

ERNESTO FRANCISCO Y SPENOCILLA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 146584. July 12, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal via a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. CR No. 19110 affirming the Decision[2] of the Regional Trial Court of Malolos, Bulacan, Branch 22, finding petitioner Ernesto Francisco guilty of violating Presidential Decree No. 1612, otherwise known as the Anti-Fencing Law, sentencing him to suffer the penalty of ten (10) years and one (1) day of prision mayor maximum, as minimum, to twenty (20) years of reclusion temporal maximum, as maximum, with the accessory penalties corresponding to the latter, and to pay the corresponding value of the subject pieces of jewelry.

The Indictment

The petitioner was charged of violating P.D. No. 1612 under the Information filed on June 23, 1993, the accusatory portion of which reads:

That in or about the month of November 1991, in the municipality of Meycauayan, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Ernesto Francisco y Spenocilla, with intent to gain for himself, did then and there wil[l]fully, unlawfully and feloniously buy, receive, possess and acquire from one Pacita Linghon y Liza, not the owner, several pieces of jewelry, to wit:

One (1) pair of earrings (Heart Shape) ---- P 400,000.00

One (1) White Gold Bracelet ---- 150,000.00

One (1) Diamond Ring ---- 100,000.00

One (1) Ring with Diamond ---- 5,000.00

with the total value of P655,000.00, belonging to Jovita Rodriguez y Cruz, which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft.

Contrary to law.[3]

The petitioner was arraigned, with the assistance of counsel, and entered a plea of not guilty. Trial forthwith ensued.

The Case for the Prosecution

Jovita Rodriguez was a resident of Barangay Manggahan, Rodriguez, Rizal.[4] She was engaged in business as a general contractor under the business name J.C. Rodriguez Contractors. Macario Linghon was one of her workers. She and her husband, the former Municipal Mayor of Rodriguez, Rizal, acquired several pieces of jewelry which were placed inside a locked cabinet in a locked room in their main house. Jovita hid the key to the cabinet inside

the room. The couple and their son resided inside a compound. They hired Pacita Linghon, Macario's sister, as one of their household helpers sometime in February 1989.[5] Pacita swept and cleaned the room periodically. Sometime in May 1991, she left the employ of the Rodriguez family.

Sometime in the third week of October 1991, Pacita contacted her brother Macario, who resided in Sitio Baloongan, Barangay Paltok, Meycauayan, Bulacan,[6] and asked him to sell some pieces of jewelry. She told Macario that a friend of hers owned the jewelry.[7] Macario agreed. He then went to the shop of petitioner Ernesto "Erning" Francisco located at Pacheco Street, Calvario, Meycauayan, Bulacan,[8] which had a poster outside that said, "We buy gold." Macario entered the shop, while Pacita stayed outside. Macario offered to sell to Ernesto two rings and one bracelet. Ernesto agreed to buy the jewelry for P25,000, and paid the amount to Macario. He also gave Macario P300 as a tip.[9]

Sometime in November 1991,[10] Pacita asked Macario anew to sell a pair of earrings. He agreed. He and a friend of his went to the shop of Ernesto and offered to sell to Ernesto the pair of earrings for P18,000. The latter agreed and paid Macario the amount. Ernesto gave a P200 tip to Macario. After these transactions, Macario saw the petitioner in his shop for about five to six more times and received some amounts.[11]

Sometime in November 1991, Jovita was asked to be a principal sponsor at a wedding. She was shocked when she opened the locked cabinet containing her jewelry, and found that the box was empty. She noticed that the lock to the cabinet was not broken. Among the pieces of jewelry missing were one pair of diamond heart-shaped earrings worth P400,000; one heart-shaped diamond ring worth P100,000; one white gold bracelet with diamond stones worth P150,000; and one ring with a small diamond stone worth P5,000. She suspected that it was Pacita who stole her jewelry. She was, however, occupied with her business ventures that she had little time to gather evidence and charge Pacita.

On August 19, 1992, Jovita filed a complaint for theft against Pacita and her mother Adoracion Linghon with the Counter-Intelligence Group of the Philippine National Police in Camp Crame, Quezon City. She stated that she owned several jewels, viz: one (1) heart-shaped pair of earrings with diamond worth P400,000; one (1) heart-shaped ring with diamond worth P100,000; one (1) white gold bracelet with diamond stones worth P150,000; and, one (1) ring with a small diamond stone worth P5,000. She also averred that Pacita had stolen the pieces of jewelry, and that she and her mother Adoracion disposed of the same.

A team of police investigators, including PO1 Santiago Roldan, Jr. of the Counter-Intelligence Group, invited Pacita and Adoracion to Camp Crame, Quezon City, for investigation in connection with Jovita's complaint. Pacita arrived in Camp Crame without counsel and gave a sworn statement pointing to the petitioner as the person to whom she sold Jovita's jewelry. On August 23, 1992, Pacita gave a sworn statement to PO1 Roldan, Jr., admitting that she sold one pair of heart-shaped earrings with diamond, one white gold bracelet, one heart-shaped diamond ring, and one ring "with big and small stones" to "Mang Erning" of Meycauayan, Bulacan, for the total price of P50,000 to cover the cost of her father's operation and for food. When asked about the full name of the person to whom the jewelry was sold, Pacita replied that she knew him only as "Mang Erning."

Pacita accompanied a group of five police officers, which included SPO1 Dremio Peralta and PO1 Roldan, Jr. to the shop in Meycauayan, Bulacan. Pacita pointed to the petitioner as the "Mang Erning" who had purchased the jewelry from her. The policemen alighted from their vehicle and invited the petitioner for questioning in Camp Crame. Upon his insistence, the petitioner was brought to the police station of Meycauayan, Bulacan. When they were at the police station, the petitioner, in the presence of SPO4 Valdez, offered an amount of P5,000 to the policemen as a bribe, for them not to implicate him in the case. PO1 Roldan, Jr. rejected the offer.[12] They again invited the petitioner to go with them to Camp Crame, but the petitioner refused and demanded that the policemen

first secure a warrant for his arrest should they insist on taking him with them.[13]

Nevertheless, Pacita was charged with qualified theft in the Regional Trial Court of San Mateo, Rizal, Branch 76.[14] The case was docketed as Criminal Case No. 2005. Adoracion was also charged with violating P.D. No. 1612 (Anti-Fencing Law), docketed as Criminal Case No. 1992. The cases were consolidated and jointly tried.

Meanwhile, Jovita succeeded in convincing Macario to testify against the petitioner, assuring him that he would not be prosecuted for violation of P.D. No. 1612. Macario agreed to testify against the petitioner.

PO1 Roldan, Jr. and SPO1 Peralta executed a joint affidavit on their investigation.

On September 1, 1992, Jovita executed a sworn statement in the office of the police station of Meycauayan, Bulacan, charging the petitioner of buying stolen jewelry worth P655,000.[15] A criminal complaint against the petitioner for violation of P.D. No. 1612 was filed in the Municipal Trial Court of Meycauayan, Bulacan, docketed as Criminal Case No. 92-13841. During the preliminary investigation, Pacita and Macario testified that they sold a set of earrings, bracelet and two rings to the petitioner for P50,000 at his shop in Meycauayan, Bulacan. According to Pacita, she found the jewelry belonging to Jovita while she was cleaning the room in the house, and that she brought the jewelry home.[16] The court found probable cause against the petitioner, and issued a warrant for his arrest.

On June 23, 1993, an Information was filed by the Provincial Prosecutor with the RTC charging the petitioner with violating P.D. No. 1612.

In the meantime, on August 20, 1993, judgment was rendered by the RTC of San Mateo, Rizal, Branch 76, in Criminal Cases Nos. 1992 and 2005, finding Pacita guilty of theft and Adoracion guilty of fencing under P.D. No. 1612, beyond reasonable doubt. The decretal portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in these cases, as follows:

- In Crim. Case No. 2005, finding accused Pacita Linghon y Liza GUILTY beyond reasonable doubt of the crime of theft, as defined and penalized under Art. 308 in relation to Art. 309 of the Revised Penal Code, and sentencing her to suffer the indeterminate sentence of Nine (9) years and Four (4) months of prision mayor as minimum to Eighteen (18) years, Two (2) months and Twenty (20) days of reclusion temporal as maximum, to return to complainant Jovita Rodriguez the unrecovered stolen pieces of jewelry subject of this case and if restitution is not possible, to indemnify the said complainant in the amount of P1,300,000.00; and to pay the costs.

- In Crim. Case No. 1992, finding accused Adoracion Linghon y Liza GUILTY beyond reasonable doubt of the offense of violation of PD 1612, otherwise known as the Anti-Fencing Law, and sentencing her to suffer imprisonment of Twelve (12) years of prision mayor; to indemnify complainant Jovita Rodriguez in the amount of P45,000.00; and to pay the costs.

SO ORDERED.[17]

The Case for the Petitioner

The petitioner testified that he was a resident of Calvario, Meycauayan, Bulacan. He had a shop located at Pacheco Street, Calvario, Meycauayan, Bulacan, where he bought and sold jewelry. He had been in this business since 1980.[18] He did not transact with Pacita regarding Jovita's missing jewels.[19] In fact, he did not even know Jovita and met her only during the preliminary investigation of the case before the MTC of Meycauayan, Bulacan. He, likewise, denied knowing Pacita Linghon, and claimed that he first saw her when she accompanied some policemen in civilian clothes to his shop, where he was thereafter invited to Camp Crame for

investigation.[20] He saw Pacita again only during the preliminary investigation of the case.[21] The petitioner also averred that he had no transaction with Macario of whatever nature.[22]

The petitioner further testified that when the policemen in civilian clothes approached him in his shop, they asked who “Mang Erning” was, as the sign in his shop carried such name. When he responded to the question, the policemen identified themselves as members of the police force. The petitioner then gave them his full name.[23] When the policemen invited him for questioning, he refused at first. Eventually, he agreed to be interrogated at the municipal hall, where the policemen insisted on bringing him to Camp Crame. He told them that he would go with them only if they had a warrant of arrest.[24] He denied ever offering any bribe to the policemen.[25]

On November 29, 1995, the court rendered judgment finding the petitioner guilty beyond reasonable doubt of violating P.D. No. 1612. The decretal portion of the decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

- Finding the accused GUILTY beyond reasonable doubt of the violation of Pres. Decree No. 1612 (Anti-Fencing Law) and is hereby sentenced to suffer the penalty of 10 years and 1 day of prision mayor maximum, as minimum, to 20 years of reclusion temporal maximum, as maximum, with the accessory penalties corresponding to the latter.

- Ordering the accused to pay to private complainant Jovita Rodriguez the corresponding value of the subject items of jewelries (sic):

one (1) pair of earrings, heart shaped
P400,000.00

one (1) white gold bracelet
150,000.00

one (1) diamond ring
100,000.00

one (1) ring with diamond
5,000.00

TOTAL VALUE
P655,000.00

with 6% interest on all amounts due from the filing of the information on June 23, 1993 until said amounts have been fully paid.

SO ORDERED.[26]

The petitioner appealed the decision to the Court of Appeals contending that:

I

THE LOWER COURT ERRED IN NOT FINDING THAT THE TESTIMONY OF PROSECUTION WITNESSES ARE ALL HEARSAY EVIDENCE.

II

THE LOWER COURT ERRED IN NOT FINDING THAT THE PROSECUTION EVIDENCE WAS NOT SUFFICIENT TO CONVICT THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.

III

THE LOWER COURT ERRED IN BELIEVING ON THE CONTRADICTING TESTIMONY (sic) OF PROSECUTION WITNESSES.

IV

THE LOWER COURT ERRED IN BELIEVING THE TESTIMONY OF A PROSECUTION WITNESS AS TO THE ALLEGED ACCUSED-APPELLANT'S OFFER OF BRIBE WITHOUT SHOW OF MONEY.

V

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT.[27]

On December 29, 2000, the CA rendered judgment affirming the decision of the RTC.[28]

The Present Petition

In the present recourse, petitioner Ernesto Francisco asserts that:

The Court of Appeals erred in sustaining the trial court's decision finding petitioner guilty beyond reasonable doubt of violation of the (sic) Presidential Decree No. 1612, otherwise known as the Anti-Fencing Law.

The Court of Appeals erred in relying on the conflicting testimonies of prosecution witnesses, all of which consisted of hearsay evidence.[29]

The petitioner asserts that the prosecution failed to prove his guilt for the crime charged beyond reasonable doubt. He avers that the prosecution failed to prove that Pacita stole the jewelry subject of the charge, and that Macario sold the said pieces of jewelry to him. He, likewise, posits that the prosecution failed to present Pacita as its witness to prove that she stole the pieces of jewelry and sold the same to him, and to adduce in evidence the jewelry allegedly sold to him. He contends that the testimonies of Macario and PO1 Roldan, Jr., on his investigation of Jovita's complaint for theft, are hearsay evidence. The appellant argues that assuming that Macario sold the subject jewelry to him, Macario had no personal knowledge that the same belonged to Jovita. The petitioner avers that the testimony of Macario, the principal witness of the prosecution, is inconsistent on substantial matters; hence, should not be given credence and probative weight.

On the other hand, the Office of the Solicitor General (OSG) maintains that the prosecution was able to prove all the elements of the crime charged. It asserts that the first element was proved through Pacita's conviction for theft in Criminal Case No. 2005; the second element was shown to exist with moral certainty via the testimony of Macario identifying the petitioner as the one who bought the subject pieces of jewelry, corroborated by the testimony of PO1 Roldan, Jr.; and, the third element was proven by evidence showing that the petitioner had been in the business of buying and selling jewelry for a long period of time, and that he had the expertise to know the correct market price of the jewelry he purchased from Macario and Pacita. The OSG asserts that the petitioner must have been put on his guard when the subject pieces of jewelry worth P655,000 were sold to him for only P50,000.[30] It contends that the inconsistencies in the testimonies of the prosecution witnesses referred to by the petitioner were minor, and could not be made as a basis to disregard the trial court's findings of facts, which are entitled to great respect and credit.[31]

The Ruling of the Court

The petition is meritorious.

The essential elements of the crime of fencing are 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 crime of robbery or theft; (3) the accused knew or should have shown 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.[32] Fencing is *malum prohibitum*, and P.D. No. 1612 creates a *prima facie* presumption of fencing from evidence of possession by the accused of any good, article, item, object or anything of value which has been the subject of robbery or theft, and prescribes a higher penalty based on the value of the property.[33] The stolen property subject of the charge is not indispensable to prove fencing. It is merely corroborative of the testimonies and other evidence adduced by the prosecution to prove the crime of fencing.

We agree with the trial and appellate courts that the prosecution mustered the requisite quantum of evidence, on the basis of the testimony of Jovita, that Pacita stole the subject jewelry from the locked cabinet in the main house of her then employer. Jovita testified on her ownership of the jewelry and the loss thereof, and narrated that Pacita had access to the cabinet containing the pieces of jewelry.

We, however, agree with the petitioner that the decision of the RTC of Rizal, Branch 76, in Criminal Case No. 2005 convicting Pacita of theft does not constitute proof against him in this case, that Pacita had, indeed, stolen the jewelry. There is no showing that the said decision in Criminal Case No. 2005 was already final and executory when the trial court rendered its decision in the instant case.

On the second element of the crime, the trial and appellate courts held that the prosecution proved the same beyond reasonable doubt based on the testimony of Jovita during the trial in Criminal Cases Nos. 1992 and 2005; that Pacita had confessed to Jovita that she sold some of the jewelry to the petitioner; the joint affidavit of PO1 Roldan, Jr. and SPO1 Peralta on their investigation of the complaint of Jovita; the testimony of PO1 Roldan, Jr. relating to said investigation; the RTC decision in Criminal Cases Nos. 1992 and 2005; the testimonies of Pacita and her brother Macario during the preliminary investigation of Criminal Case No. 92-13841 before the MTC of Meycauayan as shown by the transcripts of the stenographic notes taken during the proceedings; the supplemental sworn statement of Pacita on August 23, 1992 in Camp Crame, Quezon City, and, the testimony of Macario before the trial court.

However, we find and so hold that –

First. Jovita's testimony in Criminal Cases Nos. 1992 and 2005, that Pacita had confessed to her that she had sold four pieces of jewelry to the petitioner, is inadmissible in evidence against the latter to prove the truth of the said admission. It bears stressing that the petitioner was not a party in the said criminal cases. The well-entrenched rule is that only parties to a case are bound by a judgment of the trial court. Strangers to a case are not bound by the judgment of said case.[34] Jovita did not reiterate her testimony in the said criminal cases during the trial in the court *a quo*. The prosecution did not present Pacita as witness therein to testify on the admission she purportedly made to Jovita; hence, the petitioner was not able to cross-examine Pacita. The rule is that the acts or declarations of a person are not admissible in evidence against a third party.[35]

Second. The testimony of Pacita during the preliminary investigation in Criminal Case No. 92-13841, as well as her supplemental affidavit, is, likewise, inadmissible against the petitioner since Pacita did not testify in the court *a quo*. The petitioner was, thus, deprived of his constitutional right to confront and cross-examine a witness against him.

Third. The testimony of PO1 Roldan, Jr., that on August 23, 1992, Pacita pointed to the petitioner, while the latter was having a drinking spree, as the person who bought the subject jewelry from her, is indeed admissible in evidence against the petitioner. It is, likewise, corroborative of the testimony of Macario. However, such testimony is admissible only to prove such fact - that Pacita pointed to the petitioner as the person to whom she

sold the subject jewelry; it is inadmissible to prove the truth of Pacita's declaration to the policemen, that the petitioner was the one who purchased the jewelry from her. It must be stressed that the policemen had no personal knowledge of the said sale, and, more importantly, Pacita did not testify in the court a quo. Indeed, the petitioner was deprived of his right to cross-examine Pacita on the truth of what she told the policemen.

Fourth. On the other hand, the testimony of Macario during the preliminary investigation of Criminal Case No. 92-13841 is admissible in evidence against the petitioner since he testified for the prosecution and was cross-examined on his testimony during the preliminary investigation.

In fine, the only evidence of the prosecution to prove that the petitioner purchased the jewelry from Macario and Pacita are the following: the testimony and affidavit of PO1 Roldan, Jr.; and, the testimony of Macario during the preliminary investigation and trial in the court a quo.

Although the well-entrenched rule is that the testimony of a single witness is sufficient on which to anchor a judgment of conviction, it is required that such testimony must be credible and reliable.[36] In this case, we find the testimony of Macario to be dubious; hence, barren of probative weight.

Macario admitted when he testified in the court a quo that his testimony during the preliminary investigation in Criminal Case No. 92-13841 and his testimony in the court a quo were inconsistent. He even admitted that some portions of his testimony on direct examination in the court a quo were inconsistent with his testimony on cross-examination and on re-direct examination. These admissions are buttressed by the records of the case, which show that such inconsistencies pertained to material points and not merely to minor matters. Thus, during the preliminary investigation in Criminal Case No. 92-13841, Macario admitted that on October 10, 1991, he and his sister Pacita sold two rings and one bracelet to the petitioner for P25,000, while in November 1991, he and Pacita sold a pair of earrings to the petitioner for P25,000. On direct examination in the court a quo, Macario testified that he and Pacita sold the earrings to the petitioner in May 1992, not in November 1991, and only for P18,000. On cross-examination, Macario testified that he and his sister Pacita went to the petitioner's shop in Meycauayan, Bulacan and sold the subject jewelry on both occasions. On further cross-examination, Macario changed his testimony anew, and declared that he sold the jewelry to the petitioner for P18,000 and not P25,000; only to change his testimony again, and declare that he sold the jewelry for P25,000. However, Macario testified during the preliminary investigation in Criminal Case No. 92-13841 that when he transacted with the petitioner for the second time, he was with a friend, and not with his sister Pacita. On redirect examination, Macario declared that in October 1991, he and Pacita sold four (4) pieces of jewelry, namely, two rings, one bracelet and a pair of earrings, contrary to his testimony on direct examination. He also testified that he and his sister sold the earrings in November 1991. Because of the contradicting accounts made by Macario, the court made the following observations:

Court

q According to you, you were "nalilito" but you gave the correct answer, you are not "nalilito" here but you gave the wrong answer. Bakit ganoon, sabi mo nalilito ka roon (sic) pero ang sagot mo pala tama. Dito hindi ka naman nalilito, bakit mali. Bakit ka nalilito eh tama iyong P25,000.00. Hindi ka nalilito, mali ang sabi mo.

a Because I am scare[d] here that's why I gave the wrong answer.

q You better think about it.

a I was confused, Sir.[37]

The testimonies of Macario are even contrary to the averments of the Information, that the petitioner received the said jewelry from Pacita.

Assuming, for the nonce, that the petitioner purchased the said jewelry from Macario, there is no evidence on record that the petitioner knew that they were stolen. Significantly, even Macario did not know that the jewelry was stolen. He testified that his sister Pacita told him before he sold the jewelry to the petitioner that they belonged to a friend of hers.

Atty. Lerio

Q At that time you and your sister sold those jewels to “Mang Erning” did ... do you know already [that] it was Mrs. Rodriguez who is the owner of those jewels?

A No, Sir, I do not know.

Q And who do you know was the owner of that jewels and that time you and your sister sold those jewels to “Mang Erning”?

A According to my sister, it is (sic) owned by a friend of hers.

Court

Q How did you come to know of this “Mang Erning?”

A Only at that time when we brought the jewels.

Q But previous to that, do you know him?

A No.[38]

Macario learned, after the case against Pacita had already been filed in the trial court, that the jewelry was, after all, owned by Jovita. However, he failed to inform the petitioner that the said jewelry was stolen. Following is the testimony of Macario:

Atty. Lerio

Q When you learned that those jewels were owned by Mrs. Rodriguez, did you, if at all, informed (sic) “Mang Erning” about it?

Court

Q No basis, when did you come to know that the jewels belong to Mrs. Rodriguez?

A In 1992, when my sister already had a case.

Q What did you do when you come (sic) to know about that?

A I was not able to do anything but just to help my sister with her case and also to help the case of Mrs. Rodriguez.

Atty. Lerio

Q After that, after knowing that these jewels are (sic) owned by Mrs. Rodriguez, was there any occasion where you (sic) able to inform “Mang Erning” that those jewels were owned by Mrs. Rodriguez?

A No more, I have no more time.[39]

The prosecution cannot even validly argue that the petitioner should have known which pieces of jewelry were stolen, considering that Macario was selling the same for P50,000 when the said pieces stolen from Jovita were alleged to be worth P655,000. This is so because the prosecution failed to adduce sufficient competent evidence to prove the value of the said stolen articles. The prosecution relied solely on the bare and uncorroborated testimony

of Jovita, that they were worth P655,000:

Atty. Lerio

Q Now, will you tell this Court some of those jewels which you own?

A I own several jewels and the one (sic) in question are: 1-pair of earrings, diamond heart-shaped P400,000.00; 1-ring, heart-shaped diamond worth P100,000.00; 1-bracelet, white gold full of stones, diamond worth P150,000.00; 1-diamond ring with small stones worth P5,000.00. So, all in all, the jewelry is (sic) worth P665,000.00.[40]

When asked by the trial court to declare the present market value of the stolen jewelry, Jovita merely declared:

Atty. Lerio

Q Now again, when did you acquire those jewels if you can still remember?

A I remember several years ago when my husband is (sic) alive.

Court

Q Please tell the court, [is] the market value of the jewels the same today?

A No, that is (sic) the market value several years ago.

Q So, can you explain [if] the market value, more or less, [is] the same today?

A No. The price, if we will appraise now, is much bigger.[41]

When required by the petitioner, through counsel, to bring to the court any receipts reflecting the price of the pieces of jewelry to show that she purchased the same, Jovita answered that she had no such receipts. Thus:

Court

Q You bought it from [a] private person?

A Yes, Your Honor.

Atty. Bernal

Q What then is your proof that you bought these jewelries (sic) from a private person?

Atty. Lerio

That was already answered, Your Honor. She said, no receipt.[42]

In *People v. Paraiso*,[43] we cited our ruling in *People v. Marcos*[44] that an ordinary witness cannot establish the value of jewelry, nor may the courts take judicial notice of the value of the same:

...[A]nd as we have ruled in the case of *People vs. Antonio Marcos*, an ordinary witness cannot establish the value of jewelry and the trial court can only take judicial notice of the value of goods which are matters of public knowledge or are capable of unquestionable demonstration. The value of jewelry is not a matter of public knowledge nor is it capable of unquestionable demonstration and in the absence of receipts or any other competent evidence besides the self-serving valuation made by the prosecution, we cannot award the reparation for the stolen jewelry.[45]

It bears stressing that, in the absence of direct evidence that the accused had knowledge that the jewelry was stolen, the prosecution is burdened to prove facts and circumstances from which it can be concluded that the

accused should have known that the property sold to him were stolen. This requirement serves two basic purposes: (a) to prove one of the elements of the crime of fencing; and, (b) to enable the trial court to determine the imposable penalty for the crime, since the penalty depends on the value of the property; otherwise, the court will fix the value of the property at P5.00, conformably to our ruling in *People v. Dator*:^[46]

In the absence of a conclusive or definite proof relative to their value, this Court fixed the value of the bag and its contents at P100.00 based on the attendant circumstances of the case. More pertinently, in the case of *People vs. Reyes*, this Court held that if there is no available evidence to prove the value of the stolen property or that the prosecution failed to prove it, the corresponding penalty to be imposed on the accused-appellant should be the minimum penalty corresponding to theft involving the value of P5.00.^[47]

IN VIEW OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CR No. 19110 affirming the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 22, is REVERSED and SET ASIDE. The petitioner is ACQUITTED of the crime of violating P.D. No. 1612 for the prosecution's failure to prove his guilt beyond reasonable doubt.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Bennie A. Adefuin-dela Cruz, with Associate Justices Salome A. Montoya and Wenceslao I. Agnir, Jr., concurring.

[2] Penned by Judge Candido R. Belmonte.

[3] Records, p. 2.

[4] TSN, 18 August 1993, p. 4.

[5] TSN, 19 October 1993, p. 3.

[6] TSN, 20 May 1994, p. 4.

[7] Id. at 8.

[8] TSN, 29 March 1995, p. 5.

[9] TSN, 6 July 1994, p. 7.

[10] Id. at 13-14.

[11] Id. at 9-10.

[12] TSN, 24 November 1993, p. 10.

[13] Exhibit "C."

[14] Presided by Judge Jose C. Reyes, Jr.

[15] Exhibit "A."

[16] Exhibit "F."

[17] Exhibit "D."

[18] TSN, 29 March 1995, p. 5.

[19] Id. at 7.

[20] Id. at 8.

[21] TSN, 19 May 1995, p. 7.

[22] TSN, 29 March 1995, p. 20.

[23] Id. at 10.

[24] Id. at 12.

[25] Id. at 24.

[26] Records, pp. 451-452.

[27] CA Rollo, pp. 43-44.

[28] Id. at 125.

[29] Rollo, p. 13.

[30] Id. at 54-55.

[31] Id. at 58.

[32] *Capili v. Court of Appeals*, 338 SCRA 45 (2000); *Tan v. People*, 313 SCRA 220 (1999) citing *Dizon-Pamintuan v. People*, 234 SCRA 63 (1994).

[33] *Dizon-Pamintuan v. People*, *supra*.

[34] *Padilla v. Court of Appeals*, 370 SCRA 208 (2001).

[35] Rule 130, Section 28 of the Rules of Evidence.

[36] *People vs. Araneta*, 335 SCRA 1 (2000); *People vs. Lotoc*, 307 SCRA 471 (1999).

[37] TSN, 6 July 1994, pp. 359-360. (*Italics, ours*)

[38] TSN, 20 May 1994, p. 12.

[39] Id. at 13.

[40] TSN, 1 August 1989, pp. 5-6.

[41] TSN, 18 August 1993, p. 7.

[42] TSN, 19 October 1993, p. 16.

[43] 319 SCRA 422 (1999).

[44] 308 SCRA 660 (1999).

[45] *People v. Paraiso*, *supra*.

[46] 344 SCRA 236 (2000).

[47] Ibid.

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