

ERNESTINO P. DUNLAO, SR., PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THE PEOPLE OF THE PHILIPPINES, REPRESENTED BY THE OFFICE OF THE SOLICITOR GENERAL, AND LOURDES DU, RESP...

G.R. No. 111343. August 22, 1996

Ponente: ROMERO, J.

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ROMERO, J.:

Petitioner Ernestino P. Dunlao, Sr. is accused of violating Presidential Decree No. 1612, otherwise known as the Anti-Fencing Law, in an information which reads:

"I N F O R M A T I O N

The undersigned accuses the above-named accused of Violation of Anti-Fencing Law of 1979 (Presidential Decree 1612), committed as follows:

That on or about a week prior to October 25, 1986, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with intent to gain for himself, wilfully, unlawfully and feloniously purchased and received dismantled farrowing crates made of GI pipes, valued at P20,000.00, knowing the same to be the subject of thievery, thereby committing an act of 'fencing,' in violation of the Anti-Fencing Law of 1979, to the damage and prejudice of the owner thereof Lourdes Farms, Inc., represented by Lourdes Du.

Contrary to law.

Davao City, Philippines, January 19, 1987.

(SGD.) ANTONINA B. ESCOVILLA
4th Asst. City Fiscal"[1]

Petitioner is a duly licensed retailer and wholesaler of scrap iron in Davao City using the business name "Dunlao Enterprise."

On October 25, 1986 at about 2:30 p.m. Fortunato Mariquit and Carlito Catog, both employees of Lourdes Farms, were instructed by its proprietor, Mrs. Lourdes Du, to go to petitioner's premises together with police officers Pfc. Epifanio Sesaldo and Pat. Alfredo Ancajas to verify information received that some farrowing crates and G.I. pipes stolen from Lourdes Farms were to be found thereat.

Upon arrival at petitioner's compound, the group saw the farrowing crates and pipes inside the compound. They also found assorted lengths of G.I. pipes inside a cabinet in petitioner's shop and another pile outside the shop but within the compound.

After he was informed by the police operatives that said pipes were owned by Lourdes Farms and had been stolen from it, petitioner voluntarily surrendered the items. These were then taken to the police station.

On February 16, 1987, Criminal Case No. 14655 was filed in the Regional Trial Court of Davao city, Branch 9, accusing petitioner of violation of the Anti-Fencing Law.

On March 13, 1987, petitioner was arraigned and pleaded NOT GUILTY. Trial ensued and on May 30, 1989, the trial court rendered judgment, the dispositive portion of which reads:

"PREMISES CONSIDERED and the evidence being sufficient, this Court finds ERNESTINO P. DUNLAO, SR., GUILTY, beyond reasonable doubt of Violation of Anti-Fencing Law of 1979 and hereby sentences him to imprisonment of Six (6) Years, Eight (8) Months, One (1) Day as minimum to Seven (7) Years and Four (4) Months as maximum of Prison Mayor with all the accessory penalties provided by law.

SO ORDERED."[2]

Petitioner then appealed his conviction to the Court of Appeals. On May 10, 1993, the appellate court promulgated its decision[3] affirming the judgment of the trial court.

Hence, this petition.

Petitioner states that the appellate court erred:

"(A) IN NOT FINDING THAT AT LEAST TWO (2) ELEMENTS OF THE CRIME CHARGED, NAMELY, THE ALLEGED PURCHASE BY THE ACCUSED-APPELLANT OF THE GI-PIPES AND HIS ALLEGED KNOWLEDGE OF THEIR BEING STOLEN ITEMS, WERE NOT PROVEN BY THE PROSECUTION'S EVIDENCE;

(B) IN NOT FINDING THAT ACCUSED-APPELLANT, A DULY LICENSED SCRAP METAL BUSINESSMAN FOR MORE THAN FIFTEEN (15) YEARS, HAD ACTED IN GOOD FAITH AND WITHOUT ANY CRIMINAL INTENT IN POSSESSING AS TEMPORARY CUSTODIAN OF SAID GI-PIPES BY BRINGING THEM INSIDE HIS BUSINESS ESTABLISHMENT, WHOSE INSIDE PREMISES WERE OPEN TO PUBLIC VIEW, BEFORE DARK SET IN ON THE DAY THEY WERE BROUGHT TO HIM BY WELL-DRESSED JEEP-RIDING MEN WHO MERELY OFFERED SAID ITEMS TO HIM FOR SALE BUT WHO FAILED TO RETURN TO HIS ESTABLISHMENT UNTIL POLICE OPERATIVES WENT TO HIS BUSINESS PREMISES A FEW DAYS THEREAFTER."[4]

In brief, petitioner argues that the prosecution failed to establish the fact that, in receiving and possessing the subject items, he was motivated by gain or that he purchased the said articles. Further, he questions the alleged value of the stolen properties stating that they are worth a lot less than what the trial court declared them to be.

Under Presidential Decree 1612,[5] "fencing is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft."

There is no question that the farrowing crates and assorted lengths of G.I. pipes were found in the premises of petitioner. The positive identification by Fortunato Mariquit, an employee of Lourdes Farms, Inc., that these items were previously owned by it gave rise to a presumption of fencing under the law:

"Sec. 5. Presumption of Fencing. -- 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."

In the instant case, did petitioner Ernestino Dunlao succeed in rebutting this presumption?

We hold in the negative.

First of all, contrary to petitioner's contention, intent to gain need not be proved in crimes punishable by a special law such as P.D. 1612.

The law has long divided crimes into acts wrong in themselves called "acts mala in se," and acts which would not be wrong but for the fact that positive law forbids them, called "acts mala prohibita." [6] This distinction is important with reference to the intent with which a wrongful act is done. The rule on the subject is that in acts mala in se, the intent governs, but in acts mala prohibita, the only inquiry is, has the law been violated? [7] When an act is illegal, the intent of the offender is immaterial. [8]

In the case of *Lim v. Court of Appeals* [9] involving violation of the Anti-Fencing Law, we said:

"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)."

Secondly, the law does not require proof of purchase of the stolen articles by petitioner, as mere possession thereof is enough to give rise to a presumption of fencing. [10]

It was incumbent upon petitioner to overthrow this presumption by sufficient and convincing evidence but he failed to do so. All petitioner could offer, by way of rebuttal, was a mere denial and his incredible testimony that a person aboard a jeep unloaded the pipes in front of his establishment and left them there.

"A.

There was a jeep loaded with G.I. pipes where he approached me with the G.I. pipes but I refused to buy and instead requested me that they will unload those G.I. pipes in front of my establishment.

Q.

Now, did you have a talk with that person whom you said arrived aboard the jeep which was carrying G.I. pipes?

A.

We had a talk requesting me that they will just unload the G.I. pipe but we have never talked that I am going to buy those G.I. pipes.

Q.

Can you recall what did the man tell you as he asked you to allow him to unload those G.I. pipes?

A.

He told me that he would just leave them temporarily and he will come back but it took a long time, he failed

to come back.

Q.

What time, more less, of the day was that when the unloading of the G.I. pipes was made, was it in the morning or afternoon?

A.

I can remember it was in the afternoon but I am not certain as to the time.

Q.

Can you estimate the time in the afternoon?

A.

May be around 2 or 3 o'clock but I am not certain, it was in the afternoon.

Q.

You said that man who unloaded the G.I. pipes did not return anymore and so, what did you do with the G.I. pipes that were unloaded in front of your establishment?

A.

That was already late in the afternoon, around 5:30 up to 6:00 o'clock, we are about to close, so what I did I have it brought inside my compound for safekeeping."^[11]

In the Lim^[12] case, we held that:

"x x x the presumption of fencing under Section 5 of Presidential Decree 1612 x x x 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."

The Court notes that the stolen articles were found displayed^[13] on petitioner's shelves inside his compound. If petitioner were merely keeping the farrowing crates and G.I. pipes for the men aboard the jeep, why did he display them? When a storeowner displays articles, it is assumed that he is doing so with the intention of selling them.

Furthermore, the Court finds it strange that petitioner did not even bother to ascertain the identity of the person or persons who deposited the articles with him. We quote with approval the trial court's observation that:

The narration of how the items were simply dumped at the compound of the accused; the fragile and vague statement that the unidentified party unloading the items would bring more items at some indefinite date; x x x that accused caused the pipes to be brought inside the compound of his own volition without any such arrangement with the strangers; that the latter did not return thereafter; that some of the items delivered by the strangers were distributed in and around the compound and in cabinets inside the building already cut in short pieces; that accused cannot produce any proof of ownership by the persons who simply unloaded the items then left without coming back - these are matters which common sense and sound business practices would normally clarify in the face of the express provisions of the Anti-fencing Law. x x x And when the accused took it upon himself to protect and transfer inside his compound items unloaded by total strangers without any agreement as to how the items would be sold or disposed of nor how soon agreement would be compensated, a rather dubious aura of illegitimacy envelopes and taints the entire transaction."

Lastly, petitioner questions the value of the stolen articles as found by the trial court and as affirmed by the Court

of Appeals. He contends that the pipes were worth only P200.00, not the P20,000.00 alleged in the Information.

Prosecution witness Carlito Catog testified on the value of the stolen pipes stating that, as he worked as purchaser for Lourdes Farms, he was knowledgeable about their true worth. He also explained the basis of the estimate of the said articles:[14]

Q.

Now, those G.I. pipes which you said you saw in the premises of Mr. Dumlao and which you earlier mentioned as having been identified by you as coming from Lourdes Farms, can you tell the Honorable Court, more or less, how much did you buy those pipes?

A.

I arrive at the amount of Fifty Nine Thousand (P59,000.00) as my estimate.

Q.

Fifty Nine?

A.

Fifty Nine Thousand Pesos (P59,000.00).

Q.

And can you tell the Honorable Court what is your basis of making this estimate?

A.

The G.I. pipes were made into piggery crates, we use the 3 / 4 inch by 20 feet G.I. pipes in fabricating. We use 6 lengths of those pipes at the cost of P80.00 per crate. So, we arrive at the amount of P480.00 of the materials, the G.I. pipes used in fabricating crates, plus the cost of fabrication which we paid to the one making at P700.00 per crate, so we arrive at P1,180.00 per crate and the number of crates per estimate, which we recovered from the premises of Mr. Dumlao is about more or less 50 crates. So, we arrive at Fifty Nine Thousand Pesos (P59,000.00).

The trial court, however, based its decision on the amount of P20,000.00 as alleged in the information, instead of the appraisal of P59,000.00 made by Mr. Catog. The Court believes that P20,000.00 is a more realistic estimate of the value of the stolen pipes. Petitioner's claim that the pipes were worth only P200.00 is not credible considering that it took a truck to haul off the entire load from petitioner's premises, as testified to by Fortunato Mariquit.[15]

Q.

How did you bring the G.I. pipes from the place of Mr. Dumlao to the police station?

A.

We loaded them in a dump truck owned by Federico Jaca.

Q.

Now, what was the quantity of the pipes that you were able to bring from the place of Mr. Dumlao to the police station?

A.

Almost a truckload.

Q.

What did you say, it was a dump truck?

A.

Almost a load of a dump truck.

Q.

After reaching the police station, what happened?

A.

We unloaded it in the police station and we went home.

In line with our ruling in the Lim case,[16] petitioner should pay Lourdes Farms, Inc. represented by its owner Mrs. Lourdes Du, the sum of P20,000.00 minus the value of the pipes and farrowing crates recovered and in the custody of the police, without subsidiary imprisonment in case of insolvency.

WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED. Petitioner is ordered to pay Lourdes Farms, Inc., represented by Mrs. Lourdes Du, the sum of P20,000.00 minus the value of the recovered pipes and farrowing crates, without subsidiary imprisonment in case of insolvency.

SO ORDERED.

Regalado (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Rollo, p. 62.

[2] Rollo, pp. 60-61.

[3] CA-G.R. CR No. 07174, penned by Arturo B. Buena, J., ponente, concurred in by Regina G. Ordoñez-Benitez and Eduardo G. Montenegro, JJ., Rollo, p.60.

[4] Rollo, pp. 18-19.

[5] Section 2a.

[6] Sangco, J. Cesar, Criminal Law, Vol. I, Book One, 1979, p.90.

[7] Gardner v. People, 62 N.Y., 299, cited in U.S. v. Go Chico, 14 Phil. 134.

[8] Fiedler v. Darrin, 50 N.Y., 437, also cited in U.S. v. Go Chico, supra.

[9] 222 SCRA 286, 287 (1993)

[10] Sec. 2A. supra.

[11] TSN, November 4, 1988, pp. 98-99.

[12] Supra.

[13] TSN, September 23, 1987, p. 8.

[14] TSN, May 26, 1988, pp. 67-69.

[15] TSN, September 23, 1987, p. 9.

[16] Supra.

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