sec. 1945 of the Revised Administrative Code of 1917, first class mail matter includes letters. For the greater security of valuable mail matter, Sec. 1962 of the same Code established a registry system "under which the senders or owners of registered matter may be indemnified for losses thereof in the mails, the indemnity to be paid out of postal revenues x x x."

From the foregoing, it is clear that petitioner had not been deprived of his constitutional right to be informed of the nature and cause of the accusation against him. Moreover, he may be convicted of a crime and sentenced to the corresponding penalty as long as the facts alleged in the information and proved at the trial constitute the crime for which he is convicted although different from the crime designated and charged in the information.[22] The allegations in the complaint against petitioner had been established beyond reasonable doubt at the trial. In this regard, it should be pointed out that absolute certainty of guilt is not demanded by the law as basis for conviction of any criminal charge but moral certainty is required as to every proposition of proof requisite to constitute the offense.[23] Moral certainty convinces and satisfies the reason and conscience that a crime has indeed been committed.[24] This quantum of proof has been satisfied in this case.

In his defense, petitioner relied solely on his own unsupported testimony. His story that after taking delivery of the registered letter addressed to complainant Mrs. Lacson, he left it on her desk after office hours when no one else was in the office strains credulity. In his attempt to prove that he did not benefit from the bank draft of \$400.00, he presented Mrs. Lacson herself with a letter from the cashier of the Guardian State Bank in Milwaukee, Wisconsin to the effect that the bank draft had not been paid. However, as in the crime of robbery, the fact that the accused did not benefit from the articles taken does not affect the nature of the crime because from the moment the offender gained possession of the thing, the unlawful taking is complete.[25]

Petitioner's assertion that he took Mrs. Lacson's registered letter by following the postal regulations and hence, he may not be liable for its "misdelivery," falls flat in the face of the un rebutted proof that he even used a woman to misrepresent herself as Mrs. Lacson. Although no one else witnessed the deception, and Rosalinda Cervo could no longer describe the woman, the undisputed fact remains that someone else other than Mrs. Lacson did sign the control book and that, thereafter, petitioner took the letter with the bank draft of \$400.00 which Mrs. Lacson never received.

Although proof as to motive for the crime is essential when the evidence of the theft is circumstantial,[26] the intent to gain or animus lucrandi is the usual motive to be presumed from all furtive taking of useful property appertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator.[27] As earlier noted, the intent to gain may be presumed from the proven unlawful taking.

The Court of Appeals considered P6,000.00 as the equivalent of \$400.00. Under Art. 309 (2) of the Revised Penal Code, the penalty for theft involving said amount is prision correccional in its minimum and medium periods, but

considering that qualified theft is punishable by a penalty two degrees higher,[28] petitioner should be imposed the penalty of prision mayor in its medium and maximum periods. In the absence of aggravating and mitigating circumstances, the penalty should be the medium period of said penalty or nine (9) years, four (4) months and one (1) day of prision mayor medium to ten (10) years, eight (8) months and one (1) day of prision mayor maximum. Hence, the Court of Appeals correctly applied the Indeterminate Sentence Law and imposed the indeterminate sentence of four (4) years, two (2) months and one (1) day of prision correccional maximum as minimum penalty to nine (9) years, four (4) months and one (1) day of prision mayor medium as maximum penalty.

WHEREFORE, the modification of the decision of the trial court by the Court of Appeals finding the accused-appellant guilty, not only of simple but qualified theft, being in order, the above imposition of the penalty prescribed by the Indeterminate Sentence Law is CORRECT. Costs against the appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ.,concur.

[1] Annex "C" of the Petition; Rollo, p. 28.

[2] Original Record, p. 29.

[3] Exhibit "A."

[4] Exhibits "C" and "C-1."

[5] TSN, June 14, 1972, pp. 18-19.

[6] TSN, September 19, 1972, pp. 9-15.

[7] TSN, September 19, 1972, p. 35.

[8] Exhibit "G."

[9] TSN, October 16, 1972, pp. 22-25.

[10] Exhibit "1."

[11] TSN, April 10, 1973, pp. 113-123.

[12] Presided by Judge Emilio V. Salas.

[13] Rollo, p. 35.

[14] Rollo, p. 26.

[15] Rollo, p. 27.

[16] Petition, pp. 2-3; Rollo, pp. 3-4.

[17] Petition, pp. 2-6.

[18] Buaya v. Polo, G.R. No. 75079, January 26, 1989, 169 SCRA 471.

[19] Santos v. People, G.R. No. 77429, January 29, 1990, 181 SCRA 487.

[20] Santos v. People, supra, p. 492; People v. Rodrigo, G.R. No. L-18507, March 31, 1966, 16 SCRA 475.

[21] *People v. Gulinao*, G.R. Nos. 82264-66, December 4, 1989, 179 SCRA 774.

[22] *People v. Demecillo*, G.R. No. 83186, June 4, 1990, 186 SCRA 161, citing *Santos v. People*, *supra*.

[23] *People v. Felipe*, L-40432, July 19, 1982, 115 SCRA 88, citing *U.S. v. Lasada*, 18 Phil. 90 (1910) and *People v. Dramayo*, L-21325, October 29, 1971, 42 SCRA 59.

[24] *People v. Martinez*, L-39402, September 24, 1986, 144 SCRA 303.

[25] *People v. Salvilla*, G.R. No. 86163, April 26, 1990, 184 SCRA 671.

[26] See: *People v. Oquino*, L-37483, June 24, 1983, 122 SCRA 797.

[27] *People v. Mercado*, 65 Phil. 665, 673 (1938), citing the decision of October 14, 1898 of the Supreme Court of Spain.

[28] Article 310, Revised Penal Code.

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