

JUANITO LIM, PETITIONER, VS. THE COURT OF APPEALS, THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 100311. May 18, 1993

Ponente: MELO, J.

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MELO, J.:

What makes the case at bar an interesting subject for study is the dearth of jurisprudence involving violation of the Anti-Fencing Law of 1979 or Presidential Decree No. 1612.

Inasmuch as the appellant below was not able to overthrow the presumption of fencing embodied under Section 5 of the law in point, his conviction for the misdeed, as rendered by the trial court, was affirmed by respondent Court of Appeals, through Justice Gloria Paras with whom Justices Elbinias and Abad Santos, Jr. concurred (p. 27, Rollo).

Hence, the petition before us which revolves on the ensuing backdrop culled from the text of the decision appealed from:

From the decision dated March 20, 1989 in Criminal Case No. 7526 entitled "People of the Philippines vs. Juanito Lim," the dispositive portion of which states:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused guilty beyond reasonable doubt of violating PD 1612 (Anti-fencing Law) and consequently, pursuant to Sec. 3(a) of said PD 1612 and the provisions of the Indeterminate Sentence Law, he is hereby sentenced to serve imprisonment ranging from 8 years of Prison Mayor as minimum to 14 years, 8 months and 1 day of reclusion temporal as maximum with the accessories of the law and to pay the private offended party the sum of P206,320.00 minus the value of the spare parts recovered and in the possession of Sgt. Dabatian, without however, subsidiary imprisonment in case of insolvency.

"SO ORDERED.",

the accused appealed to this Court.

Juanito Lim, the accused, was charged in an information with violation of PD 1612 (Anti-Fencing Law) which was allegedly committed as follows:

"That on or about March, 1986, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to gain for himself or for another, did then and there willfully, unlawfully and feloniously receive, possess, keep and acquire, or deal with the following spare parts and item, to wit:

xxx xxx xxx

the said spare parts and items being owned by and belonging to one Loui Anton Bond, well knowing that the

same were stolen or should be known to him to have been derived from the proceeds of the crime of Theft, but in spite of such knowledge, accused allowed the same to be stored or kept in his bodega and subsequently bought or disposed of the nine (9) pieces of tires with rims, to the damage and prejudice of the offended party Loui Anton Bond in the total amount of P206,320.00, Philippine Currency.

"Contrary to and in violation of P.D. 1612."

A plea of "not guilty" was entered by the accused upon arraignment.

The evidence of the prosecution tried to establish that Sergio Pabilona had vacated his house in Barangay Tiglimao, Cagayan de Oro City, because of the worsening communist insurgency problem in that barangay, of which he used to be the barangay captain; that he had taken temporary residence in Barangay Pagatpat, also of Cagayan de Oro City (tsn., September 22, 1987, p. 1); that on or about noon of March 1, 1986, Pabilona and the eight men he had requested to help him retrieve his belongings in his house in Barangay Tiglimao, converged at the residence of Sgt. Delfin Bacalso at Lapasan, Cagayan de Oro City; that Sgt. Bacalso and nine other constabulary soldiers, with the former as leader, were to escort Pabilona and his men in going to Barangay Tiglimao; that Pabilona had earlier requested for such a military escort (id., p. 5); that soon after, a Mercedes Benz truck, owned by accused Juanito Lim, arrived; that it was Sgt. Bacalso who contracted for the truck because, according to him, he too had some lumber to load in Barangay Taglimao; that Pabilona had earlier given Sgt. Bacalso P600.00 for truck rental (id., p. 6); that at about 2:00 p.m. Pabilona, his men and their military escort left Lapasan on board the Mercedes Benz truck for Barangay Taglimao, arriving thereat at about 5:00 o'clock that same afternoon; that after they have rested for a while, Pabilona then ordered his men to gather his belongings inside his house, but he was stopped by Sgt. Bacalso who wanted that they first proceed to the next barangay, Barangay Tuburan, because his lumber were allegedly there; that Pabilona protested because his request for military escort was only up to Barangay Taglimao; that he was prevailed upon by Sgt. Bacalso to first proceed to Barangay Tuburan (tsn., id., p. 7); that upon arriving in Barangay Tuburan, Sgt. Bacalso ordered the men of Pabilona to proceed to the compound of ECG Mining Corporation and to remove from the heavy equipment found therein their parts; that he also ordered them to unload and to carry with them the acetylene equipment owned by accused-appellant Juanito Lim which was covered by canvass on board the truck; that as it was already dark, and afraid of being bitten by snakes, the men of Pabilona started removing the parts of the heavy equipment only in the early morning the following day, March 2, 1986; that their job having been done, they brought the various heavy equipment parts, among which were nine tires with rims, to the Mercedes Benz truck and loaded them thereon; that Pabilona, his men and their military escort repaired back to Barangay Taglimao and loaded the personal belongings of Pabilona; that they then drove back to Lapasan, stopping at the "bodega" of accused Juanito Lim which was located a few meters away from the residence of Sgt. Bacalso; that long after their arrival, accused Juanito Lim also arrived on board his pick-up vehicle; that Sgt. Bacalso then ordered the men of Pabilona to unload acetylene equipment and the various heavy equipment parts and to deposit them inside the "bodega" of accused Juanito Lim, after which the latter ordered that his "bodega" be closed; that Pabilona and his men then rode on the truck again and proceeded to Barangay Pagatpat where they unloaded the personal belongings of Pabilona; that the following morning, the men of Pabilona went to the house of Sgt. Bacalso, as they were told by the latter to do so, but Sgt. Bacalso was out of his house; that while waiting for Sgt. Bacalso, the men of Pabilona saw the accused arrive at his "bodega" on board his yellow pick-up vehicle; that they then saw the accused remove from his "bodega" the nine tires with rims, load them on his yellow pick-up vehicle and then drive away; that soon after, Sgt. Bacalso arrived, only to tell the men waiting for him that they have nothing more to collect from him because they already incurred an overdraft, so, the men left for their respective homes; that at the time the heavy equipment was being cannibalized, the President and General Manager of BCG Mining Corporation, Loui Anton Bond, an Australian national, was being held captive by the New People's Army, however, after his

release in June 1986, he immediately reported to the police authorities the thievery committed in his company's compound in Barangay Tuburan; that he also caused to be estimated by Engr. Kionisala the value of the items taken from the heavy equipment; that Engr. Kionisala placed the total value of the items taken at P470,310.00; and that Sgt. Dabatian, of the Cagayan de Oro City Police, conducted an investigation, which culminated in the filing of the instant case by the City Fiscal against accused Juanito Lim for violation of Presidential Decree No. 1612.

Aside from denying the commission of the offense charged, the accused also set up the defense of alibi, which the lower court did not believe.

The trial court found the accused guilty as charged and sentenced him accordingly.

A reconsideration of the aforesaid decision, which was sought by the accused, was denied by the lower court in its Order dated May 3, 1989... (pp. 27-30, Rollo.)

Inculcation of petitioner was anchored on the principal observation that the witnesses who testified against him had no ulterior motive to prevaricate which rendered their testimony worthy of credence when juxtaposed with petitioner's defense of denial and alibi. Respondent court also did not see it fit to reverse the court of origin just because the witnesses against petitioner were not included as co-defendants because as observed also by the trial court, petitioner did not bother to impugn the resolution of the inquest fiscal who conducted the preliminary investigation.

On the absence of the so-called evidence to indicate that it was petitioner who sold or disposed of the spare parts recovered from a store named Basic Diesel Parts, respondent court remarked:

In the case at bar, the prosecution has duly proved that the appellant had dealt with the stolen items and had possession of the same because the said spare parts and tires which were the subject of thievery or robbery for they were removed from the heavy equipment of Loui Bond, the private complainant, without the latter's knowledge and consent, were unloaded from the truck of the appellant and kept in his bodega. And appellant was present during such unloading and had even ordered the bodega closed after such unloading to his bodega.

Under such duly proved facts and circumstances, there is the presumption of fencing on the part of the appellant as provided in the aforequoted Sec. 5 of PD 1612.

The appellant has not destroyed the aforesaid presumption. And the charge against him was further strengthened by the facts and circumstances that he owned the truck that transported the removed spare parts from barangay Tuburan to his bodega; that the said vehicle which was allegedly hired to transport the belongings of Pabilona at Barangay Taglimao to his place at Pagatpat did not immediately proceed to Pagatpat to unload Pabilona's things; instead, from Taglimao the truck proceeded immediately to the appellant's bodega; that he owned the acetylene equipment that was used to detach the spare parts from the heavy equipment of the private complainant and the said acetylene equipment was also unloaded at the bodega of the appellant; that the following morning after the said spare parts, acetylene equipment and tires were deposited in his bodega, he brought out the said tires from his bodega and loaded them in his pick-up vehicle; and his bodega is near the house of Sgt. Bacalso. (p. 32, Rollo.)

With respect to petitioner's argument that the Anti-Fencing Law does not contemplate the inclusion of civil liability as part of the penalty for violation thereof, respondent court opined that when he was instructed to pay the sum of P206,320.00 less the value of the spare parts recovered, such imposition refers to his civil liability, in line with the penal axiom that a person criminally liable is also civilly liable.

Did respondent court err in upholding the judgment of the trial court?

In his efforts to impress an affirmative response to this basic query, petitioner formulates four propositions which all boil down to the ultimate issue of proof beyond reasonable doubt to support conviction.

Petitioner entertains a different perception on the alleged intrinsic substance of the People's evidence by suggesting that the prosecution witnesses testified against him so that the private complainant would not press charges against the prosecution witnesses. It is difficult to grasp petitioner's logic along this line because if this were so, then, every accusing finger collectively pointed towards a single individual will have to be construed as a mere ploy to save one's own skin against prosecution. Independently of petitioner's cold aspersion and delusion of paranoia, the pleadings submitted to this Court hardly support his pretense. An unwarranted assumption expressed by petitioner must perforce deserve scant consideration especially so when he candidly admitted that he does not know Navarro, Bahian, and Pabilona who took the witness stand (p. 31, Rollo).

To bolster petitioner's claim that the prosecution witnesses were the perpetrators of the crime of theft or robbery and are thus polluted, a portion of private complainant Loui Anton Bond's statement was even lifted from the stenographic notes:

Court:

Q The NPA's told you about the cannibalization of your heavy equipment(s)?

A Correct, they told me that my heavy equipment(s) were cannibalized. When I was released and came back to Cagayan de Oro City and lots of people from Tuburan informed me that my heavy equipment(s) were cannibalized by Sgt. Bacalso and Barangay Captain Pabilona. (TSN, 2/2/89, p. 9; Underscoring supplied)

but the foregoing open-court declaration does not exclude petitioner's culpability subsequent to the loss of the heavy equipment. It may convey the message that it was Sgt. Bacalso and Barangay Captain Pabilona who carted away the spare parts, but it does not necessarily follow that petitioner did not get his other end of the bargain, more so when it was established that the things ripped off were loaded on thence unloaded from his truck and kept in his bodega whose door was even closed thereafter per his instructions (p. 32, Rollo).

Further to the argument concerning the non-inclusion of the prosecution witnesses as additional accused in the case for violation of the Anti-Fencing Law, it may be observed that this bare assertion overlooks the fact that it is the fiscal, as a quasi-judicial officer, who assumes full discretion and control of the case and this faculty may not be interfered with, for a prosecutor may not be compelled by mandamus to file a criminal information where he is convinced that he does not have the necessary evidence against an individual (Section 5, Rule 110, Revised Rules on Criminal Procedure; *Quizo vs. Sandiganbayan*, 149 SCRA 108 [1987]; 2 *Regalado*, Remedial Law Compendium, Sixth Rev. Ed., 1989, p. 195). Verily, the matter of prosecuting witnesses for the people is a prerogative of the prosecuting fiscal (*Reyes vs. Camilon*, 192 SCRA 445 [1990]; 4 *Herrera*, Remedial Law, 1992 Ed., p. 39).

On the aspect of *animus furandi*, petitioner is of the belief that this element was not clearly established by the People's evidence and he, therefore, draws the conclusion that respondent court seriously erred in presuming the existence of intent to gain. Again, this supposition ignores the fact that intent to gain is a mental state, the existence of which is demonstrated by the overt acts of a person (*Soriano vs. People*, 88 Phil. 368 [1951]; 1 *Reyes*, Revised Penal Code, Eleventh Rev. Ed., 1977, p. 45; 1 *Aquino*, Revised Penal Code, 1988 Ed., p. 197). And what was the external demeanor which petitioner showed from which the trial court and respondent court inferred *animus furandi*? These circumstances were vividly spelled in the body of the judgment which petitioner chose to blandly impugn and over which he remains indifferent even at this crucial stage. Withal, the sinister mental state is presumed from the commission of an unlawful act in bringing out the tires from his bodega which were loaded on his pick-up (*People vs. Sia Teb Ban*, 54 Phil. 52 [1929]; 1 *Reyes*, *supra* at p. 46; Section 3(b),

Rule 131, Revised Rules on Evidence). At any rate, *dolo* is not required in crimes punished by a special statute like the Anti-Fencing Law of 1979 (U.S. vs. Go Chico, 14 Phil. 128 [1909]; 1 Reyes, *supra* at p. 58) because it is the act alone, irrespective of the motives which constitutes the offense (U.S. vs. Siy Cong Bieng, et al., 30 Phil. 577 (1915); 1 Reyes, *supra*, at p. 59; 1 Aquino, *supra*, at p. 52). Verily, when it was proved that petitioner committed the unlawful acts alleged in the information, it was properly presumed that they were committed with full knowledge and with criminal intent, and it was incumbent upon him to rebut such a presumption -- a burden which petitioner regrettably failed to discharge (United States vs. Tria, 17 Phil. 303 (1910); 1 Aquino, *supra*, at p. 45). Moreover, the presumption of fencing under Section 5 of Presidential Decree No. 1612 that:

Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.

must be upheld in the light of petitioner's shallow demurrer premised on a denial and alibi, since a disputable presumption on this score is sufficient until overcome by contrary evidence (Sibal and Salazar, *Compendium on Evidence*, Second Ed., 1988, p. 290).

Lastly, it is puerile for petitioner to contend that the order for him to pay the sum of P206,320.00, less the value of the spare parts recovered in the possession of Sgt. Pabatian, as civil indemnity is unauthorized under Presidential Decree No. 1612, because Section 3(a) thereof includes the accessory penalty pertaining thereto vis-a-vis Article 104 of the Revised Penal Code:

SEC. 3. Penalties.--Any person guilty of fencing shall be punished as hereunder indicated:

a) The penalty of prision mayor, if the value of the property involved is more than 12,000 pesos but not exceeding 22,000 pesos; if the value of such property exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, the penalty shall be termed *reclusion temporal* and the accessory penalty pertaining thereto provided in the Revised Penal Code shall also be imposed.

There is thus no ambiguity to speak of considering that the message of the aforequoted section is too clear to need clarification.

WHEREFORE, the petition is hereby dismissed and the decision of the Court of Appeals dated February 15, 1991 is hereby AFFIRMED.

SO ORDERED.

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

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