

ELPIDIO EMPELIS, MAMERTO CARBUNGCO, SALVADOR CARBUNGCO AND EMILIO CARBUNGCO, PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 66136. September 28, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

The then Municipal Circuit Court of Dimasalang-Palanan-Uson, Masbate convicted herein petitioners of qualified theft of fifty coconuts valued at P50.00 and sentenced each of them to an indeterminate penalty of from four (4) to eight (8) years and one (1) day, to restore to the owner of the stolen coconuts, Guillermo Catarining the sum of P50.00 and to pay the costs.

From the foregoing judgment they went to the Intermediate Appellate Court claiming that the court a quo erred: (1) in convicting all accused when there was no sufficient evidence to prove that they did gather and steal the coconut fruits of the coconut plantation of Guillermo Catarining at Tambangan, Dapdap, Uson, Masbate, Philippines; (2) in giving too much probative value to the evidence for the prosecution and in discrediting that for the defense; and (3) in not acquitting all the accused of the crime charged on the ground of reasonable doubt. (pp. 8-9, Rollo)

Respondent appellate court affirmed in toto the penalty imposed upon petitioners by the trial court. Hence, instant petition which seeks to reduce the penalty imposed upon petitioners by the trial court, which was affirmed in toto by respondent Intermediate Appellate Court. (p. 1, Rollo)

The facts as found by respondent Intermediate Appellate Court are as follows:

"Prior to June 10, 1979, Guillermo Catarining, owner of a coconut plantation in Sitio Tambangan, Dapdap, Uson, Masbate, was frequently losing coconuts in his plantation due to thievery. Thus, on the early morning of June 10, 1979, while he stayed in his plantation to keep watch, he saw four (4) persons within the premises of his plantation gathering and tying some coconuts. He then went home, fetched his neigh-bors Anastacio Andales and Teodomero Garay and took along a flashlight. Upon reaching the coconut plantation with his companions, Catarining beamed his flashlighth on the four persons who turned out to be the herein appellants. Elpidio Empelis and Emilio Carbungco were seen carry-ing coconuts on a piece of wood on their shoulders while Salvador and Mamerto Carbungco were espied carrying coconuts with their bare hands. As the four persons noticed the presence of Catarining and the latter's companions, they dropped the Coconuts they were carrying and fled leaving behind about 50 pieces of coconuts valued at P50.00 and two poles, one made of bamboo and the other of wood. (Exhs. A & A-1) Catarining invited the barangay tanod to witness the counting of the coconuts abandoned by the four men. Upon the advice of said tanod, Catarining reported the incident to the barangay captain who accompanied him and his com-panions to the police station at Uson, Masbate where Catarining filed his complaint." (pp. 47-48, Rollo)

The only issue raised with earnestness by petitioners is that the crime committed, if at all, is simple and not qualified theft as found by respondent court.

Article 310 of the Revised Penal Code states that the crime of theft shall "be punished by the penalties next higher by two degrees than those respectively expressed in the next preceding article x x x if the property stolen x x x consists of coconuts taken from the premises of a plantation, x x x." Thus, the stealing of coconuts when they are still in the tree or deposited on the ground within the premises is qualified theft. When the coconuts are stolen in any other place, it is simple theft. Stated differently, if the coconuts were taken in front of a house along the highway outside the coconut plantation, it would be simple theft only.

In the case of *People vs. Isnain*, 85 Phil. 648, this Court held that "[i]n the matter of theft of coconuts, the purpose of the heavier penalty is to encourage and protect the development of the coconut industry as one of the sources of our national economy. Unlike rice and sugar cane farms where the range of vision is unobstructed, coconut groves can not be efficiently watched because of the nature of the growth of coconut trees; and without a special measure to protect this kind of property, it will be as it has been in the past the favorite resort of thieves."

In the case at bar, petitioners were seen carrying away fifty coconuts while they were still in the premises of the plantation. They would therefore come within the definition of qualified theft because the property stolen consists of coconuts taken from the premises of a plantation.

However, the crime committed is only frustrated qualified theft because petitioners were not able to perform all the acts of execution which should have produced the the felony as a consequence. They were not able to carry the coconuts away from the plantation due to the timely arrival of the owner.

WHEREFORE, the judgment of conviction is hereby **AFFIRMED** but modified in the sense that the crime committed is only frustrated qualified theft and petitioners Elpidio Empelis, Mamerto Carbungco, Salvador Carbungco and Emilio Carbungco are each sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of arresto mayor, as minimum, to two (2) years and four (4) months and one (1) day, of prision correccional, as maximum, and to pay the costs.

SO ORDERED.

Teehankee (Chairman), Melencio Herrera, Plana, Gutierrez, Jr., and De La Fuente, JJ., concur.

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