

LAURO SANTOS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 77429. January 29, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The factual findings of the lower courts are as a matter of policy not disturbed by this Court in the absence of any of the recognized exceptions that will justify reversal. As none of these exceptions appears in the case at bar, the petitioner's conviction, based on such findings, must be affirmed.

The evidence of the prosecution is, in the view of the Court, conclusive of the petitioner's guilt.

Sometime in November 1980, the complaining witness, Encarnacion Peñalosa, entrusted her car, a 1976 Ford Escort, to herein petitioner Lauro Santos for repair of the carburetor. The work was to cost P300.00. A week later, Santos persuaded her to have her car repainted by him for P6,500.00, within a period of two months.[1]

After two months, Peñalosa went to the petitioner's repair shop at MacArthur Highway, Malabon, to retrieve her car. Santos refused to deliver the vehicle unless she paid him P634.60 for the repairs. As she did not have the money then, she left the shop to get the needed payment. Upon her return, she could not find Santos although she waited five hours for him. She went back to the shop several times thereafter but to no avail.[2]

Peñalosa was to learn later that Santos had abandoned his shop in Malabon. Unable to recover her car, she filed a complaint for carnapping against Santos with the Constabulary Highway Patrol Group in Camp Crame. The case was dismissed when the petitioner convinced the military authorities that the complainant had sold the vehicle to him. He submitted for this purpose a Deed of Sale with Right of Repurchase in his favor.[3]

This notwithstanding, an information for estafa on Peñalosa's complaint was filed against Santos in the Regional Trial Court of Quezon City on October 26, 1982. After trial, the accused was found guilty as charged and sentenced to "an indeterminate penalty of from four (4) months and one (1) day as minimum to four (4) years and two (2) months as maximum, both of prision correccional, to indemnify the offended party in the amount of P38,000.00 which is the value of the car without subsidiary imprisonment in case of insolvency and with costs." [4]

On appeal, the conviction was affirmed but Santos was held guilty of qualified theft and not estafa. The dispositive portion of the decision of the respondent court [5] read:

WHEREFORE, the judgment appealed from is MODIFIED: the offense committed by the appellant is qualified theft and he is hereby sentenced to an indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum, to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of reclusion temporal, as maximum; to indemnify Encarnacion Peñalosa the sum of P20,000.00 without subsidiary imprisonment in case of insolvency; and, to pay the costs.

In his defense, the petitioner now quibbles about the supposed inconsistencies of the complaining witness that he

says make her testimony questionable. Our ruling is that such inconsistencies are minor lapses and do not impair Peñalosa's credibility as a whole. Santos also wonders why, if it is true that she had asked him to repair and repaint her car, she had not even made an advance payment. One reason could be that he himself did not ask for such advance, considering that they were members of the same bowling team. There is even the suggestion that he was smitten with her although she says she rejected his suit.[6]

The petitioner's main reliance, though, is on the Deed of Sale with Right of Repurchase which he submitted at the trial to prove that Peñalosa had sold the car to him and now had no claim to it.

The lower courts were correct in rejecting this shoddy evidence. It is a wonder that it was even considered at all when the case filed in Camp Crame was dismissed.

A cursory look at this alleged document will show that it is spurious. There are alterations and deletions that are not even initialed to authenticate the changes. Two entire paragraphs are canceled. The name and address of the supposed original vendee are crossed out and those of the petitioner are written in place of the deletions. Moreover, the so-called deed is not notarized.

It would have been so easy to re-type the one-page document to express clearly and indubitably the intent of the parties and then have it properly acknowledged. But this was not done.

The petitioner insists that the document was originally intended to be concluded between Peñalosa and Domingo Corsiga but was hastily changed to make Santos the buyer and mortgagee.[7] Surely a vendee would not be so rash as to depend for his title to the thing purchased on such a shabby and dubious deed of sale.

The petitioner also makes much of the fact that Peñalosa did not even sign a job order or get a receipt when she delivered her car to him for repairs. In fact, she did not even check where his repair shop was. He forgets that he was no less trusting either. He himself does not explain why the amount of P6,000.00 he allegedly gave for the car was not acknowledged by Peñalosa in the Deed of Sale or in a separate instrument. There was no proof at all of such payment.

Given these circumstances, we find it easier to believe that Peñalosa had signed the original document with the intention of selling her car to Domingo Corsiga, the party first named therein, but later changed her mind. She left the unused document in her car and Santos, chancing upon it when the vehicle was delivered to him, decided to modify it to suit his purposes.

Besides, as the respondent court correctly observed, why would Santos still demand from Peñalosa the cost of the repairs on the car if he claims he had already bought it from her? And there is also the glaring fact that Santos was unable to register the car in his name despite the lapse of all of two years after his alleged purchase of the vehicle.

In his supplemental memorandum, the petitioner says he could not register the car because it had merely been mortgaged to him and he had to wait until the expiration of the period of repurchase.[8] Yet, during his cross-examination on March 5, 1984, Santos repeatedly declared that the car belonged to him and that the right of repurchase expired after two months from November or December 1980. He also said that rather than register it, he could cannibalize the car and sell the spare parts separately at greater profit.[9]

The Court also notes that, according to Santos, he accompanied Peñalosa to redeem her car from Corsiga and that he himself gave her the money for such redemption in Corsiga's presence.[10] Having made that allegation, it was for the petitioner himself to present Corsiga as his witness to corroborate that statement. Santos did not, and so failed to prove what was, to begin with, an improbable defense. *Ei incumbit probatio qui dicit*.

Although the information charged the petitioner with estafa, the crime committed was theft. It is settled that what

controls is not the designation of the offense but the description thereof as alleged in the information.[11] And as described therein, the offense imputed to Santos contains all the essential elements of theft, to wit: (1) that there be a taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence or intimidation against persons or force upon things.[12]

Theft should not be confused with estafa. According to Chief Justice Ramon C. Aquino in his book on the Revised Penal Code, "The principal distinction between the two crimes is that in theft the thing is taken while in estafa the accused receives the property and converts it to his own use or benefit. However, there may be theft even if the accused has possession of the property. If he was entrusted only with the material or physical (natural) or de facto possession of the thing, his misappropriation of the same constitutes theft, but if he has the juridical possession of the thing, his conversion of the same constitutes embezzlement or estafa." [13]

The petitioner argues that there was no intent to gain at the time of the taking of the vehicle and so no crime was committed. In *U.S. v. De Vera*, [14] we held that the subsequent appropriation by the accused of the thing earlier delivered to him supplied the third element that made the crime theft instead of estafa.

Illustrating, the Court declared:

... let us suppose that A, a farmer in the Province of Bulacan, agrees to sell B a certain quantity of rice at a certain price per picul. A ships several sacks of the grain which B receives in his warehouse. If, prior to the measuring required before the payment of the agreed price, B takes a certain quantity of rice from the different sacks, there can be no doubt that he is guilty of the crime of theft. Now, it may be asked: Did not B receive the sacks of rice shipped to him by A? — Yes. And did A voluntarily deliver the sacks of rice which he owned by shipping them to B? — Yes. Was the taking of the rice by B from the different sacks done with A's consent? — No.

This shows, to our mind, that the theory of the defense is untenable, according to which, when the thing is received and then appropriated or converted to one's own use without the consent of the owner, the crime committed is not that of theft.

It was erroneous for the respondent court to hold the petitioner guilty of qualified theft because the fact that the object of the crime was a car was not alleged in the information as a qualifying circumstance.[15] Santos would have had reason to argue that he had not been properly informed of the nature and cause of the accusation against him, as qualified theft carries a higher penalty.

But although not pleaded and so not considered qualifying, the same circumstance may be considered aggravating, having been proved at the trial.[16] Hence, the impossible penalty for the theft, there being no other modifying circumstances, should be in the maximum degree.

According to the Solicitor General:

The value of the car is P38,000.00. Under Article 309 of the Revised Penal Code, if the value of the thing stolen exceeds P22,000.00, the penalty should be the maximum period of the prescribed penalty plus one year for each additional P10,000.00. Thus the impossible penalty is the maximum of prision mayor with a range of TEN (10) YEARS and ONE (1) DAY to TWELVE (12) YEARS plus an additional ONE (1) YEAR for every P10,000.00 in excess of P22,000.00, raising the maximum penalty into Reclusion Temporal in the minimum period.

Applying the Indeterminate Sentence Law, there being one aggravating and no mitigating circumstance, the impossible penalty recommended is from SIX (6) YEARS and ONE (1) DAY of prision mayor to THIRTEEN (13) YEARS of reclusion temporal.

We approve the above observations and sentence the petitioner accordingly.

WHEREFORE, the appealed decision is AFFIRMED as herein modified. The petitioner is declared guilty of theft and sentenced to from six (6) years and one (1) day of prision mayor to thirteen (13) years of reclusion temporal. He is also ordered to restore the car in question to the private respondent, or if this is no longer possible, to pay her the value thereof in the amount of P38,000.00.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] TSN, September 7, 1983, pp. 4 & 10.

[2] Ibid., pp. 5-6.

[3] Exhibit "1."

[4] Decision dated January 22, 1985 penned by Judge Filemon H. Mendoza.

[5] Penned by Justice Felipe B. Kalalo, with Justices Floreliana Castro-Bartolome and Esteban M. Lising, concurring.

[6] TSN, September 7, 1983, pp. 8-9.

[7] TSN, March 5, 1984, p. 3.

[8] Rollo, p. 135.

[9] TSN, March 5, 1984, pp. 19-20, 22-23.

[10] Ibid., p. 2.

[11] U.S. v. Treyes, 14 Phil. 270; U.S. v. Lim San, 17 Phil. 273; U.S. v. Ondaro, 39 Phil. 70; People v. Oliveria, 67 Phil. 427; People v. Arnault, 92 Phil. 252.

[12] U.S. v. De Vera, 43 Phil. 1000.

[13] Volume III, 1988 Edition, p. 194.

[14] Supra.

[15] U.S. v. Campo, 23 Phil. 368; People v. Collado, 60 Phil. 610; People v. Domondon, 60 Phil. 729; People v. Raquinio, 17 SCRA 914; People v. Bautista, 28 SCRA 184; People v. Jovellano, 56 SCRA 156.

[16] Ibid.

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