

IRENEO CAHULOGAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 225695. March 21, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is a petition for review on certiorari[1] filed by petitioner Ireneo Cahulogan (petitioner) assailing the Decision[2] dated November 6, 2015 and the Resolution[3] dated June 8, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 01126-MIN, which affirmed the Judgment[4] dated October 4, 2013 of the Regional Trial Court of Cagayan De Oro City, Misamis Oriental, Branch 41 (RTC) in Crim. Case No. 2011-507, convicting petitioner of the crime of Fencing, defined and penalized under Presidential Decree No. (PD) 1612, otherwise known as the "Anti-Fencing Law of 1979." [5]

The Facts

On April 18, 2011, an Information[6] was filed before the RTC charging petitioner with the crime of Fencing, the accusatory portion of which reads:

That on or about January 14, 2011 [,] at about 4:00 o'clock [sic] in the afternoon, at Bugo, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without the knowledge and consent of the owner thereof, did then and there wilfully, unlawfully and feloniously buy, receive, possess, keep, acquire, conceal, sell or dispose of, or in any manner deal, Two Hundred Ten (210) cases of Coca Cola products worth Php52,476.00 owned by and belonging to the offended party Johnson Tan which accused know, or should be known to him, to have been derived from the proceeds of the crime of Theft, to the damage and prejudice of said owner in the aforesaid sum of Php52,476.00.

Contrary to Presidential Decree No. 1612, otherwise known as Anti-Fencing Law of 1979.[7]

The prosecution alleged that private complainant Johnson Tan (Tan), a businessman engaged in transporting Coca-Cola products, instructed his truck driver and helper, Braulio Lopez (Lopez) and Loreto Lariosa (Lariosa), to deliver 210 cases of Coca-Cola products (subject items) worth P52,476.00 to Demins Store. The next day, Tan discovered that contrary to his instructions, Lopez and Lariosa delivered the subject items to petitioner's store. Tan then went to petitioner and informed him that the delivery to his store was a mistake and that he was pulling out the subject items. However, petitioner refused, claiming that he bought the same from Lariosa for P50,000.00, but could not present any receipt evidencing such transaction. Tan insisted that he had the right to pull out the subject items as Lariosa had no authority to sell the same to petitioner, but the latter was adamant in retaining such items. Fearing that his contract with Coca-Cola will be terminated as a result of the wrongful delivery, and in order to minimize losses, Tan negotiated with petitioner to instead deliver to him P20,000.00 worth of empty bottles with cases, as evidenced by their Agreement[8] dated January 18, 2011. Nonetheless, Tan felt aggrieved over the foregoing events, thus, prompting him to secure an authorization to file cases from Coca-Cola and charge petitioner with the crime of Fencing. He also claimed to have charged Lariosa with the crime of Theft but he had

no update as to the status thereof.[9]

Upon arraignment, petitioner pleaded not guilty,[10] but chose not to present any evidence in his defense. Rather, he merely submitted his memorandum,[11] maintaining that the prosecution failed to prove his guilt beyond reasonable doubt.[12]

The RTC Ruling

In a Judgment[13] dated October 4, 2013, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for the indeterminate period often (10) years and one (1) day of prison mayor, as minimum, to fifteen (15) years of reclusion temporal, as maximum.[14]

The RTC found that the prosecution had successfully established the presence of all the elements of the crime of Fencing, considering that Lariosa stole the subject items from his employer, Tan, and that petitioner was found to be in possession of the same. The RTC noted that under the circumstances of the case, petitioner would have been forewarned that the subject items came from an illegal source since Lariosa: (a) sold to him the subject items at a discount and without any corresponding delivery and official receipts; and (b) did not demand that such items be replaced by empty bottles, a common practice in purchases of soft drink products.[15]

Aggrieved, petitioner appealed[16] to the CA.

The CA Ruling

In a Decision[17] dated November 6, 2015, the CA affirmed petitioner's conviction.[18] It held that Lariosa's act of selling the subject items to petitioner without the authority and consent from Tan clearly constituted theft. As such, petitioner's possession of the stolen items constituted prima facie evidence of Fencing - a presumption which he failed to rebut.[19]

Undaunted, petitioner moved for reconsideration[20] which was, however, denied in a Resolution[21] dated June 8, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld petitioner's conviction for the crime of Fencing.

The Court's Ruling

The petition is without merit.

"Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law." [22]

Guided by this consideration, the Court finds no reason to overturn petitioner's conviction for the crime of Fencing.

Section 2 of PD 1612 defines Fencing as "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." [23] The same Section also states that a Fence "includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing." [24]

The essential elements of the crime of fencing are as follows: (a) a crime of robbery or theft has been committed; (b) 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 crime of robbery or theft; (c) the accused knew 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 (d) there is, on the part of one accused, intent to gain for oneself or for another. [25] Notably, Fencing is a *malum prohibitum*, and PD 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. [26]

In this case, the courts *a quo* correctly found that the prosecution was able to establish beyond reasonable doubt all the elements of the crime of Fencing, as it was shown that: (a) Lariosa sold to petitioner the subject items without authority and consent from his employer, Tan, for his own personal gain, and abusing the trust and confidence reposed upon him as a truck helper; [27] (b) petitioner bought the subject items from Lariosa and was in possession of the same; (c) under the circumstances, petitioner should have been forewarned that the subject items came from an illegal source, as his transaction with Lariosa did not have any accompanying delivery and official receipts, and that the latter did not demand that such items be replaced with empty bottles, contrary to common practice among dealers of soft drinks; [28] and (d) petitioner's intent to gain was made evident by the fact that he bought the subject items for just P50,000.00, lower than their value in the amount of P52,476.00. "[T]he Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same." [29]

Anent the proper penalty to be imposed on petitioner, pertinent portions of Section 3 of PD 1612 read:

Section 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 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.

x x x x

Notably, while the crime of Fencing is defined and penalized by a special penal law, the penalty provided therein is taken from the nomenclature in the Revised Penal Code (RPC). In *Peralta v. People*, [30] the Court discussed the proper treatment of penalties found in special penal laws vis-a-vis Act No. 4103, [31] otherwise known as the "Indeterminate Sentence Law," viz.:

Meanwhile, Sec. 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed. Be that as it may, the Court had

clarified in the landmark ruling of *People v. Simon* that the situation is different where although the offense is defined in a special law, the penalty therefor is taken from the technical nomenclature in the RPC. Under such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.[32]

Otherwise stated, if the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules applied for those crimes punishable under the RPC.[33]

Applying the foregoing and considering that there are neither mitigating nor aggravating circumstances present in this case, the Court finds it proper to sentence petitioner to suffer the penalty of imprisonment for an indeterminate period of four (4) years, two (2) months, and one (1) day of prision correccional, as minimum, to fifteen (15) years of reclusion temporal, as maximum.

At this point, the Court notes that as may be gleaned from its *whereas* clauses, PD 1612 was enacted in order to provide harsher penalties to those who would acquire properties which are proceeds of the crimes of Robbery or Theft, who prior to the enactment of said law, were punished merely as accessories after the fact of the said crimes.[34] This rationale was echoed in *Dizon-Pamintuan v. People*[35] where the Court held that while a Fence may be prosecuted either as an accessory of Robbery/Theft or a principal for Fencing, there is a preference for the prosecution of the latter as it provides for harsher penalties:

Before P.D. No. 1612, a fence could only be prosecuted for and held liable as an accessory, as the term is defined in Article 19 of the Revised Penal Code. The penalty applicable to an accessory is obviously light under the rules prescribed in Articles 53, 55, and 57 of the Revised Penal Code, subject to the qualification set forth in Article 60 thereof. Noting, however, the reports from law enforcement agencies that "there is rampant robbery and thievery of government and private properties" and that "such robbery and thievery have become profitable on the part of the lawless elements because of the existence of ready buyers, commonly known as fence, of stolen properties," P.D. No. 1612 was enacted to "impose heavy penalties on persons who profit by the effects of the crimes of robbery and theft." Evidently, the accessory in the crimes of robbery and theft could be prosecuted as such under the Revised Penal Code or under P.D. No. 1612. However, in the latter case, he ceases to be a mere accessory but becomes a principal in the crime of fencing. Elsewise stated, the crimes of robbery and theft, on the one hand, and fencing, on the other, are separate and distinct offenses. The state may thus choose to prosecute him either under the Revised Penal Code or P.D. No. 1612, although the preference for the latter would seem inevitable considering that fencing is a *malum prohibitum*, and P.D. No. 1612 creates a presumption of fencing and prescribes a higher penalty based on the value of the property.[36]

While PD 1612 penalizes those who acquire properties which are proceeds of Robbery or Theft, its prescribed penalties are similar to the latter crime in that they are largely dependent on the value of the said properties. In fact, a reading of Section 3 of PD 1612 and Article 309 of the RPC (which provides for the prescribed penalties for the crime of Theft) reveals that both provisions use the same graduations of property value to determine the prescribed penalty; in particular, if the value: (a) exceeds P22,000.00, with additional penalties for each additional P10,000.00; (b) is more than P12,000.00 but not exceeding P22,000.00; (c) is more than P6,000.00 but not exceeding P12,000.00; (d) is more than P200.00 but not exceeding P6,000.00; (e) is more than P50.00 but not exceeding P200.00; and (f) does not exceed P5.00. However, with the recent enactment of Republic Act No. 10951,[37] which adjusted the values of the property and damage on which various penalties are based, taking into consideration the present value of money, as opposed to its archaic values when the RPC was enacted in 1932,[38] the graduation of values in Article 309 was substantially amended, without any concomitant adjustment for PD 1612. This development would then result in instances where a Fence, which is theoretically a mere accessory to the crime of Robbery/Theft, will be punished more severely than the principal of such latter crimes.

This incongruence in penalties therefore, impels an adjustment of penalties.

However, while it may be the most expeditious approach, a short cut by judicial fiat is a dangerous proposition, lest the Court dare trespass on prohibited judicial legislation.[39] As the Court remains mindful of the fact that the determination of penalties is a policy matter that belongs to the legislative branch of the government, it finds it prudent to instead, furnish both Houses of Congress, as well as the President of the Republic of the Philippines, through the Department of Justice, pursuant to Article 5[40] of the RPC, copies of this ruling in order to alert them on the aforestated incongruence of penalties, all with the hope of arriving at the proper solution to this predicament.

WHEREFORE, the petition is DENIED. The Decision dated November 6, 2015 and the Resolution dated June 8, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 01126-MIN finding petitioner Ireneo Cahulogan GUILTY beyond reasonable doubt of the crime of Fencing defined and penalized under Presidential Decree No. 1612, otherwise known as the "Anti-Fencing Law," are AFFIRMED with MODIFICATION, sentencing him to suffer the penalty of imprisonment for the indeterminate period of four (4) years, two (2) months, and one (1) day of prision correccional, as minimum, to fifteen (15) years of reclusion temporal, as maximum.

Pursuant to Article 5 of the Revised Penal Code, let a copy of this Decision be furnished the President of the Republic of the Philippines, through the Department of Justice, the President of the Senate, and the Speaker of the House of Representatives.

SO ORDERED.

Carpio,[*] Acting C. J., (Chairperson), Peralta, Caguioa, and Reyes, Jr., JJ., concur.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[1] Rollo, pp. 3-12.

[2] Id. at 16-30. Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting, concurring.

[3] Id. at 39-41. Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Edgardo A. Camello and Edgardo T. Lloren, concurring.

[4] CA rollo, pp. 28-34. Penned by Presiding Judge Jeoffre W. Acebido.

[5] (March 2, 1979).

[6] Records, p. 2.

[7] Id.

[8] Id. at 17.

[9] See rollo, pp. 18-19 and CA rollo, pp. 29-30.

[10] Rollo, p. 17 and CA rollo, p. 29.

[11] See Memorandum for the Accused dated June 18, 2013; records, pp. 170-171.

[12] See rollo, p. 19 and CA rollo, p. 30.

[13] CA rollo, pp. 28-34.

[14] See *id.* at 34.

[15] See *id.* at 30-33.

[16] See Notice of Appeal dated October 17, 2013; records, pp. 211-212.

[17] Rollo, pp. 16-30.

[18] See *id.* at 29.

[19] See *id.* at 20-29.

[20] See motion for reconsideration dated January 12, 2016; *id.* at 31-37.

[21] *Id.* at 39-41.

[22] See *Rivac v. People*, G.R. No. 224673, January 22, 2018.

[23] See Section 2 (a) of PD 1612.

[24] See Section 2 (b) of PD 1612.

[25] *Ong v. People*, 708 Phil. 565, 571 (2013); citing *Capili v. CA*, 392 Phil. 577, 592 (2000).

[26] *Ong v. People*; *id.* at 574; citing *Dizon-Pamintuan v. People*, G.R. No. 111426, July 11, 1994, 234 SCRA 63, 72. See also Section 5 of PD 1612 which reads:

Section 5. Presumption of Fencing. — Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.

[27] In *Lim v. People* (G.R. No. 211977, October 12, 2016, 806 SCRA 1, 12), it has been held that conviction of a principal in the crime of theft is not necessary for an accused to be found guilty of the crime of Fencing.

[28] "[Circumstances normally exist to forewarn, for instance, a reasonably vigilant buyer that the object of the sale may have been derived from the proceeds of robbery or theft. Such circumstances include the time and place of the sale, both of which may not be in accord with the usual practices of commerce. The nature and condition of the goods sold, and the fact that the seller is not regularly engaged in the business of selling goods may likewise suggest the illegality of their source, and therefore should caution the buyer. This justifies the presumption found in Section 5 of P.D. No. 1612 that 'mere possession of any goods, . . . , object or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing' — a presumption that is, according to the Court, 'reasonable for no other natural or logical inference can arise from the established fact of. . . possession of the proceeds of the crime of robbery or theft.'" (*Ong v. People*, *supra* note 25, at 573; citing *Dela Torre v. COMELEC*, 327 Phil. 1144, 1154-1155 [1996].)

[29] See *Peralta v. People*, G.R. No. 221991, August 30, 2017, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[30] See *id.*

[31] Entitled "AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR, AND FOR OTHER PURPOSES" (December 5, 1933).

[32] See *Peralta v. People*, *supra* note 29; citing *Quimvel v. People*, G.R. No. 214497, April 18, 2017.

[33] See *Peralta v. People*, *id.*; citing *Mabunot v. People*, G.R. No. 204659, September 19, 2016, 803 SCRA 349, 364.

[34] The whereas clauses of PD 1612 read:

WHEREAS, reports from law enforcement agencies reveal that there is rampant robbery and thievery of government and private properties;

WHEREAS, such robbery and thievery have become profitable on the part of the lawless elements because of the existence of ready buyers, commonly known as fence, of stolen properties;

WHEREAS, under existing law, a fence can be prosecuted only as an accessory after the fact and punished lightly;

WHEREAS, it is imperative to impose heavy penalties on persons who profit by the effects of the crimes of robbery and theft.

[35] *Supra* note 26.

[36] *Id.* at 71-72; citations omitted.

[37] Entitled "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE,' AS AMENDED" approved on August 29, 2017.

[38] See *Rivac v. People*, G.R. No. 224673, January 22, 2018, *supra* note 22.

[39] *Corpuz v. People*, 734 Phil. 353, 425 (2014).

[40] Article 5 of the RPC reads:

Article 5. Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties. - Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

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