

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JOSE C. DE GUZMAN, PRESIDING JUDGE OF REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 93, AND SPOUSES DANILO A. ALCANTARA AND ISA...

G.R. No. 77368. October 05, 1993

Ponente: VITUG, J.

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VITUG, J.:

Is the crime of "fencing" a continuing offense that could allow the filing of an information therefor in the place where the robbery or theft is committed and not necessarily where the property unlawfully taken is found to have later been acquired?

The above query is the sole issue in this petition for certiorari and mandamus filed by the People of the Philippines, praying for the reversal, annulment and setting aside of the Order of 28 February 1986[1] of the respondent Judge, who has ruled in the negative, as well as his Order, dated 21 March 1986,[2] denying the motion for reconsideration. The petitioner prays that the respondent Judge be directed to assume jurisdiction over, and to proceed with the trial of, the criminal case.

On 09 September 1985, robbery was committed in Quezon City in the house of Jose L. Obillos, Sr., where various pieces of precious jewelry alleged to be worth millions of pesos were taken. An information, dated 30 September 1985, was instituted against the perpetrators in the Regional Trial Court of Quezon City, Branch 101, docketed thereat as Criminal Case No. G.R. No. 42078.[3]

Subsequently, an information, dated 22 October 1985, for violation of Presidential Decree No. 1612, otherwise known as the "Anti-Fencing Law," was also filed with the Regional Trial Court of Quezon City, Branch 93, docketed as Criminal Case No. 42433, against herein respondent spouses Danilo A. Alcantara and Isabelita Esguerra-Alcantara, from whose possession the jewelries stolen were recovered in Antipolo, Rizal.[4]

The trial court, acting on the motion to quash filed by the accused [now private respondents], issued the now questioned order of 28 February 1986, viz:

"Before the Court is a Motion to Quash, filed by the accused thru counsel, praying that the information filed against both accused be quashed, on the ground that the Court has no jurisdiction to try the offense charged. Among others, the motion alleges, that as per police investigation, the crime took place in Antipolo, Rizal. For this reason, Violation of Presidential Decree No. 1612 is an independent crime, separate and distinct from that of Robbery. The accused claims, likewise, that jurisdiction to try the same is with the Court within which territorial jurisdiction, the alleged fencing took place.

The Prosecution filed an Opposition thereto, alleging among others, that there is nothing in the law which prohibits the filing of a case of fencing in the court under whose jurisdiction the principal offense of robbery was committed. The prosecution claims further, that the consideration in the enactment of PD 1612 was to impose a heavier penalty on persons who profit by the effects of the crimes of robbery or theft.

On this point, we should not lose sight of the fact, that in all criminal prosecutions, the action shall be instituted and tried in the court of the Municipality or Province wherein the offense was committed, or anyone of the essential ingredients thereof took place.[5]

Since the alleged act of fencing took place in Antipolo, Rizal, outside the territorial jurisdiction of this Court, and considering that all criminal prosecutions must be instituted and tried in the Municipality or Province where the offense took place, this Court, necessarily, does not have jurisdiction over the instant case.

Wherefore, the above-entitled case is hereby QUASHED, without prejudice to the filing of the corresponding action against the accused in the Court having proper jurisdiction."

The private prosecutor's motion for reconsideration was denied in the court's order of 21 March 1986.

Hence, the instant petition.

The Solicitor General argues that since an essential element of the crime of fencing is the commission of robbery, in this case committed in Quezon City, the information therefor filed in said City accords with the provisions of Rule 110 of the 1985 Rules on Criminal Procedure, and the refusal of the Court a quo to assume and exercise jurisdiction thereover constitutes a serious error of law and a grave abuse of discretion. He theorizes that fencing is a "continuing offense." He explains that the Anti-Fencing Law has been enacted for the purpose of imposing a heavier penalty on persons who profit from the effects of the crime of robbery or theft, no longer merely as accessories under Article 19, paragraph 1, of the Revised Penal Code, but as equally guilty with the perpetrators of the robbery or theft itself.

In *People vs. Ledesma*,^[6] we said:

"x x x. A 'continuous crime' is a single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division. According to Cuello Calon, when the actor, there being unity of purpose and of right violated, commits diverse acts each of which, although of a delictual character merely constitutes a partial execution of a single particular delict, such concurrence of delictual acts is called a 'delito continuado.' For it to exist there should be plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated; unity of criminal intent or purpose, which means that two or more violations of the same penal provision are united in one and the same intent leading to the perpetration of the same criminal purpose or aim.

Robbery is the taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person, or using force upon anything.^[7] "Fencing", upon the other hand, is 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.^[8]

The crimes of robbery and fencing are clearly then two distinct offenses. The law on fencing does not require the accused to have participated in the criminal design to commit, or to have been in any wise involved in the commission of, the crime of robbery or theft. Neither is the crime of robbery or theft made to depend on an act of fencing in order that it can be consummated. True, the object property in fencing must have been previously taken by means of either robbery or theft but the place where the robbery or theft occurs is inconsequential. It may not be suggested, for instance, that, in the crime of bigamy which presupposes a prior subsisting marriage of an accused, the case should thereby be triable likewise at the place where the prior marriage has been contracted.^[9]

We are not unaware of a number of instances^[10] when the Court would allow a change of venue in criminal cases "whenever the interest of justice and truth so demand, and there are serious and weighty reasons to believe

that a trial by the court that originally had jurisdiction over the case would not result in a fair and impartial trial and lead to a miscarriage of justice." [11] Here, however, we do not see the attendance of such compelling circumstances, nor are we prepared to state that the lower court gravely abused its discretion in its questioned orders.

WHEREFORE, the instant petition for certiorari and mandamus is DISMISSED, and the orders appealed from are hereby AFFIRMED.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] G.R. No. 77368, Annex "F," Petition, 32-33.

[2] Ibid., Annex "H," Ibid., 39.

[3] G.R. No. 74344, Annex "A," Petition, 19-21.

[4] Ibid., Annex "B," Petition, 22-23.

[5] Section 14, Rule 110, Rules of Court.

[6] 73 SCRA 77/1976/.

[7] Article 293, Revised Penal Code.

[8] Presidential Decree No. 1612, Anti-Fencing Law of 1979.

[9] See *Ganchero vs. Bellosillo*, 28 SCRA 673/1969/.

[10] *People v. Gutierrez*, 36 SCRA 172/1970/; *People v. Pilotin*, 65 SCRA 635/1975/; *Mondiguing v. Abad*, 68 SCRA 14/1975/.

[11] *People v. Gutierrez*, Ibid.; see also Article VIII, Section 5 [4], 1987 Constitution.

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