

NORMA DIZON-PAMINTUAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 111426. July 11, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The chief issue presented for our determination in this petition for review under Rule 45 of the Rules of Court is the correctness of the decision of 29 March 1993 of the Court of Appeals in CA-G.R. CR No. 11024[1] which affirmed the decision of Branch 20 of the Regional Trial Court of Manila in Criminal Case No. 88-64954[2] finding the petitioner guilty of the violation of the Anti-Fencing Law (P.D. No. 1612) but set aside the penalty imposed and ordered the trial court to receive additional evidence on the "correct valuation" of the pieces of jewelry involved for the sole purpose of determining the penalty to be imposed.

The information in Criminal Case No. 88-64954 charged the petitioner with the violation of the Anti-Fencing Law in that

"on or about and during the period from February 12, to February 24, 1988, inclusive, in the City of Manila, Philippines, the said accused, with intent of gain for herself or for another, did then and there wilfully, unlawfully and knowingly buy and keep in her possession and/or sell or dispose of the following jewelries, to wit: one (1) set of earrings, a ring studded with diamonds in a triangular style, one (1) set of earrings (diamond studded) and one (1) diamond-studded crucifix, or all valued at P105,000.00, which she knew or should have known to have been derived from the proceeds of the crime of robbery committed by Joselito Sacdalan Salinas against the owner Teodoro and Luzviminda Encarnacion. "[3]

On the basis of the testimonies of prosecution witnesses Teodoro Encarnacion (one of the offended parties), Cpl. Ignacio Jao, Jr., and Pfc. Emmanuel Sanchez, both of the Western Police District, the trial court promulgated on 16 November 1990 its decision, the dispositive portion of which reads:

"WHEREFORE, the prosecution having proved the guilt of the accused for violation of Presidential Decree No. 1612 beyond reasonable doubt, the accused Norma Dizon-Pamintuan is hereby sentenced to suffer an indeterminate penalty of imprisonment from FOURTEEN (14) YEARS of prison mayor to NINETEEN (19) YEARS of reclusion temporal.

No civil liability in view of the recovery of the items, subject-matter of this case.

With costs."[4]

The evidence of the prosecution is summarized by the trial court as follows:

"Teodoro Encarnacion, Undersecretary, Department of Public Works and Highways testified that he has just arrived at his residence located at Better Living Subdivision, Parañaque at around 9:45 p.m. of February 12, 1988 coming from the Airport and immediately proceeded inside the house, leaving behind his driver and two housemaids outside to pick-up his personal belongings from his case. It was at this point that five unidentified masked armed persons appeared from the grassy portion of the lot beside the house and poked their guns to his

driver and two helpers and dragged them inside his house. That the men pointed a gun at him and was made to lie face down on the floor. The other occupants, namely his wife, the maids and his driver were likewise made to lie on the floor. Thereafter, the robbers ransacked the house and took away jewelries and other personal properties including cash. After the intruders left the house he reported the matter immediately to the police. He was then interviewed by the Parañaque police and was informed that an operation group would be assigned to the case.

He likewise reported the matter to the Western Police District on February 15, 1988. Two days later, a group of WPD operatives came over to his house and he was asked to prepare a list of items of jewelry and other valuables that were lost including a sketch of distinctive items. He was later told that some of the lost items were in Chinatown area as tipped by the informer the police had dispatched. That an entrapment would be made with their participation, on February 14, 1988. As such, they went to Camp Crame at around 9:00 a.m. and arrived at the vicinity of 733 Florentino Torres Street, Sta. Cruz, Manila at about 10:00 a.m.; that he is with his wife posed as a buyer and were able to recognize items of the jewelry stolen displayed at the stall being tended by Norma Dizon Pamintuan; the pieces were: 1 earring and ring studded with diamonds worth P75,000 bought from estimator Nancy Bacud (Exh. "C-2"), 1 set of earring diamond worth P15,000 (Exh. "C-3") and 1 gold chain with crucifix worth P3,000 (Exh. "C-4").

Corporal Ignacio Jao, Jr. of the WPD testified that he was with the spouses Teodoro Encarnacion, Jr. in the morning of February 24, 1988 and they proceeded to Florentino Torres Street, Sta. Cruz, Manila at the stall of Norma Dizon-Pamintuan together with Sgt. Perez. After the spouses Encarnacion recognized the items subject matter of the robbery at the display window of the stall being tended by the herein accused, they invited the latter to the precinct and investigated the same. They likewise brought the said showcase to the WPD station. He further testified that he has no prior knowledge of the stolen jewelries of the private complainant from one store to another.

Pfc. Emmanuel Sanchez of the WPD testified that he reported for duty on February 24, 1988; that he was with the group who accompanied the spouses Encarnacion in Sta. Cruz, Manila and was around when the couple saw some of the lost jewelries in the display stall of the accused. He was likewise present during the early part of the investigation of the WPD station."^[5]

The recovery of the pieces of jewelry, on the basis of which the trial court ruled that no civil liability should be adjudged against the petitioner, took place when, as testified to by Teodoro Encarnacion, the petitioner "admitted that she got the items but she did not know they were stolen [and that] she surrendered the items and gave them to [his] wife."^[6]

On the other hand, the version of the defense, as testified to by Rosito Dizon-Pamintuan, is summarized by the trial court thus:

"The defense presented only the testimony of Rosito Dizon-Pamintuan who testified that he is the brother of Norma Dizon-Pamintuan and that sometime around 11:00 a.m. of February 24, 1985, he, together with the accused went in front of the Carinderia along Florentino Torres Street, Sta. Cruz, Manila waiting for a vacancy therein to eat lunch. Suddenly, three persons arrived and he overheard that Cpl. Jao told her sister to get the jewelry from inside the display window but her sister requested to wait for Fredo, the owner of the stall. But ten minutes later when said Fredo did not show up, the police officer opened the display window and got the contents of the same. The display stall was hauled to a passenger jeepney and the same, together with the accused were taken to the police headquarters. He likewise testified that he accompanied his sister to the station and after investigation was sent home."^[7]

In convicting the petitioner, the trial court made the following findings:

"The prosecution was able to prove by evidence that the recovered items were part of the loot and such

recovered items belong to the spouses Encarnacion, the herein private complainants. That such items were recovered by the Police Officers from the stall being tended by the accused at that time. Of importance, is that the law provides a disputable presumption of fencing under Section 5 thereof, to wit:

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

There is no doubt that the recovered items were found in the possession of the accused and she was not able to rebut the presumption though the evidence for the defense alleged that the stall is owned by one Fredo. A distinction should likewise be made between ownership and possession in relation to the act of fencing. Moreover, as to the value of the jewelries recovered, the prosecution was able to show that the same is Ninety Three Thousand Pesos (P93,000.00) ."[8]

The petitioner then appealed her conviction to the Court of Appeals (CA-G.R. CR No. 11024) where she raised two issues: (1) that the judgment was based on a mere presumption, and (2) that the prosecution failed to show that the value of the jewelry recovered is P93,000.00.

In its challenged decision of 29 March 1993, the Court of Appeals disposed of the first issue in this wise:

"The guilt of accused-appellant was established beyond reasonable doubt. All the elements of the crime of fencing in violation of the Anti-Fencing Law of 1979 (P.D. No. 1612), to wit:

1. A crime of robbery or theft has been committed;
2. A person, not a participant in said crime, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells; or in any manner deals in any article or item, object or anything of value;
3. With personal knowledge, or should be known to said person that said item, object or anything of value has been derived from the proceeds of the crime of robbery or theft;
4. With intent to gain for himself or for another;

have been established by positive and convincing evidence of the prosecution. . .

...

The fact that a crime of robbery has been committed on February 12, 1988 is established by the testimony of private complainant Teodoro T. Encarnacion who immediately reported the same to Parañaque Police Station of the Southern Police District (TSN, Hearings of October 3, 1988, November 9, 1988 and January 11, 1989; Exh. A) and submitted a list and sketches of the jewelries robbed, among other things, from their residence located at Better Living Subdivision, Parañaque, Metro Manila (Exh. C, C-1 to C-4 and D).

The second element is likewise established by convincing evidence. On February 24, 1988, accused-appellant was found selling the jewelries (Exhs. C-2, C-3 and C-4) which was displayed in a showcase in a stall located at Florentino Street, Sta. Cruz, Manila. [Testimonies of Teodoro Encarnacion (id. supra); Cpl. Ignacio Jao (TSN, Hearing of February 13, 1989) and Pfc. Emmanuel Sanchez (TSN, Hearing of June 4, 1989)].

On the element of knowledge that the items are derived from the proceeds of the crime of robbery and of intent to gain for herself or for another, the Anti-Fencing Law provides:

'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.'

Knowledge and intent to gain are proven by the fact that these jewelries were found in possession of appellant and they were displayed for sale in a showcase being tended by her in a stall along Florentino Street, Sta. Cruz,

Manila."[9]

Nevertheless, the Court of Appeals was of the opinion that there was not enough evidence to prove the value of the pieces of jewelry recovered, which is essential to the imposition of the proper penalty under Section 3 of P.D. No. 1612. It opined that the trial court erred in concluding that "the value of the recovered jewelries is P93,000.00 based on the bare testimony of the private complainant and the self-serving list he submitted (Exhs. C, C-2 and C-4, TSN, Hearing of October 3, 1993)."[10]

The dispositive portion of the Court of Appeals' decision reads:

"WHEREFORE, finding that the trial court did not commit any reversible error, its decision dated October 26, 1990 convicting accused appellant is hereby AFFIRMED with the modification that the penalty imposed is SET ASIDE and the Regional Trial Court (Branch 20) of Manila is ordered to receive evidence with respect to the correct valuation of the properties involved in this case, marked as Exhibits "C", "C-2" and "C-4" for the sole purpose of determining the proper penalty to be meted out against accused under Section 3, P.D. No. 1612. Let the original records be remanded immediately."[11]

Hence, this petition wherein the petitioner contends that:

"I

PUBLIC RESPONDENT COURT OF APPEALS MANIFESTLY ERRED IN AFFIRMING THE DECISION OF PUBLIC RESPONDENT JUDGE CAÑEBA, IN BLATANT DISREGARD OF APPLICABLE LAW AND WELL-ESTABLISHED JURISPRUDENCE.

II

PUBLIC RESPONDENT COURT OF APPEALS MANIFESTLY ERRED IN REMANDING THE CASE TO THE COURT A QUO FOR RECEPTION OF EVIDENCE FOR THE PURPOSE OF DETERMINING THE CORRECT PENALTY TO BE IMPOSED."[12]

On 23 February 1994, after the public respondents had filed their Comment and the petitioner her Reply to the Comment, this Court gave due course to the petition and required the parties to submit their respective memoranda, which they subsequently complied with.

The first assigned error is without merit.

Fencing, as defined in Section 2 of P.D. No. 1612 (Anti-Fencing Law), 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 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."

Before P.D. No. 1612, a fence could only be prosecuted for and held liable as an accessory, as the term is defined in Article 19 of the Revised Penal Code. The penalty applicable to an accessory is obviously light under the rules prescribed in Articles 53, 55, and 57 of the Revised Penal Code, subject to the qualification set forth in Article 60 thereof. Noting, however, the reports from law enforcement agencies that "there is rampant robbery and thievery of government and private properties" and that "such robbery and thievery have become profitable on the part of the lawless elements because of the existence of ready buyers, commonly known as fence, of stolen properties," P.D. No. 1612 was enacted to "impose heavy penalties on persons who profit by the effects of the crimes of robbery and theft." Evidently, the accessory in the crimes of robbery and theft could be prosecuted as such under the Revised Penal Code or under P.D. No. 1612. However, in the latter case, he ceases to be a mere accessory but becomes a principal in the crime of fencing. Elsewise stated, the crimes of robbery and theft, on the one hand, and

fencing, on the other, are separate and distinct offenses.[13] The state may thus choose to prosecute him either under the Revised Penal Code or P.D. No. 1612, although the preference for the latter would seem inevitable considering that fencing is a *malum prohibitum*, and P.D. No. 1612 creates a presumption of fencing[14] and prescribes a higher penalty based on the value of the property.[15]

The elements of the crime of fencing are:

1. A crime of robbery or theft has been committed;
2. The accused, who is not a principal or accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the said crime;
3. The accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and
4. There is, on the part of the accused, intent to gain for himself or for another.

In the instant case, there is no doubt that the first, second, and fourth elements were duly established. A robbery was committed on 12 February 1988 in the house of the private complainants who afterwards reported the incident to the Parañaque Police, the Western Police District, the NBI, and the CIS, and submitted a list of the lost items and sketches of the jewelry taken from them (Exhibits "C" and "D"). Three of these items stolen, viz., (a) a pair of earrings and ring studded with diamonds worth P75,000.00 (Exhibit "C-2"); (b) one set of earrings worth P15,000.00 (Exhibit "C-3"); and (c) a chain with crucifix worth P3,000.00 (Exhibit "C-4"), were displayed for sale at a stall tended to by the petitioner in Florentino Torres Street, Sta. Cruz, Manila. The public display of the articles for sale clearly manifested an intent to gain on the part of the petitioner.

The more crucial issue to be resolved is whether the prosecution proved the existence of the third element: that the accused knew or should have known that the items recovered from her were the proceeds of the crime of robbery or theft.

One is deemed to know a particular fact if he has the cognizance, consciousness or awareness thereof, or is aware of the existence of something, or has the acquaintance with facts, or if he has something within the mind's grasp with certitude and clarity.[16] When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence unless he actually believes that it does not exist.[17] On the other hand, the words "should know" denote the fact that a person of reasonable prudence and intelligence would ascertain the fact in performance of his duty to another or would govern his conduct upon assumption that such fact exists.[18] Knowledge refers to a mental state of awareness about a fact. Since the court cannot penetrate the mind of an accused and state with certainty what is contained therein, it must determine such knowledge with care from the overt acts of that person. And given two equally plausible states of cognition or mental awareness, the court should choose the one which sustains the constitutional presumption of innocence.[19]

Since Section 5 of P.D. No. 1612 expressly provides that "[m]ere 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," it follows that the petitioner is presumed to have knowledge of the fact that the items found in her possession were the proceeds of robbery or theft. The presumption is reasonable for no other natural or logical inference can arise from the established fact of her possession of the proceeds of the crime of robbery or theft. This presumption does not offend the presumption of innocence enshrined in the fundamental law.[20] In the early case of *United States vs. Luling*,[21] this Court held:

"It has been frequently decided, in case of statutory crimes, that no constitutional provision is violated by a statute providing that proof by the state of some material fact or facts shall constitute prima facie evidence of guilt, and that then the burden is shifted to the defendant for the purpose of showing that such act or acts are innocent and are committed without unlawful intention. (Commonwealth vs. Minor, 88 Ky., 422.)

In some of the States, as well as in England, there exist what are known as common law offenses. In the Philippine Islands no act is a crime unless it is made so by statute. The state having the right to declare what acts are criminal, within certain well defined limitations, has a right to specify what act or acts shall constitute a crime, as well as what proof shall constitute prima facie evidence of guilt, and then to put upon the defendant the burden of showing that such act or acts are innocent and are not committed with any criminal intent or intention."

In his book on constitutional law,[22] Mr. Justice Isagani A. Cruz said:

"Nevertheless, the constitutional presumption of innocence may be overcome by contrary presumptions based on the experience of human conduct [People vs. Labara, April 20, 1954]. Unexplained flight, for example, may lead to an inference of guilt, as 'the wicked flee when no man pursueth, but the righteous is as bold as a lion.' Failure on the part of the accused to explain his possession of stolen property may give rise to the reasonable presumption that it was he himself who had stolen it [U.S. vs. Espia, 16 Phil. 506]. Under our Revised Penal Code, the inability of an accountable officer to produce funds or property entrusted to him will be considered prima facie evidence that he has appropriated them to his personal use [Art. 217]. According to Cooley, the constitutional presumption will not apply as long as there is 'some rational connection between the fact proved and the ultimate fact presumed, and the inference of one fact from proof of another shall not be so unreasonable as to be purely arbitrary mandate' [1 Cooley, 639]."

The petitioner was unable to rebut the presumption under P.D. No. 1612. She relied solely on the testimony of her brother which was insufficient to overcome the presumption, and, on the contrary, even disclosed that the petitioner was engaged in the purchase and sale of jewelry and that she used to buy from a certain Fredo.[23]

Fredo was not presented as a witness and it was not established that he was a licensed dealer or supplier of jewelry. Section 6 of P.D. No. 1612 provides that "all stores, establishments or entities dealing in the buy and sell of any good, article, item, object or anything of value obtained from an unlicensed dealer or supplier thereof, shall before offering the same for sale to the public, secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where such store, establishment or entity is located." Under the Rules and Regulations[24] promulgated to carry out the provisions of Section 6, an unlicensed dealer/supplier refers to any person, partnership, firm, corporation, association or any other entity or establishment not licensed by the government to engage in the business of dealing in or supplying "used secondhand articles," which refers to any good, article, item, object or anything of value obtained from an unlicensed dealer or supplier, regardless of whether the same has actually or in fact been used.

We do not, however, agree with the Court of Appeals that there is insufficient evidence to prove the actual value of the recovered articles.

As found by the trial court, the recovered articles had a total value of P93,000.00, broken down as follows:

- "a) one earring and ring studded with diamonds (Exh. "C-2") -- P75,000.00
- b) one set of earring (Exh. "C-3") -- P15,000.00
- c) one gold chain with crucifix (Exh. "C-4") -- P3,000.00"

These findings are based on the testimony of Mr. Encarnacion[25] and on Exhibit "C,"[26] a list of the items which were taken by the robbers on 12 February 1988, together with the corresponding valuation thereof. On

cross-examination, Mr. Encarnacion re-affirmed his testimony on direct examination that the value of the pieces of jewelry described in Exhibit "C-2" is P75,000.00[27] and that the value of the items described in Exhibit "C-3" is P15,000.00, although he admitted that only one earring -- and not the pair -- was recovered.[28] The cross-examination withheld any question on the gold chain with crucifix described in Exhibit "C-4." In view, however, of the admission that only one earring was recovered of the jewelry described in Exhibit "C--3," it would be reasonable to reduce the value from P15,000.00 to P7,500.00. Accordingly, the total value of the pieces of jewelry displayed for sale by the petitioner and established to be part of the proceeds of the robbery on 12 February 1988 would be P87,000.00.

Section 3(a) of P.D. No. 1612 provides that the penalty of prision mayor shall be imposed upon the accused if the value of the property involved is more than P12,000.00 but does not exceed P22,000.00, and if the value of such property exceeds the latter sum, the penalty of prision mayor should be imposed in its maximum period, adding one year for each additional P10,000.00; the total penalty which may be imposed, however, 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. The maximum penalty that can be imposed in this case would then be eighteen (18) years and five (5) months, which is within the range of reclusion temporal maximum. Applying the Indeterminate Sentence Law which allows the imposition of an indeterminate penalty which, with respect to offenses penalized by a special law, shall range from a minimum which shall not be lower than the minimum prescribed by the special law to a maximum which should not exceed the maximum provided therein, the petitioner can thus be sentenced to an indeterminate penalty ranging from ten (10) years and one (1) day of prision mayor maximum as minimum, to eighteen (18) years and five (5) months of reclusion temporal maximum as maximum, with the accessory penalties corresponding to the latter.

In the light of the foregoing, the Court of Appeals erred in setting aside the penalty imposed by the trial court and in remanding the case to the trial court for further reception of evidence to determine the actual value of the pieces of jewelry recovered from the petitioner and for the imposition of the appropriate penalty.

We do not agree with the petitioner's contention, though, that a remand for further reception of evidence would place her in double jeopardy. There is double jeopardy when the following requisites concur: (1) the first jeopardy must have attached prior to the second, (2) the first jeopardy must have validly been terminated, and (3) the second jeopardy must be for the same offense as that in the first.[29] Such a concurrence would not occur assuming that the case was remanded to the trial court.

WHEREFORE, the instant petition is partly GRANTED by setting aside the challenged decision of the Court of Appeals in CA-G.R. CR No. 11024 insofar as it sets aside the penalty imposed by Branch 20 of the Regional Trial Court of Manila in Criminal Case No. 88-64954 and orders the remand of the case for the trial court to receive evidence with respect to the correct value of the properties involved. The decision of the Regional Trial Court is AFFIRMED subject to the modification of the penalty which is hereby reduced to an indeterminate penalty ranging from Ten (10) years and One (1) day of Prision Mayor maximum as minimum to Eighteen (18) years and Five (5) months of Reclusion Temporal maximum as maximum, with the accessory penalties of the latter.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Rollo, 54-64. Per Associate Justice Ma. Alicia Austria-Martinez, concurred in by Associate Justices Nathanael P. De Pano, Jr. and Quirino D. Abad Santos, Jr.

[2] Original Records (OR), 130-135; Rollo, 67-72. Per Judge Doroteo N. Cañeba.

[3] RTC OR, 1.

[4] OR, 135; Rollo, 72.

[5] OR, 132-133; Rollo, 69-70.

[6] TSN, 3 October 1988, 23.

[7] OR, 133-134; Rollo, 70-71.

[8] OR, 134; Rollo, 71.

[9] Rollo, 57-59.

[10] Rollo, 61.

[11] Id., 63.

[12] Id., 20-21.

[13] People vs. Hon. de Guzman, G.R. No. 77368, 5 October 1993.

[14] Section 5, P.D. No. 1612.

[15] Section 3, Id.

[16] Webster's Third New World International Dictionary, unabridged, 1971 ed., 1252.

[17] BLACK'S LAW DICTIONARY, 872-873, (6th ed.), citing Model Penal Code, § 2.202.

[18] Id., 873, taken from Reinstatement of Torts § 12.

[19] Diong-an vs. Court of Appeals, 138 SCRA 39 [1985].

[20] Section 14(2), Article III, 1987 Constitution.

[21] 34 Phil. 725, 728 [1916].

[22] CONSTITUTIONAL LAW, 1993 ed., 313.

[23] TSN, 2 February 1990, 2-4.

[24] It took effect on 15 June 1979.

[25] TSN, 3 October 1988, 15-17.

[26] OR, 79.

[27] TSN, 9 November 1988, 5.

[28] Id., 3-4.

[29] Gorion vs. RTC of Cebu, 213 SCRA 138 [1991].

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