

GABRIEL CAPILI, PETITIONER, VS. COURT OF APPEALS, ET. AL., RESPONDENTS.

G.R. No. 139250. August 15, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This Petition for Review on Certiorari seeks the reversal of the Decision of the Court of Appeals[1] in CA G.R. CR No. 19336 entitled “People of the Philippines vs. Gabriel Capili, et. al.” affirming the Decision of the Regional Trial Court[2] of the National Capital Judicial Region, Branch 34, finding Gabriel Capili guilty beyond reasonable doubt of violation of Presidential Decree 1612.

Gabriel Capili y Recto (GABRIEL) together with his wife Ferma Capili y Inot were charged with violation of Presidential Decree 1612, otherwise known as the Anti-Fencing Law, in an information that reads:

“That on or about November 5, 1993, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other. With intent to gain for themselves or for another, did then and there willfully and knowingly receive, possess, keep, acquire and sell or dispose of the following, to wit:

Assorted pieces of jewelry
Several pieces of old coins (U.S. dollar)

all valued at P3,000,000.00, which they knew or should have known to have been derived from the proceeds of a (sic) crime of theft.

Contrary to law.”[3]

On December 3, 1993, both accused entered a plea of not guilty to the offense charged with the assistance of counsel.[4] Thereafter, trial ensued.

The trial court summarized the testimonies of the witnesses as follows:

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Christine Diokno testified that at 4:00 P.M. on November 4, 1993, when she went home from her office, she discovered that some of her (sic) items at (sic) her closet and the jewelries (sic) and money at (sic) her mother’s room were taken. Upon call, two Makati police responded and surveyed the room where the robbery took place. The police officer took her statement (Exhs. “F”, “F-1” and “F-2”) and then investigated the theft case. Police prepared the police report and concluded that Michael Manzo, her former houseboy, committed the offense so a case against Manzo was filed. She described all the properties that were taken as those reflected in the police report because according to her she gave the police a list of the items and is part of her statement (tsn, p. 11, May 11, 1994). Allegedly the value is about 3 Million pesos, some were of 20 years and some were of 30 years vintage, acquired by her parents since their wedding in 1945. Some from abroad, States or Hongkong acquired during trips.

On November 27, 1993, Quiapo sub-station informed her that Michael Manzo was there. She talked to Michael Manzo who admitted the commission of the stealing and that he sold the items to Gabriel Capili and his wife for P50,000.00. Likewise Michael Manzo admitted that on two occasions Gabriel Capili returned some of the items. The first was before he went to Isabela. That Capili returned to him (Manzo) the memorabilia taken from her room consisting of (sic) school ring, bracelets, key chain and some custom jewelries (sic) and some other items. That three days before the apprehension Gabriel returned the Raymond Wiel watch and two cast rings with diamonds. The first ring is valued at P3,000.00 the second watch was (sic) cost P20,000.00 to P60,000.00 and the two cast rings about P80,000.00. Then Manzo informed her that he sold those items returned to other buyers, near Claro M. Recto, who paid P1,500.00 and P1,000.00 for the ring which police officer (sic) failed to recover because the stand was no longer there. She was shown by the police officer the items recovered from Gabriel Capili and his wife which she identified as her property. Shown with Exhs. "A", "B", "C", she said those are her properties and that the coins (sic) were acquired during the trips to the States. She kept John F. Kennedy dollar coins contained in a small box. She further relayed that the coins, Exh. "A" came from a brooch owned by her mother. The chain with medal of our Lady was bought by her mother and was given to her together with other belongings.

That before the discovery of the incident her mother had the list of all the items by counting them physically because her mother used to check the jewelry every week in her presence. That all is worth three (3) Million Pesos because the jewelries (sic) were sometimes brought to a jeweler for a change or for removal of stones or replacement that is why she considered that all the jewelries (sic) were appraised. She does not know, however, what exactly were brought by her mother. That she was present during the last inventory of the items and the land titles by her mother, presenting the alleged inventory on August 1, 1993 (Exh. "S"), after her father died on July 15, 1993. While her mother was checking them, she was in the room writing the description of the jewelries (sic), the cost and date when bought. That the corresponding value stated came from her mother kept inside the vault.

That on November 2, 1993, she took out all the items because November 9 was her mother's birthday and would like to select the items she and her mother were going to wear for the occasion then check the jewelries (sic) against the prepared list. The list included the items lost but did not include the box of memorabilia which was taken from her room. She claimed that the records including the receipts from where the list was taken were lost together with the jewelries (sic) that were taken.

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To support the allegation in the Information Michael Manzo testified that after he asked his friend Emilio Benitez where he can sell his jewelries (sic) he was brought to Boy Recto's (accused) house at 1260 Carola St., Sampaloc, Manila, to whom he gave one bag of jewelries (sic) with the information that he stole them while he was a house boy. Recto agreed to pay him P50,000.00 (p. 3, tsn, March 3, 1994). He left and went back after a week or on November 5, as he needed the money. He was paid P1,500.00. He left again and went back after two weeks and was paid again P6,000.00. He left again but in his return he was not paid anymore.

When he visited his friend Emilio Benitez at the precinct, having been charged with vagrancy, he was caught by the police asking him where he brought the jewelries (sic), so he pointed to Boy Recto, who was picked-up and brought to the station and investigated. During the frisking and searching at the station, police officers found pearls and old coins from Gabriel Capili. The following day, Mrs. Ferma Capili was investigated at sub-station 3, Quiapo, WPD.

He identified the pearl earring with copper (sic) with diamond (Exh. "A"). He likewise identified the old coin 4 pieces of dollars marked as Exhs. "B-1", "B-2", "B-3" and "B-4"; "B-1", "B-2" dimes, "B-3" and "B-4" quarter cents; pendant with inscription Boy Recto, Exh. "C". He admitted that the statement marked as Exh. "D" and sub-markings is his.

Describing the contents of the bag, he said that there were more or less 20 pieces of rings, some with pearls

and some with diamonds and birthstones; more or less 20 pairs of earrings, diamond with pearls; more or less 10 pieces of necklaces of plain gold with pendant with the replica of God and cast with diamond. There were Quartz watches; 3 pieces Bulova watches; 5 pieces of Seiko watches, Raymond Wiel. That per complainant's information, all of them costs (sic) 3 Million Pesos which he merely gave to the accused without counting them. He however, claims that they will cost only one to two million pesos. Despite which value, he entrusted them to Boy Recto without counting the pieces.

Defense adopted Exhibit "B" as Exhibit "1" and sub-markings, Exhibit "D" as their Exhibit "2" and "2-a".

That during the investigation, when he was given another lawyer, he stated that he told the accused to sell the jewelries (sic) he stole. (p. 6, tsn, March 16, 1994)

That witness explained that only the fancy ones were returned to him.

That three days after he left the jewelries (sic) to (sic) Recto, they had drinking session somewhere at Recto, on which occasion, he did not ask for the jewelries (sic).

That the P1,500.00 was given to him near the bus terminal at Sampaloc near UST and when the fancies (sic) were returned, which he came to know as such because he had it appraised in a pawnshop when they arrived from Roxas, Isabela. When the jewelries (sic) were returned contained in the bag, he accepted, opened (sic) for a couple of minutes without counting. That Emilio Benitez glanced on (sic) them because the bus was about leave. Recto gave the instruction that he can come back within two weeks because Boy Recto will pay.

The witness admitted that he is facing a charge of Qualified Theft in Makati pending before a court where he posted his bail. That he is testifying before this Court out of his own volition. He explained that they went to Isabela per instruction of Gabriel Capili that they should lie low because the police were hunting for them and that Emilio Benitez is from Roxas, Isabela.

After more or less two weeks when (sic) they arrived from Isabela, he was requested by Boy Recto (Gabriel Capili) to sign a blank document somewhere at Espana (Document Exh. "3" to "3-A"). He was not, however, forced. That upon arrival from Isabela, they went to the house of the accused then proceeded to wait at a hotel in Sta. Cruz. After three hours of waiting, the accused arrived and gave him P6,000.00 in the presence of Emilio Benitez without receipt. He declared that he himself is not sure whether all the jewelries (sic) inside the bag are (sic) genuine or not.

Having admitted to the police that he is Michael Manzo, he was asked where he brought the jewelries (sic) so he pointed to Boy Recto. He admitted to have signed a blank document, Exhibit "4" and "3", his signature, Exh. "4-1" and Exh. "3-A", but do (sic) not know where the originals were, but later said that the originals are in the hands of the police officers.

SPO3 Ernesto Ramirez testified that as police officer of Station 3, on November 27, 1993 he investigated Michael Manzo who was accused of Qualified Theft at Makati and who admitted to him having committed said offense and pointed to the house of Gabriel Capili at Sampaloc, Manila where he sold the jewelries (sic). Thereafter, he and his companions SPO2 Reyes, SPO3 Salalia and SPO3 Fuentes with Michael Manzo went to the place and saw the wife of Gabriel Capili wearing the pair of earrings, one of the jewelries (sic) stolen. They were allowed by Gabriel Capili to get (sic) inside the residence where Gabriel Capili showed him the signed document of Michael Manzo, Exh. "4" and said he returned the jewelries (sic). It was however, denied by Manzo although he admitted the signature. Gabriel Capili went with them to the police precinct where he (Gabriel Capili) was referred to the investigator and found (sic) from his pockets 4 pieces of coins. Allegedly while the wife was then being investigated, Manzo pointed to the earrings worn by the (sic) wife as part of those stolen properties. The same was taken by the investigator. He pointed to both accused inside the courtroom.

SPO1 Eduardo San Diego also from Station 3, Quiapo, Manila, investigator, investigated the case of Qualified

Theft that happened at the house of Cristine Diokno. Both accused were positively identified by Michael Manzo so he took the latter's statement. That during his investigation he recovered a necklace with pendant, US dollar coins with different denominations and one pair of earrings (Exh. "A", "B" and "C"). In their investigation they tried to recover the other items but failed because the establishment of the other buyer pointed to them by Michael Manzo was no longer existing. He prepared the booking sheet and arrest report Exhs. "D" and "E" and sub-markings.

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Gabriel Capili denied any knowledge about the charge against him and declared that what Michael Manzo stated in court that he agreed to pay P50,000.00 but paid only P1,800.00 is not true. He was at home on November 10, 1993 selling junk foods (sic) when he was called by Emil, companion of Michael Manzo, through the phone which number he gave to Emil when the latter bought something on credit from him a week before that date. Emil asked him if he would like to buy jewelry to whom he relayed if he will see the jewelry. Emil arrived at 2:00 o'clock P.M. together with Michael Manzo, the first time he saw the latter and showed him two (2) pieces of jewelry, one birthstone and an old coin with a price of P2,000.00. He inquired from (sic) where the jewelries (sic) came from and was answered by Michael Manzo that it came from and (sic) being sold by his mother. He declined because he cannot pay for it. Michael Manzo handed to Emil something wrapped of which he was asked to appraise. Michael Manzo asked him if he knew somebody who can buy. He said he has but hard to see because he seldom see the man already but was invited to see the person at Recto. After boarding the taxi they did not proceed immediately to the place. Michael Manzo ordered the taxi cab to go back to Sta. Mesa Love Hotel where he was told to wait. Michael Manzo went up the hotel while Emil went towards Aurora Boulevard walking carrying some items but did not know what happened. After one hour of waiting at the taxicab and worried about the taxi fare, he went inside the hotel and after inquiring from the counter where his companion was, Michael Manzo went down with two women companions. Fifteen minutes after the two women left, Emil arrived and said he went to Cubao selling the jewelries (sic). Thereafter, they went to Recto at (sic) a business establishment near the Galaxy Theater. He was offered to drink from almost dark until dawn asking him if he had already find (sic) his friend buyer. They parted ways and went home.

On November 15, Manzo and Emil called him up again asking if it was possible to see him which he positively answered. He went to UST somewhere near Mambusco station where he saw Emil with Michael Manzo about 5 meters from Emil standing talking to someone. He asked Emil if he was able to sell the jewelries (sic) and was answered "not yet". Emil was borrowing P700.00 but he has no such amount, so Emil gave him the jewelries (sic) formerly offered to him, the birthstone and watch allegedly as a gift from Michael Manzo. Emil informed him that he and Michael Manzo together with two others were going to Isabela so he gave the P700.00. After they (Emil and his friend) boarded the bus he went home.

On November 21, he was fetched by Emil, brought to a place near the UST along Dapitan Street where he found Michael Manzo retrieving the gift given to him. Because of Manzo's insistence, he returned them but asked Manzo to sign Exh. "3". They failed to return his P700.00 so he asked Manzo to sign another documents (sic), Exhs. "4" and "4-A", the original of which was given to the policeman and which was not returned to him.

After several days Pat. Ramirez arrived informing him that Michael Manzo sold him jewelries (sic). Invited (sic) he went to the police at the Hidalgo sub-station 3. Michael Manzo was not immediately investigated but Michael Manzo and Emil were incarcerated. After fifteen (15) minutes from the second floor he was brought to the ground floor inside the cell and detained for several days. He alleged that on the same day he was brought in a room at the second floor where he was mauled by Pat. Ramirez (sic) not convinced with what he said about the paper (Exh. "4"), he gave them then brought back to the cell. He told the police that the jewelries (sic) they are looking for are in the possession of Michael Manzo. He further claimed that Michael Manzo talked to a certain Go and pointed to some other buyers who were brought to the precinct. He, however, did not know if they were released. On November 27 when his wife visited him at 7:00 P.M. she was likewise

incarcerated because Michael Manzo pointed to the earrings of his wife.

He further declared that prior to his wife's arrival, policeman and Michael planned that when his wife arrived, Michael will point to her earrings, allegedly because Emil gave P500.00 to the police officer while planning to include his wife. His wife was then brought to the second floor but did not know what happened, thereafter was incarcerated.

He testified that the earrings of his wife was given by her brother and that the old coin, Exh. "B" is his acquired when he helped, per order of Pat. Nick Golahan, in carrying dead body (sic) when MV Nucnucan sank in Cebu where the son of one he carried gave him coin. The other coin belongs to him which he picked up in Cebu. That the necklace with print Boy Recto on the pendant belongs to him and which was taken at the precinct from the dancer to whom he gave it. Further stating that the same came from Pat. Alex Aguirre when he was still single.

That upon inquest, the Fiscal told the police that they should be released but were not and (sic) brought back to the cell. The following morning they were brought to the City Hall. There again, the Fiscal ordered that they be released but were not and (sic) brought back to the cell once more. On the third time when he was brought to the Fiscal, the latter allegedly told him that San Diego altered the testimony that is why they will be incarcerated.

He denied that Manzo signed Exh. "3" without any writing and pointed to the typewritten statement therein as his relaying that the same was thru Michael's suggestion at the time when they were already quarreling while accusing Manzo to have stolen the properties subject matter of this case and even questioned that there is something wrongly written, the giving as a gift.

That although they did not know the accused Michael Manzo and did not know of any reason why he pointed to him and his wife as buyers of the jewelries (sic) worth 3 Million Pesos, he believed that it was because of the quarrel when he started accusing Manzo of stealing of which he was being blamed.

He now claims that the he came to know Emilio Benitez only on November 5, the same time he came to know Michael. (tsn, p. 22, Aug. 8, 1994), hence, there is no reason why Benitez will approach him selling the property. There is no quarrel with the police officers and so he has no knowledge why these people would like to implicate him and his wife. He likewise did not know of any reason why the police officer stated in their affidavit of arrest that the items "US Dollars" were recovered from him at the time of the investigation. He admitted that only one of the coins belongs to him, picked-up from Cebu (Exh. "B-4") and his two (2) LRT coins are still missing so with P20.00 and two more Abraham Lincoln coins. Although he claimed that San Diego did not release them after the Fiscal's order he did not file any action against San Diego. That on December 1, 1993, the Prosecutor ordered the police to release them and was present asking the Fiscal if he can be allowed to go home but since they did not have any document, the Fiscal said the policemen will take care of them. They did not execute any statement because according to him he was not given any chance.

SPO1 Beinvenido Inot testified that he is a member of the National Police Force of Precinct 1, Olongapo City and that the accused Ferma Capili, wife of Gabriel, is his sister. He was asked by his sister to testify about the pair of earring (sic) that he gave Ferma on June 24, 1990, a U. S. Fancy jewel which was given by her sister from abroad. It has brillantitos which is the same as a base of the glass. The same was confiscated from Ferma by the police.

The last time he saw the pair of earring was on the date his sister celebrated her birthday. Showing all the exhibits of the prosecution to the witness, at first he answered "There are no brillantitos pair of earrings, sir.". And later witness answered: "Ay ito pala." (holding the pair of earrings marked as Exh. "A-1", tsn p. 5, Oct. 14, 1994). He later claimed that the pair of earrings is actually for his wife sent by her sister abroad to Olongapo. He cannot remember having seen Ferma Capili on December 1993 to September 9, 1994, they saw each other two times and that they talked about those jewelries (sic) thru the phone at that time when the

accused was apprehended and incarcerated. However, despite the information of Ferma Capili that she was apprehended because of the pair of earrings he did not do anything because allegedly he was too busy and they have operation. He admitted that this is the first time he declared that the earrings came from him without executing any written statement. (Defense marked Exh. "A-1" pair of earring (sic) as their Exh. "8") (Decision, pp. 1-15; Rollo, pp. 31-45)."[5]

On August 17, 1995, the trial court rendered its decision acquitting Ferma Capili but finding the accused, Gabriel Capili, guilty beyond reasonable doubt of the crime charged the dispositive portion of the decision reads:

"WHEREFORE, finding the prosecution's evidence to be sufficient to support a conviction beyond moral certainty, for violation of P.D. 1612 in relation to Sec. 3 par. A of the same law which required that the penalty to be imposed shall be in the maximum period if the value of the property is more than P22,000.00, adding one (1) year for its additional P10,000.00, the total penalty of which shall not exceed twenty (20) years, further considering that the consideration of the purchase is P50,000.00, accused Gabriel Capili is hereby found guilty beyond reasonable doubt for violation of said law. Without any mitigating or aggravating circumstances attendant to its commission, but granting the accused with the benefit of the indeterminate sentence law, he is hereby sentenced to suffer eight (8) years and one (1) day to ten (10) years of prision mayor medium and to suffer the additional penalty of three years (one for every P10,000.00) and to further suffer the accessory penalty thereof.

The accused shall be credited with the full extent of his preventive imprisonment in accordance with Art. 29 of the Revised Penal Code.

Since the claim of P3 Million has not been sufficiently proven but the agreed price between the seller and herein accused is only P50,000.00, the accused is hereby directed to indemnify the complainant Christined Diokno the sum of P50,000.00, less the value of the jewelries (sic) presented in Court, Exhibits "A". "B" and "C" and its sub-markings, to be returned to the owner upon proper receipt and photograph.

The bond posted by the accused for his provisional liberty is hereby cancelled.

The body of the accused is hereby committed to the Director of the Bureau of Corrections, National Penitentiary, Muntinlupa, Metro Manila, through the City Warden of Manila.

Considering that there is no evidence to show complicity and/or that Ferma Capili conspired and confederated with her husband Gabriel Capili, she is hereby acquitted from the offense charged in the Information.

The bond posted by the accused for her provisional liberty is hereby cancelled.

SO ORDERED."[6]

GABRIEL appealed to the Court of Appeals which affirmed the decision of the RTC the dispositive portion of its decision reads:

"WHEREFORE, the decision of the trial court dated August 17, 1995 convicting the appellant for violation of P.D. 1612 is hereby AFFIRMED in toto.

SO ORDERED."[7]

Motion for reconsideration was denied[8], hence this appeal where the accused assigns the following error:

"THE COURT OF APPEALS IN AFFIRMING THE DECISION OF THE TRIAL COURT ERRED IN NOT REMANDING THE CASE TO THE COURT A QUO FOR FURTHER PROCEEDINGS DESPITE OF (SIC) THE FAVORABLE RECOMMENDATION OF THE OFFICE OF THE SOLICITOR GENERAL CONSIDERING THAT THE ACTUAL VALUE OF THE FENCED ARTICLES WERE NOT CORRECTLY ESTABLISHED BY THE PROSECUTION."[9]

The petitioner maintains that even for the sake of argument that the prosecution has established that the petitioner committed the crime of fencing (violation of P.D. 1612) beyond reasonable doubt, there is no legal basis for him to suffer the entire penalty imposed by the trial court. Petitioner claims that the Office of the Solicitor General, in its appellee's brief filed with the Court of Appeals, agrees that basis of the penalty for the offense of fencing is the value of the property actually involved and not the agreed selling price of the stolen item. The petitioner also maintains that since the prosecution failed to prove the value of the stolen goods, the guilt of the petitioner has not been proved beyond reasonable doubt. The petitioner therefore prays that the decision of the Court of Appeals be reversed and a new one be issued either acquitting the petitioner or remanding the case to the court a quo for further proceedings.[10]

The respondent through the Office of the Solicitor General (OSG) counters that on April 25, 1997, it filed a Manifestation/Clarification modifying the recommendation it made in its appellee's brief to the effect that a remand of the case would unduly delay the disposition of the case. Therefore, to expedite the final resolution of the case, the OSG recommended that as an alternative to a remand that the assessment and findings of the trial court on the value of the subject articles, which is P50,000.00 be adopted and used instead.[11] It is therefore the contention of the OSG that there is no merit in the petitioner's claim that the OSG agreed to the remand of the case for further reception of evidence to determine the value of the stolen goods inasmuch as this would be prejudicial to the rights of the petitioner. The OSG also opines that the petitioner is not entitled to an acquittal since the value of the stolen property is not determinative of the guilt of the accused and is not an element of the crime but is only determinative of the penalty therefor.

The petition is partly meritorious.

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.[12] The essential 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 an 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."

All these elements are present in the case at bench.

The first element or the fact of theft was proved by prosecution witness, Christine Diokno (DIOKNO) who testified that several pieces of jewelry, watches and money were stolen from her mother's bedroom. She reported the theft to the police who after conducting an investigation, concluded that her houseboy, Michael Manzo (MANZO), committed the offense. Consequently, a criminal case was filed against MANZO. In her testimony, DIOKNO stated that the major items that were taken consisted of two diamond rings each having a diamond solitaire of three (3) carats each, a pair of diamond earrings each having a diamond solitaire of two point five (2.5) carats, a diamond cross with twelve (12) half (1/2) carat diamond, her mother's wedding band, an emerald set consisting of an emerald ring set with diamonds with a pair of matching earrings, a sapphire set consisting of two sapphire rings set with diamonds and matching earrings, a South Sea pearl set consisting of a ring and two pairs of

matching earrings also set with diamonds, three cultured pearl necklaces with matching cultured pearl earrings set with diamonds, a topaz set consisting of two rings with diamonds and one with rubies with a set of matching earrings, a cameo set consisting of a ring, matching earrings and a brooch all set with diamonds and four solid gold watches, a Rolex, Piaget, Universal Geneve and a Gabriel Peregaux. She alleged that the total value of the items amounted to approximately three million (P3,000,000.00) pesos. In court, DIOKNO identified some of the recovered stolen items consisting of a set of pearl earrings with two small diamonds (Exhibit "A"), a gold chain with pendant (Exhibit "B") and old United States dollar coins (Exhibit "C").[14]

DIOKNO's testimony is corroborated by MANZO, who admitted that he stole the jewelry from DIOKNO. And that after stealing the jewelry, he delivered them to the petitioner, GABRIEL with the information that the jewelry was stolen and for the purpose of selling the same. He identified GABRIEL in court as the person to whom he delivered the stolen jewelry.[15] MANZO testified that GABRIEL was not a participant in the theft of the jewelry and that he told GABRIEL that the jewelry was stolen. He also established the fact that the petitioner agreed to pay fifty thousand (P50,000.00) pesos for the stolen jewelry which clearly manifests intent to gain on the part of the petitioner. Consequently, MANZO's testimony proves the second, third and fourth elements of the crime of fencing.

At any rate, the law does not require proof of purchase of the stolen articles by the accused as mere possession thereof is enough to give rise to a presumption of fencing.[16] GABRIEL, who was in possession of at least two of the stolen items, has not rebutted this presumption.

We also disagree with the petitioner that the prosecution failed to prove the value of the stolen items.

Although DIOKNO's testimony is hearsay and is inadmissible for purposes of determining the value of the stolen items inasmuch as her testimony was not based on her own personal knowledge but on the appraisals made by jewelers and what her mother told her, MANZO's testimony remains unrebutted. MANZO established that he sold the stolen items to GABRIEL for P50,000.00 and in the absence of any evidence to the contrary, said amount is presumed to be the value thereof as it is the only value established by the prosecution. Besides, the valuation of the stolen items made by the trial court is a factual issue and factual findings of the trial court especially when affirmed by the Court of Appeals are entitled to great weight and generally should not be disturbed on appeal.[17]

We note however that the trial court was mistaken in imposing the penalty. A person found guilty of fencing property the value of which exceeds P22,000.00 is punished under Presidential Decree 1612 as follows:

"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 for 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."

Under the Indeterminate Sentence Law[18], the court shall sentence an accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed and the minimum of which shall be within the range of the penalty next lower to that prescribed for the offense; and if the offense is punished by any other law, the court shall sentence an accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.[19]

Applying the foregoing, the petitioner should be sentenced to suffer the penalty of prision mayor maximum. The fact that the value of the fenced items exceeds P22,000.00 should not, like in cases of estafa, be considered in the initial determination of the indeterminate penalty.[20] In the absence of mitigating and aggravating circumstances, this should be imposed in its medium period which ranges from ten (10) years, eight (8) months and one (1) day to eleven (11) years and four (4) months. Adding the additional two (2) year sentence, one for each P10,000.00 in excess of P22,000.00, the maximum of the indeterminate penalty is anywhere within ten (10) years, eight (8) months and one (1) day of prision mayor to thirteen (13) years and four (4) months of reclusion temporal[21]. On the other hand, the minimum of the indeterminate sentence should be anywhere within the range of the penalty next lower which is prision correccional maximum[22] which ranges from four (4) years, two (2) months and one (1) day to six (6) years.

WHEREFORE, the petition is hereby DENIED and the decision of the Court of Appeals finding the petitioner, Gabriel Capili guilty beyond reasonable doubt of violating Presidential Decree 1612 otherwise known as the Anti-fencing law is AFFIRMED with the MODIFICATION that the petitioner is hereby sentenced to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional as minimum to thirteen (13) years and four (4) months of reclusion temporal as maximum.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima JJ., concur.

[1] Twelfth Division composed of the ponente J. Presbiterio J. Velasco, Jr. and the members: J. Consuelo Ynares-Santiago (Chairman) and J. B. A. Adefuin-De La Cruz concurring.

[2] Penned by Judge Romulo A. Lopez.

[3] Record, 1.

[4] Record, 25.

[5] Court of Appeals Decision, 2-10; Rollo, 25-33.

[6] RTC Decision, Record, 269-270.

[7] Court of Appeals Decision, Rollo, 43.

[8] Rollo, 44-45.

[9] Petition, 10, Rollo, 18.

[10] Petition, 18-21.

[11] Comment, 6; Rollo, 61.

[12] § 2a, P.D. 1612; Tan vs. People, G.R. No. 134298, August 26, 1999, 6;Dunlao, Sr. vs. Court of Appeals, 260 SCRA 788, 792 [1996].

[13] Tan vs. People, Supra, 7-8.

[14] TSN, May 11, 1994, 4-18.

[15] TSN, March 3, 1994, 2-8.

[16] § 5, P.D. 1612.

[17] People vs. Sumalpong, 284 SCRA 464,488 [1998].

[18] ACT NO. 4103 as amended.

[19] Ibid., § 1.

[20] People vs. Gabres, 267 SCRA 581, 596 [1997].

[21] § 1 of ACT NO. 4103, Supra states that in cases when an additional year is added to the penalty, the penalty shall be termed reclusion temporal as in this case where the maximum penalty exceeds the range of prision mayor.

[22] People vs. Javier, 112 SCRA 186, 193 [1982]; People vs. Gonzales, 73 PHIL. 549, 550-552 [1942].

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