

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MARITA OCAMPO Y PURE, DEFENDANT AND APPELLANT.

G.R. No. 10015. December 18, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

The accused was charged in the Court of First Instance of Manila with attempted theft with the aggravating circumstance of recidivism. After trial, wherein she waived her right to present evidence, she was convicted and sentenced to six months and one day of destierro, with the accessory penalties provided for by law and to pay the costs. In due time, she appealed to the Court of Appeals and considering that one of the errors she assigns involves the jurisdiction of the trial court, the case was certified to this Court under section 17 (3) of Republic Act 296, as amended.

The only question to be determined is whether the trial court has jurisdiction to try the offense charged in the information, for if the answer is in the negative, then it would be unnecessary for us to go into the merits of the case.

The offense charged is attempted theft which consists, according to the information, in that the accused "did then and there open the bag of the latter (offended party) containing the sum of P202.00 in cash of different denominations with the evident intent to take, steal and carry away said cash money, but the said accused was not however able to perform all the acts of execution which would have produced the crime of theft as a consequence by reason of causes independent of her (his) own voluntary desistance. Being an attempted offense, a penalty lower by two degrees than that prescribed by law for the consummated felony should be imposed (Article 51, Revised Penal Code).

Under Article 309 of the same Code, if the value of the property stolen is more than P200 but does not exceed P2,000, the penalty of prison correctional in its minimum and medium periods shall be imposed. If we reduce this penalty by two degrees, the penalty to be imposed will be destierro in its maximum period to arresto mayor in its minimum period (Art; 71, Revised Penal Code, as amended by section 3, Commonwealth Act No. 217, specially Scale No. 1 thereof), which, in so far as the imprisonment is concerned, does not exceed 2 months (*Uy Chin Hua vs. Dinglasan*, 47 Off. Gaz., Sup. 12, p. 233 and *People vs. Santos*, 87 Phil., 687). The offense charged in the information comes, therefore, under the original jurisdiction of the municipal court in view of section 87 (b) of Republic Act No. 296 which provides that "All offenses in which the penalty provided by law is imprisonment for not more than six months, or a fine of not more than two hundred pesos, or both such fine and imprisonment", come under the original jurisdiction of said court.

It is true that section 87, subsection (c) of Republic Act 296 also provides that "larceny, embezzlement, and estafa where the amount of money or property stolen, embezzled or otherwise involved, does not exceed the sum or value of two hundred pesos", likewise come under the original jurisdiction of the municipal court of a chartered city, and in the instant case the value of the property involved is ₱202, or a little more than the minimum fixed in

said subsection; however, we should not lose sight of the fact that the offenses mentioned in said subsection refer to consummated acts and not to those that are merely attempted or frustrated in nature. In fact, said subsection refer to "amount of money or property stolen, embezzled or otherwise involved." A different interpretation would give rise to the incongruous situation where while under subsection (c) the offense does not come within the jurisdiction of the municipal court because the value of the thing stolen is more than P200, it at the same time comes within its jurisdiction under subsection (b) because the penalty involved is less than six months. This cannot be the intent of the law. Indeed, an offense which calls for the application of a penalty of destierro in its maximum period to 2 months of arresto mayor cannot come under the jurisdiction of the court of first instance [subsection (f), section 44 of Republic Act 296].

The fact that the accused is a recidivist is also of no moment. This circumstance can at most aggravate, the penalty within the range provided for by law.

Wherefore, the decision of the lower court is reversed, without prejudice on the part of the prosecution to re-file the information with the proper court. No pronouncement as to costs.

Paras, C. J., Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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