

WAYNE JAIN, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 63129. September 28, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petition to review a decision of the defunct Court of Appeals in CA-G.R. No. 22445-CR which affirmed the decisions of the Court of First Instance of Negros Occidental finding him guilty of theft of sugar canes.

Two informations were filed against the petitioner. Both informations are similarly worded except in respect of the value of the sugar canes and their owners. The information in Criminal Case No. 560 (the other is Criminal Case No. 561) reads as follows:

"The undersigned [City Fiscal of San Carlos City] accuses ANDRES TRESFUENTES and WAYNE JAIN of the crime of 'THEFT' committed as follows:

"That on or about and during and between the period from January 12, 1973 to May 28, 1973, at Honob Loading Station, Katingal-an, City of San Carlos, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and helping one another, with intent of gain, but without intimidation of person nor force upon things, did, then and there willfully, unlawfully and feloniously, take, steal and carry away Nineteen (19) cane cars loaded with sugar cane, valued at Eight Thousand Three Hundred Fifty One Pesos and 55/100 (P8,351.55) Philippine Currency, representing the total Planter's Share of said sugar cane milled, owned by and belonging to one TOMASA BERMEJO and without the consent of the latter, to her damage and prejudice in the aforestated sum of P8,351.55.

"That the crime of Qualified Theft is committed by the accused Andres Tresfuentes, in that the latter being employed as Watchman by Tomasa Bermejo with the duty to issue tickets for every car loaded with canes committed it with a grave abuse of confidence reposed on him by said Tomasa Bermejo and Theft as to the accused Wayne Jain." (Rollo, p. 42.)

Andres Tresfuentes, the watchman, was convicted as an accessory in the crime of simple theft and was sentenced accordingly. He did not appeal.

In the Court of Appeals, the appellant, herein petitioner Wayne Jain, initially raised questions of fact only. It was in his Motion for Reconsideration of the Court of Appeals decision where he raised a legal question, namely: whether under the facts of the case (not those alleged in the informations) he could be convicted of theft. He claimed and in this petition insists that he did not commit theft; that if at all the crime which he committed is estafa; and that he cannot be convicted of estafa either because it is not the crime which is charged in the two informations.

The modus operandi in committing the "thefts" has been described by the trial court as follows:

"Marquez testified that after the routine verification of the loading of the said cane cars in the after-noon of the respective dates abovementioned, he found that these cane cars were loaded with canes belonging to

planter Tomasa Bermejo, which fact he entered and annotated in his record folder (Exh. D).

"However, after the loading of the said cane cars but before they were pulled by the locomotive of the Central to the mill site, the accused Wayne Jain, who is also a small planter of the San Carlos Milling district using the Honob Loading Station, in conspiracy with the accused Andres Tresfuentes, Bermejo's cane guard, withdrew the trainman's receipts of Bermejo's cane cars from the box where the said trainman's receipts were deposited after the loading and substituted them with other trainman's receipts in the name of the accused Wayne Jain, thereby making it appear that the said cane cars belonged to the accused Wayne Jain and not to the real owner Tomasa Bermejo." (Rollo, p. 45.)

In support of his claim the petitioner says:

"[P]etitioner did not, actually and/or physically, take, steal, and carry away cane cars loaded with sugar cane, belonging to complainants, which are the subject matter of the offense charged. It is our position that the Crime of Theft cannot be committed without an actual, physical taking of the chattel subject matter of the offense. This view finds support in the commentary of Viada when he says:

'Primer requisito: Apoderamiento de una cosa mueble. - Importa mucho tener presente este primer elemento del hurto, que consiste en tomar, esto es, coger, apprehender la cosa: Cuando esta no se toma, sino que se recibe y luego se la apropia uno o la distrae sin la voluntad de su dueño, podra haber otro delito, el de estafa, por ejemplo, pero de ningun modo el de hurto, que consiste esencialmente en tomar, esto es, en sacarla del lugar donde la tiene su legitimo dueño, sin la voluntad de este.' (Viada,Codigo Penal Reformado de 1870, Tomo VI, p. 220; Italics supplied).

"In this connection, it is important to note that Viada emphasizes the fact that in Theft, which consists essentially in taking, the thing subject of the offense must be taken from the place where its legitimate owner has or holds it without his consent. This, indeed, presupposes a transfer, a physical transfer of the thing (by the offender of course) from the place where it is to the place where it is not, which, in turn, indicates an actual, physical taking.

"In the case at bar, the sugar canes (belonging to complainants) loaded in cane cars (belonging to the Central) were the subject matter of the offense charged (Theft). Though charged, it was not proved that petitioner (accused) had a hand in said canes, meaning to say, petitioner did not even touch, much less take (physically and/or actually), steal, and carry away said canes. If these canes reached the milling site, it was not thru the intervention and/or mediation of petitioner. All that petitioner did, as proved, was merely to substitute the train receipts (evidencing ownership of the complainants over the canes) in complainants' name with those bearing his (petitioner's) name and thereafter to claim from the Central the proceeds of said canes. In other words, all that the petitioner was interested in was the proceeds of the sugar cane, not the canes themselves, and this interest or concern was sub-served by a substitution of the train receipts, not the canes. To our mind, therefore, the Crime of Theft was not, and could not be, committed.

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"Based on the peculiar circumstances of this case, it is our considered opinion that the crime committed, if any, is ESTAFA under Article 315, 2 (a), of the Penal Code, 'By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits', thru Falsification of Private Document under Article 172, Par. 2, of the same Code, which reads:

'Any person who, to the damage of a third party, or with intent to cause such damage, shall in any private document commit any of the acts of falsification, enumerated in the next preceding Article.' (Art. 171, R.P.C.),

in relation to Article 171, Subd. 4, of the same Code, 'making untruthful statements in a narration of facts'. "

(Rollo, pp. 124-126.)

Upon the other hand, the Solicitor General argues that the crime committed is theft because of the presence of the following elements: personal property (sugar canes) which the petitioner did not own; taking without the consent of the owners with intent to gain; and absence of violence or intimidation. (Rollo, p. 172.)

The petition is highly impressed with merit.

An American justice of this Court whose background was the Common Law wrote a learned historical background of Theft as it is understood in the Civil Law. A portion is quoted as follows:

"In the early Roman law we find theft defined by Gaius in terms broad enough to include any kind of physical handling of property belonging to another against the will of the owner; and in this connection we note that the term is there made to include mis-appropriation and misuse by the bailee, a species of offense which in our Penal Code is transferred to subsection 5 of article 535, dealing with estafa. 'Furtum autem fit non solum cum quis interceptiendi causa rem alienam amovet, sed generaliter cum quia alienam rem invito domino contrectat. Itaque, sive creditor pignore, sive is apud quem res deposita est, ea re utatur, sive is qui rem utendam accepit, in alium usum eam transferat quam cujus gratia ei data est, furtum committit.' (Gai. iii, 195,196.)

"Substantially the same definition is given by Paulus: 'A thief is he who with evil intention handles (touches, moves) the property of another.' Fur est qui dolo malo rem alienam contrectat. In the Institutes of Justinian a more elaborate definition is given as follows: 'Theft is the fraudulent handling of a thing with the object of acquiring gain either from the thing itself or from its use, or from possession of it.' Fortum est contrectatio rei fraudulosa, lucri faciendi causa vel ipsius rei, vel etiam usus ejus possessionisve. (Inst. 4, 1, 1.)

"The corresponding provision of the Partidas follows in the main the definition given in the Institutes but contains the additional qualification that the taking must be without the consent of the owner. 'Furto es malfetria que fazen los omes que toman alguna cosa mueble agena encubiertamente sin plazer de su señor, con intencion de ganar el señorío o la posesion o el uso della.' (Ley 1, Tit, XIV, Part. VII.)

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"From a comparison of the definitions given above it is obvious that the most fundamental notion in the crime of theft is the taking of the thing to be appropriated into the physical power of the thief, which idea is qualified by other conditions, such as that the taking must be effected animo lucrandi and without the consent of the owner; and it will be here noted that the definition does not require that the taking should be effected against the will of the owner but merely that it should be without his consent, - a distinction of no slight importance." (People vs. Avila, 44 Phil. 720, 724-726 [1923].)

Evident from the foregoing is the condition sine qua non that for theft to be committed there must be physical handling of personal property. Such a condition is not present in the case at bar for at no time did the petitioner lay his hands on the sugar canes which belonged to others. The petitioner is right; he did not commit theft but he committed estafa.

WHEREFORE, the petition is hereby granted; the judgment of the Court of Appeals is set aside and the Provincial Fiscal of Negros Occidental is directed to file appropriate informations against the petitioner for estafa or falsification of private documents.

No costs.

SO ORDERED.

Makasiar (Chairman), Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

Aquino and Guerrero, JJ., no part.

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