

## OLYMPIO REVALDO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

*G.R. No. 170589. April 16, 2009*

Ponente: CARPIO, J.

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### CARPIO, J.:

#### The Case

Before this Court is a petition for review by petitioner Olympio Revaldo (petitioner) seeking to reverse the Decision[1] dated 23 August 2004 of the Court of Appeals in CA-G.R. CR No. 22031 affirming the Decision[2] dated 5 September 1997 of the Regional Trial Court, Branch 25, Maasin, Southern Leyte (RTC-Branch 25), in Criminal Case No. 1652, finding petitioner guilty beyond reasonable doubt of illegal possession of lumber in violation of Section 68[3] of the Revised Forestry Code (Forestry Code).[4]

#### The Facts

Petitioner was charged with the offense of illegal possession of premium hardwood lumber in violation of Section 68 of the Forestry Code, in an Information[5] which reads:

That on or about the 17[th] day of June 1992, in the (M)unicipality of Maasin, (P)rovince of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, did then and there willfully, unlawfully and feloniously possess 96.14 board ft. of the following species of flat lumber:

- Six (6) pcs. 1x10x7 Molave;
- One (1) pc. 2x6x6 Molave;
- Two (2) pcs. 2x4x6 Molave;
- Two (2) pcs. 1x10x6 Narra;
- Two (2) pcs. 2x8x7 Bajong;
- One (1) pc. 1x6x6 Bajong;
- Four (4) pcs. 1x6x6 Magkalipay; and
- Three (3) pcs. 1x6x5 Magkalipay;

with a total value of P1,730.52, Philippine Currency, without any legal document as required under existing forest laws and regulations from proper government authorities, to the damage and prejudice of the government.

Upon arraignment, petitioner, assisted by counsel, pleaded not guilty. Trial ensued.

The prosecution presented SPO4 Constantino Maceda (Maceda), Sulpicio Saguing (Saguing), and SPO4 Daniel

Paloma Lasala (Lasala) as witnesses.

Maceda, the person in charge of the operations section of the Philippine National Police (PNP) in Maasin, Southern Leyte, testified that on 18 June 1992, at around 11:00 in the morning, he went with Chief Alejandro Rojas (Rojas), SPO3 Melquiades Talisic (Talisic) and SPO3 Nicasio Sunit (Sunit) to the house of petitioner to verify the report of Sunit that petitioner had in his possession lumber without the necessary documents. They were not armed with a search warrant on that day. They confiscated 20 pieces of lumber of different varieties lying around the vicinity of the house of petitioner. Maceda asked petitioner who the owner of the lumber was and petitioner replied that he owned the lumber. Petitioner stated that he would use the lumber to repair his house and to make furniture for sale. Maceda also testified that the lumber were freshly cut. Maceda loaded the lumber on the patrol jeep and brought them to the police station. For coordination purposes, Maceda informed the office of the Department of Environment and Natural Resources (DENR) of the confiscated lumber. The DENR entrusted to the police custody of the lumber.[6]

Saguing, Forester II, CENRO-DENR, Maasin, Southern Leyte, testified that he went to the office of the PNP in Maasin, Leyte to scale the confiscated lumber which were of different varieties. The total volume was 96.14 board feet belonging to the first group of hardwood lumber.[7]

Lasala, Responsible Supply Sergeant, Finance Sergeant and Evidence Custodian, PNP, Maasin, Southern Leyte, testified that he received the 20 pieces of assorted sizes and varieties of lumber from the Clerk of Court of the Municipal Trial Court, but only ten pieces remained because some were damaged due to lack of storage space.[8]

For the defense, petitioner presented Dionisio Candole (Candole), Apolonio Caalim (Caalim), and himself as witnesses.

Petitioner testified that he is a carpenter specializing in furniture making. He was in his house working on an ordered divider for a customer in the morning of 18 June 1992 when policemen arrived and inspected his lumber. Maceda, Sunit and Rojas entered his house while Talisic stayed outside. Petitioner admitted to the policemen that he had no permit to possess the lumber because those were only given to him by his uncle Felixberto Bug-os (Bug-os), his aunt Gliceria Bolo (Bolo), his mother-in-law Cecilia Tenio (Tenio). The seven pieces of "magkalipay" lumber were left over from a divider he made for his cousin Jose Epiz. He explained further that the lumber were intended for the repair of his dilapidated house.[9] The defense presented Caalim to corroborate the testimony of petitioner.[10]

Defense witness Candole testified that it was Bug-os who hired him to cut a "tugas" tree on his land, sawed it into lumber and delivered the same to petitioner who paid for the labor transporting the sawn lumber. Candole further testified that while they were on their way to Barangay Combado, Sunit stopped them but allowed the lumber to be brought to the house of petitioner.[11]

#### The Ruling of the Trial Court

The trial court stated that petitioner failed to present Bug-os, Bolo, and Tenio to attest to the fact that they sought prior DENR permission before cutting the trees and sawing them into lumber. The trial court further stated that the Forestry Code is a special law where criminal intent is not necessary. The Secretary of the DENR may issue a Special Private Land Timber Permit to landowners to cut, gather, collect or remove narra or other premium hardwood species found in private lands. Transportation of timber or other forest products without authority or without the legal documents required under forest rules and regulations is punishable under Section 68 of the Forestry Code. Petitioner did not present any document as required by law.

The RTC-Branch 25 rendered judgment on 5 September 1997 convicting petitioner of the offense charged and

sentencing him as follows:

WHEREFORE, judgment is rendered finding the accused OLYMPIO REVALDO GUILTY beyond reasonable doubt of the offense charged and, crediting him with one mitigating circumstance before applying the Indeterminate Sentence Law hereby SENTENCES him to an indeterminate imprisonment term of FOUR (4) YEARS and TWO (2) MONTHS of PRISION CORRECCIONAL as minimum to EIGHT (8) YEARS and ONE (1) DAY of PRISION MAYOR, as maximum, and to pay the costs.

The 21 pieces of flat lumber of different varieties, scaled at 96.14 board feet and valued at P1,730.52 are hereby ordered CONFISCATED and FORFEITED in favor of the government particularly the CENRO, Maasin, Southern Leyte which shall sell the same at public auction and the proceeds turned over to the National Treasury.[12]

Petitioner appealed to the Court of Appeals.

#### The Ruling of the Court of Appeals

On 23 August 2004, the Court of Appeals affirmed the judgment of the trial court. The Court of Appeals ruled that motive or intention is immaterial for the reason that mere possession of the lumber without the legal documents gives rise to criminal liability.

Hence, the present petition.

#### The Court's Ruling

Petitioner contends that the warrantless search and seizure conducted by the police officers was illegal and thus the items seized should not have been admitted in evidence against him. Petitioner argues that the police officers were not armed with a search warrant when they went to his house to verify the report of Sunit that petitioner had in his possession lumber without the corresponding license. The police officers who conducted the search in the premises of petitioner acted on the basis only on the verbal order of the Chief of Police. Sunit had already informed the team of the name of petitioner and the location the day before they conducted the search. Petitioner argues that, with that information on hand, the police officers could have easily convinced a judge that there was probable cause to justify the issuance of a search warrant, but they did not. Because the search was illegal, all items recovered from petitioner during the illegal search were prohibited from being used as evidence against him. Petitioner therefore prays for his acquittal.

In its Comment, respondent People of the Philippines (respondent) contends that even without a search warrant, the personnel of the PNP can seize the forest products cut, gathered or taken by an offender pursuant to Section 80[13] of the Forestry Code.

There is no question that the police officers went to the house of petitioner because of the information relayed by Sunit that petitioner had in his possession illegally cut lumber. When the police officers arrived at the house of petitioner, the lumber were lying around the vicinity of petitioner's house. The lumber were in plain view. Under the plain view doctrine, objects falling in "plain view" of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence. This Court had the opportunity to summarize the rules governing plain view searches in the case of *People v. Doria*,[14] to wit:

The "plain view" doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he

can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.[15]

When asked whether he had the necessary permit to possess the lumber, petitioner failed to produce one. Petitioner merely replied that the lumber in his possession was intended for the repair of his house and for his furniture shop. There was thus probable cause for the police officers to confiscate the lumber. There was, therefore, no necessity for a search warrant.

The seizure of the lumber from petitioner who did not have the required permit to possess the forest products cut is sanctioned by Section 68 of the Forestry Code which provides:

Sec. 68. Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License. - Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found. (Emphasis supplied)

There are two distinct and separate offenses punished under Section 68 of the Forestry Code, to wit:

(1)

Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and

(2)

Possession of timber or other forest products without the legal documents required under existing forest laws and regulations.[16]

As the Court held in *People v. Que*,<sup>[17]</sup> in the first offense, one can raise as a defense the legality of the acts of cutting, gathering, collecting, or removing timber or other forest products by presenting the authorization issued by the DENR. In the second offense, however, it is immaterial whether the cutting, gathering, collecting and removal of the forest products are legal or not. Mere possession of forest products without the proper documents consummates the crime. Whether or not the lumber comes from a legal source is immaterial because the Forestry Code is a special law which considers mere possession of timber or other forest products without the proper documentation as *malum prohibitum*.

On whether the police officers had the authority to arrest petitioner, even without a warrant, Section 80 of the Forestry Code authorizes the forestry officer or employee of the DENR or any personnel of the PNP to arrest, even without a warrant, any person who has committed or is committing in his presence any of the offenses defined by the Forestry Code and to seize and confiscate the tools and equipment used in committing the offense or the forest products gathered or taken by the offender. Section 80 reads:

Sec. 80. Arrest; Institution of Criminal Actions. - A forest officer or employee of the Bureau or any personnel of the Philippine Constabulary/Philippine National Police shall arrest even without warrant any person who has

committed or is committing in his presence any of the offenses defined in this chapter. He shall also seize and confiscate, in favor of the Government, the tools and equipment used in committing the offense, and the forest products cut, gathered or taken by the offender in the process of committing the offense. x x x (Emphasis supplied)

Petitioner was in possession of the lumber without the necessary documents when the police officers accosted him. In open court, petitioner categorically admitted the possession and ownership of the confiscated lumber as well as the fact that he did not have any legal documents therefor and that he merely intended to use the lumber for the repair of his dilapidated house. Mere possession of forest products without the proper documentation consummates the crime. *Dura lex sed lex*. The law may be harsh but that is the law.

On the penalty imposed by the lower courts, we deem it necessary to discuss the matter. Violation of Section 68 of the Forestry Code is punished as Qualified Theft with the penalties imposed under Articles 309 and 310 of the Revised Penal Code,[18] thus:

Art. 309. Penalties. - Any person guilty of theft shall be punished by:

- The penalty of *prisión mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be.
- The penalty of *prisión correccional* in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.
- The penalty of *prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.
- Arresto mayor in its medium period to *prisión correccional* in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.
- Arresto mayor to its full extent, if such value is over 5 pesos but does not exceed 50 pesos.
- Arresto mayor in its minimum and medium periods, if such value does not exceed 5 pesos.
- Arresto menor or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.
- Arresto menor in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

Art. 310. Qualified theft. - The crime of qualified theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding articles, x x x.

The trial court applied Article 309(3), in relation to Article 310 of the Revised Penal Code, considering that the amount involved was P1,730.52. However, except for the amount stated in the Information, the prosecution did not present any proof as to the value of the lumber. What the prosecution presented were the Seizure Receipt[19] and Confiscation Receipt[20] stating the number of pieces of lumber, their species, dimensions and volumes, with

"no pertinent supporting document." These do not suffice.

As we have held in *Merida v. People*,<sup>[21]</sup> to prove the amount of the property taken for fixing the penalty imposable against the accused under Article 309 of the Revised Penal Code, the prosecution must present more than a mere uncorroborated "estimate" of such fact. In the absence of independent and reliable corroboration of such estimate, the courts may either apply the minimum penalty under Article 309 or fix the value of the property taken based on the attendant circumstances of the case.

Accordingly, the prescribed penalty under Article 309(6) of the Revised Penal Code is *arresto mayor* in its minimum and medium periods. However, considering that violation of Section 68 of the Forestry Code is punished as qualified theft under Article 310 of the Revised Penal Code pursuant to the Forestry Code, the prescribed penalty shall be increased by two degrees,<sup>[22]</sup> that is, to *prision correccional* in its medium and maximum periods or two (2) years, four (4) months and one (1) day to six (6) years. Taking into account the Indeterminate Sentence Law, the minimum term shall be taken from anywhere within the range of four (4) months and one (1) day to two (2) years and four (4) months of *arresto mayor*, which is the penalty next lower to the prescribed penalty. We find it proper to impose upon petitioner, under the circumstances obtaining here, the indeterminate penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum.

WHEREFORE, we AFFIRM the appealed Decision convicting petitioner for violation of Section 68 (now Section 77) of the Forestry Code, as amended, with MODIFICATION as regards the penalty in that petitioner Olympio Revaldo is sentenced to suffer the indeterminate penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum.

**SO ORDERED.**

Puno, C.J., (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

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[1] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Elvi John S. Asuncion and Isaias P. Dican, concurring.

[2] Penned by Judge Leandro T. Loyao, Jr.

[3] Renumbered as Section 77 by Republic Act No. 7161.

[4] Presidential Decree No. 705, as amended by Presidential Decree Nos. 1559 and 1775.

[5] Records of Criminal Case No. 1653, p. 52.

[6] TSN, 10 February 1994, pp. 2-9.

[7] TSN, 23 February 1995, pp. 2-7.

[8] TSN, 17 October 1995, pp. 2-8.

[9] TSN, 19 March 1996, pp. 2-19.

[10] TSN, 21 January 1997, pp. 2-4.

[11] TSN, 12 September 1996, pp. 2-15.

[12] Rollo, pp. 23-24.

[13] Renumbered as Section 89 by Republic Act No. 7161.

[14] 361 Phil. 595 (1999).

[15] Id. at 633-634.

[16] Bon v. People, 464 Phil. 125 (2004); Lalican v. Hon. Vergara, 342 Phil. 485 (1997); Mustang Lumber, Inc. v. CA, 327 Phil. 214 (1996).

[17] G.R. No. 120365, 17 December 1996, 265 SCRA 721.

[18] People v. Dator, 398 Phil. 109 (2000).

[19] Exhibit "A," Folder of Exhibits, p. 10.

[20] Exhibit "1," Folder of Exhibits, p. 9.

[21] G.R. No. 158182, 12 June 2008, 554 SCRA 366.

[22] People v. Temporado, G.R. No. 173473, 17 December 2008; Bon v. People, 464 Phil. 125 (2004).

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