

RAMON C. TAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 134298. August 26, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an appeal via certiorari from a decision of the Court of Appeals* affirming that of the Regional Trial Court of Manila, Branch 19,** convicting petitioner of the crime of fencing.

Complainant Rosita Lim is the proprietor of Bueno Metal Industries, located at 301 Jose Abad Santos St., Tondo, Manila, engaged in the business of manufacturing propellers or spare parts for boats. Manuelito Mendez was one of the employees working for her. Sometime in February 1991, Manuelito Mendez left the employ of the company. Complainant Lim noticed that some of the welding rods, propellers and boat spare parts, such as bronze and stainless propellers and brass screws were missing. She conducted an inventory and discovered that propellers and stocks valued at P48,000.00, more or less, were missing. Complainant Rosita Lim informed Victor Sy, uncle of Manuelito Mendez, of the loss. Subsequently, Manuelito Mendez was arrested in the Visayas and he admitted that he and his companion Gaudencio Dayop stole from the complainant's warehouse some boat spare parts such as bronze and stainless propellers and brass screws. Manuelito Mendez asked for complainant's forgiveness. He pointed to petitioner Ramon C. Tan as the one who bought the stolen items and who paid the amount of P13,000.00, in cash to Mendez and Dayop, and they split the amount with one another. Complainant did not file a case against Manuelito Mendez and Gaudencio Dayop.

On relation of complainant Lim, an Assistant City Prosecutor of Manila filed with the Regional Trial Court, Manila, Branch 19, an information against petitioner charging him with violation of Presidential Decree No. 1612 (Anti-Fencing Law) committed as follows:

"That on or about the last week of February 1991, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously knowingly receive, keep, acquire and possess several spare parts and items for fishing boats all valued at P48,130.00 belonging to Rosita Lim, which he knew or should have known to have been derived from the proceeds of the crime of theft.

Contrary to law."

Upon arraignment on November 23, 1992, petitioner Ramon C. Tan pleaded not guilty to the crime charged and waived pre-trial. To prove the accusation, the prosecution presented the testimonies of complainant Rosita Lim, Victor Sy and the confessed thief, Manuelito Mendez.

On the other hand, the defense presented Rosita Lim and Manuelito Mendez as hostile witnesses and petitioner himself. The testimonies of the witnesses were summarized by the trial court in its decision, as follows:

"ROSITA LIM stated that she is the owner of Bueno Metal Industries, engaged in the business of manufacturing propellers, bushings, welding rods, among others (Exhibits A, A-1, and B). That sometime in

February 1991, after one of her employees left the company, she discovered that some of the manufactured spare parts were missing, so that on February 19, 1991, an inventory was conducted and it was found that some welding rods and propellers, among others, worth P48,000.00 were missing. Thereafter, she went to Victor Sy, the person who recommended Mr. Mendez to her. Subsequently, Mr. Mendez was arrested in the Visayas, and upon arrival in Manila, admitted to his having stolen the missing spare parts sold then to Ramon Tan. She then talked to Mr. Tan, who denied having bought the same.

When presented on rebuttal, she stated that some of their stocks were bought under the name of Asia Pacific, the guarantor of their Industrial Welding Corporation, and stated further that whether the stocks are bought under the name of the said corporation or under the name of William Tan, her husband, all of these items were actually delivered to the store at 3012-3014 Jose Abad Santos Street and all paid by her husband.

That for about one (1) year, there existed a business relationship between her husband and Mr. Tan. Mr. Tan used to buy from them stocks of propellers while they likewise bought from the former brass woods, and that there is no reason whatsoever why she has to frame up Mr. Tan.

MANUELITO MENDEZ stated that he worked as helper at Bueno Metal Industries from November 1990 up to February 1991. That sometime in the third week of February 1991, together with Gaudencio Dayop, his co-employee, they took from the warehouse of Rosita Lim some boat spare parts, such as bronze and stainless propellers, brass screws, etc. They delivered said stolen items to Ramon Tan, who paid for them in cash in the amount of P13,000.00. After taking his share (one-half (1/2) of the amount), he went home directly to the province. When he received a letter from his uncle, Victor Sy, he decided to return to Manila. He was then accompanied by his uncle to see Mrs. Lim, from whom he begged for forgiveness on April 8, 1991. On April 12, 1991, he executed an affidavit prepared by a certain Perlas, a CIS personnel, subscribed to before a Notary Public (Exhibits C and C-1).

VICTORY [sic] SY stated that he knows both Manuelito Mendez and Mrs. Rosita Lim, the former being the nephew of his wife while the latter is his auntie. That sometime in February 1991, his auntie called up and informed him about the spare parts stolen from the warehouse by Manuelito Mendez. So that he sent his son to Cebu and requested his kumpadre, a police officer of Sta. Catalina, Negros Occidental, to arrest and bring Mendez back to Manila. When Mr. Mendez was brought to Manila, together with Supt. Perlas of the WPDC, they fetched Mr. Mendez from the pier after which they proceeded to the house of his auntie. Mr. Mendez admitted to him having stolen the missing items and sold to Mr. Ramon Tan in Sta. Cruz, Manila. Again, he brought Mr. Mendez to Sta. Cruz where he pointed to Mr. Tan as the buyer, but when confronted, Mr. Tan denied the same.

ROSITA LIM, when called to testify as a hostile witness, narrated that she owns Bueno Metal Industries located at 301 Jose Abad Santos Street, Tondo, Manila. That two (2) days after Manuelito Mendez and Gaudencio Dayop left, her husband, William Tan, conducted an inventory and discovered that some of the spare parts worth P48,000.00 were missing. Some of the missing items were under the name of Asia Pacific and William Tan.

MANUELITO MENDEZ, likewise, when called to testify as a hostile witness, stated that he received a subpoena in the Visayas from the wife of Victor Sy, accompanied by a policeman of Buliloan, Cebu on April 8, 1991. That he consented to come to Manila to ask forgiveness from Rosita Lim. That in connection with this case, he executed an affidavit on April 12, 1991, prepared by a certain Atty. Perlas, a CIS personnel, and the contents thereof were explained to him by Rosita Lim before he signed the same before Atty. Jose Tayo, a Notary Public, at Magnolia House, Carriedo, Manila (Exhibits C and C-1).

That usually, it was the secretary of Mr. Tan who accepted the items delivered to Ramon Hardware. Further, he stated that the stolen items from the warehouse were placed in a sack and he talked to Mr. Tan first over the phone before he delivered the spare parts. It was Mr. Tan himself who accepted the stolen items in the morning at about 7:00 to 8:00 o'clock and paid P13,000.00 for them.

RAMON TAN, the accused, in exculpation, stated that he is a businessman engaged in selling hardware (marine spare parts) at 944 Espeleta Street, Sta. Cruz, Manila.

He denied having bought the stolen spare parts worth P48,000.00 for he never talked nor met Manuelito Mendez, the confessed thief. That further the two (2) receipts presented by Mrs. Lim are not under her name and the other two (2) are under the name of William Tan, the husband, all in all amounting to P18,000.00. Besides, the incident was not reported to the police (Exhibits 1 to 1-g).

He likewise denied having talked to Manuelito Mendez over the phone on the day of the delivery of the stolen items and could not have accepted the said items personally for everytime (sic) goods are delivered to his store, the same are being accepted by his staff. It is not possible for him to be at his office at about 7:00 to 8:00 o'clock in the morning, because he usually reported to his office at 9:00 o'clock. In connection with this case, he executed a counter-affidavit (Exhibits 2 and 2-a).[1]

On August 5, 1996, the trial court rendered decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, the accused RAMON C. TAN is hereby found guilty beyond reasonable doubt of violating the Anti-Fencing Law of 1979, otherwise known as Presidential Decree No. 1612, and sentences him to suffer the penalty of imprisonment of SIX (6) YEARS and ONE (1) DAY to TEN (10) YEARS of prision mayor and to indemnify Rosita Lim the value of the stolen merchandise purchased by him in the sum of P18,000.00.

"Costs against the accused.

"SO ORDERED.

"Manila, Philippines, August 5, 1996.

"(s/t) ZENAIDA R. DAGUNA

"Judge"

Petitioner appealed to the Court of Appeals.

After due proceedings, on January 29, 1998, the Court of Appeals rendered decision finding no error in the judgment appealed from, and affirming the same in toto.

In due time, petitioner filed with the Court of Appeals a motion for reconsideration; however, on June 16, 1998, the Court of Appeals denied the motion.

Hence, this petition.

The issue raised is whether or not the prosecution has successfully established the elements of fencing as against petitioner.[2]

We resolve the issue in favor of petitioner.

"Fencing, as defined in Section 2 of P.D. No. 1612 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.'"[3]

"Robbery is the taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person, or using force upon things."[4]

The crime of theft is committed if the taking is without violence against or intimidation of persons nor force upon

things.[5]

"The law on fencing does not require the accused to have participated in the criminal design to commit, or to have been in any wise involved in the commission of, the crime of robbery or theft." [6]

Before the enactment of P. D. No. 1612 in 1979, the fence could only be prosecuted as an accessory after the fact of robbery or theft, as the term is defined in Article 19 of the Revised Penal Code, but the penalty was light as it was two (2) degrees lower than that prescribed for the principal.[7]

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, the accused ceases to be a mere accessory but becomes a principal in the crime of fencing. Otherwise stated, the crimes of robbery and theft, on the one hand, and fencing, on the other, are separate and distinct offenses.[8] 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 *malum prohibitum*, and P. D. No. 1612 creates a presumption of fencing[9] and prescribes a higher penalty based on the value of the property.[10]

In *Dizon-Pamintuan vs. People of the Philippines*, we set out the essential elements of the crime of fencing as follows:

"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." [11]

Consequently, "the prosecution must prove the guilt of the accused by establishing the existence of all the elements of the crime charged." [12]

Short of evidence establishing beyond reasonable doubt the existence of the essential elements of fencing, there can be no conviction for such offense.[13] "It is an ancient principle of our penal system that no one shall be found guilty of crime except upon proof beyond reasonable doubt (*Perez vs. Sandiganbayan*, 180 SCRA 9)." [14]

In this case, what was the evidence of the commission of theft independently of fencing?

Complainant Rosita Lim testified that she lost certain items and Manuelito Mendez confessed that he stole those items and sold them to the accused. However, Rosita Lim never reported the theft or even loss to the police. She admitted that after Manuelito Mendez, her former employee, confessed to the unlawful taking of the items, she forgave him, and did not prosecute him. Theft is a public crime. It can be prosecuted *de officio*, or even without a private complainant, but it cannot be without a victim. As complainant Rosita Lim reported no loss, we cannot hold for certain that there was committed a crime of theft. Thus, the first element of the crime of fencing is absent, that is, a crime of robbery or theft has been committed.

There was no sufficient proof of the unlawful taking of another's property. True, witness Mendez admitted in an extra-judicial confession that he sold the boat parts he had pilfered from complainant to petitioner. However, an admission or confession acknowledging guilt of an offense may be given in evidence only against the person

admitting or confessing.[15] Even on this, if given extra-judicially, the confessant must have the assistance of counsel; otherwise, the admission would be inadmissible in evidence against the person so admitting.[16] Here, the extra-judicial confession of witness Mendez was not given with the assistance of counsel, hence, inadmissible against the witness. Neither may such extra-judicial confession be considered evidence against accused.[17] There must be corroboration by evidence of corpus delicti to sustain a finding of guilt.[18] Corpus delicti means the "body or substance of the crime, and, in its primary sense, refers to the fact that the crime has been actually committed." [19] The "essential elements of theft are (1) the taking of personal property; (2) the property belongs to another; (3) the taking away was done with intent of gain; (4) the taking away was done without the consent of the owner; and (5) the taking away is accomplished without violence or intimidation against persons or force upon things (U. S. vs. De Vera, 43 Phil. 1000)." [20] In theft, corpus delicti has two elements, namely: (1) that the property was lost by the owner, and (2) that it was lost by felonious taking.[21] In this case, the theft was not proved because complainant Rosita Lim did not complain to the public authorities of the felonious taking of her property. She sought out her former employee Manuelito Mendez, who confessed that he stole certain articles from the warehouse of the complainant and sold them to petitioner. Such confession is insufficient to convict, without evidence of corpus delicti.[22]

What is more, there was no showing at all that the accused knew or should have known that the very stolen articles were the ones sold to him. "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. 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. 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. 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." [23]

Without petitioner knowing that he acquired stolen articles, he can not be guilty of "fencing". [24]

Consequently, the prosecution has failed to establish the essential elements of fencing, and thus petitioner is entitled to an acquittal.

WHEREFORE, the Court REVERSES and SETS ASIDE the decision of the Court of Appeals in CA-G.R. CR. No. 20059 and hereby ACQUITS petitioner of the offense charged in Criminal Case No. 92-108222 of the Regional Trial Court, Manila.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[*] In CA-G.R. CR No. 20059, promulgated on January 29, 1998, Montoya, J., ponente, Vidallon-Magtolis and Cosico, JJ., concurring.*

[**] In Criminal Case No. 92-108222, decision dated August 5, 1996, Judge Zenaida R. Daguna, presiding.**

- [1] Rollo, pp. 69-71.
- [2] Petition, Rollo, p. 11.
- [3] *Dizon-Pamintuan vs. People*, 234 SCRA 63, 71 [1994]; *People vs. de Guzman*, 227 SCRA 64, 67 [1993].
- [4] Article 293, Revised Penal Code; *People vs. de Guzman*, supra, on p. 67.
- [5] Article 308, Revised Penal Code.
- [6] *People vs. de Guzman*, supra, on p. 68.
- [7] *Dizon-Pamintuan vs. People*, supra.
- [8] *People vs. de Guzman*, supra.
- [9] Section 5, P. D. No. 1612.
- [10] Section 3, P.D. No. 1612.
- [11] 234 SCRA 63, on p. 72 [1994].
- [12] *People vs. Aranda*, 226 SCRA 562 [1993].
- [13] *People vs. Escalona*, 227 SCRA 325 [1993].
- [14] *People vs. Escalona*, supra, on p. 328.
- [15] *People vs. Januario*, 335 Phil. 268 [1997].
- [16] *People vs. Januario*, supra.
- [17] *People vs. Alegre*, 94 SCRA 109 [1979].
- [18] *People vs. de la Cruz*, 279 SCRA 245, 256 [1997], citing *People vs. Lorenzo*, 240 SCRA 624 [1995].
- [19] *People vs. Roluna*, 231 SCRA 446, 452 [1997]; *People vs. Madlangbayan*, 94 SCRA 685 [1979]; *People vs. Taruc*, 16 SCRA 834, 837 [1966].
- [20] *People vs. Rodrigo*, 123 Phil. 310, 312-313 [1966]; *Santos vs. People*, 181 SCRA 487, 492 [1990]; *Abundo vs. Sandiganbayan*, 205 SCRA 193, 196 [1992].
- [21] *Moreno*, Philippine Law Dictionary, Third Edition, 1988, p. 218.
- [22] *People vs. de la Cruz*, supra.
- [23] *Dizon-Pamintuan vs. People of the Philippines*, supra., on pp.73-74, citing *Diong-an vs. Court of Appeals*, 138 SCRA 39 [1985].
- [24] Cf. *Aquino*, The Revised Penal Code, Vol. III, 1988 ed. p. 212; *People vs. de Guzman*, supra.

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