

BENJAMIN VENTURINA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 78038. January 18, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is a petition for review on certiorari of the decision dated March 2, 1987 promulgated by the Sandiganbayan finding petitioner Benjamin Venturina guilty as principal of the crime of attempted theft under Articles 308 and 309 in relation to Article 51 of the Revised Penal Code and sentencing him to an indeterminate penalty of four (4) months of arresto mayor as minimum to five (5) years and four (4) months as maximum and to pay the costs.[1]

The records of the case and the evidence adduced by the parties show the following facts:

Petitioner Benjamin Venturina, a trackman of the Philippine National Railways (PNR) since 1968, was a member of a team assigned to retrieve rails along the abandoned Manila - Cabanatuan line. The retrieval team was headed by Engineer Gregorio Pantaleon Jr. of the PNR Maintenance Department. On January 30, 1984, Engineer Pantaleon went on a mission to recover rails in Cabanatuan City. Venturina and Reynaldo Habalo, though members of said team, did not join Pantaleon. Venturina was allegedly going to fetch his wife and accompany her to the doctor for an emergency check-up.[2]

Meanwhile, on the same date, Rolando Marinay, PNR Security Investigation Officer, and his co-officers, Rodolfo Calderon, Prudencio Dar, and Venancio Naval, were instructed by the Chief Security Officer to proceed to San Rafael, Bulacan to look into reports about certain persons dismantling and cutting rails of PNR abandoned lines in that area. Before proceeding to their destination, they went to the headquarters of the 175th Philippine Constabulary Company to seek assistance.

From the PC headquarters, Marinay and his group went to Barangay Diliman Dos in San Rafael, Bulacan. Arriving there at about 4.00 p.m., they found three (3) persons cutting rails and I-beams of the abandoned PNR railroad tracks with an acetylene torch. About twenty three (23) pieces of cut rails ranging from about 1 1/2 to 3 feet in length with a total value of P58,500.00 had already been cut and were lying about.[3] They recognized one of the three (3) men as Benjamin Venturina, herein petitioner. The other two were non-PNR employees identified as Lolito Magan and Renato Rojo.[4]

When asked about their activity in the vicinity, petitioner Venturina told Marinay that he was instructed by Reynaldo Habalo to cut the rails preparatory to bringing them to Caloocan City. Venturina also showed Marinay a handwritten authority on PNR stationary dated January 26, 1984 purportedly signed by Engineer Gregorio Pantaleon Jr. which reads:

"TO ALL CONCERNED:

"1. Truck load of retrieved rails to be taken at Stockpile Material Management Yard area, Caloocan, escorted

by trackmen;

"A. Benjamin Venturina

"B. Tirso Bernardo

"(Sign.) Engr. Gregorio Pantaleon, Jr." [5]

Doubting the authenticity of the alleged authority, Marinay brought Venturina and his men to the PC Headquarters. On their way to the main highway, they met a blue Ford Fiera with the lone passenger identified by petitioner as the owner of the acetylene torch. When confronted, the man gave his name as Antonio Tebajia and readily admitted ownership of the torch being used by Venturina and his men. Consequently, Tebajia along with petitioner, Megan and Rojo were taken to the PC headquarters for questioning. [6]

On May 28, 1985, petitioner Venturina, together with Reynaldo Habalo, Artemio Tebajia, Lolito Magan and Renato Rojo, were charged before the Sandiganbayan with the crime of frustrated qualified theft defined under Article 310 of the Penal Code. The information reads:

"That on or about the 30th of January 1984, in the Municipality of San Rafael, province Bulacan, Philippines and within the jurisdiction of this Honorable Court, the said accused Reynaldo Habalo y Villegas, being then the Field Inspector of the Audit and Method Department of the PNR assigned to audit retrieved PNR beams and rails and Benjamin Venturina y Valderama as the PNR Trackman, both of whom were then appointed and performing the function of their office and taking advantage of the trust and confidence endowed upon them as public officers, together with Artemio Tebajia alias Teming, Lolito Magan y Sagala and Renato Rojo y Sagala, conspiring, confederating and helping one another with intent to gain, did then willfully, unlawfully and feloniously, take and retrieve PNR steel rails and beams from the PNR railroad track to be delivered to the PNR terminal, Caloocan City, but once in possession, control and custody of the said rails and beams with a total estimated cost of P58,500 and to facilitate the disposal of the same, cut with acetylene torch the said retrieved PNR steel and beams into pieces thereby performing all the acts of execution which should have produced the crime of theft but nevertheless said accused were not able to accomplish their purpose, that is to take, steal, and carry away the said PNR steel rails and beams due to the timely arrival of one, Rolando Marinay, Security Investigator of the PNR thereby preventing the asportation thereof.

"Contrary to law." [7]

Only petitioner Venturina appeared at the arraignment. His co-accused Habalo, Tebajia, Magan and Rojo, remained at large. Venturina pleaded not guilty and trial proceeded against him. On March 2, 1987, the Sandiganbayan rendered a decision finding Venturina guilty of the lesser offense of simple theft at the attempted stage. On March 18, 1987, he filed an urgent motion for reconsideration but the same was denied on April 6, 1987.

Hence the present recourse which raises the basic question of whether or not the evidence presented by the prosecution before the Sandiganbayan has established the guilt of petitioner beyond reasonable doubt.

It is the vigorous contention of petitioner that the prosecution has not shown that he took direct part in the cutting of the rails or that he forced or induced his co-accused to do the same. [8] Venturina claims that he did not personally cut the rails but merely gave direction to the persons cutting the rails in the area upon the request of PNR auditor Reynaldo Habalo, who was also a member of the retrieval team. Habalo reportedly showed him a written authorization from team leader Engineer Pantaleon, Jr. [9] Petitioner emphasizes that his act of supervising the cutting of the steel rails and beams should not be interpreted as an overt act of attempting to steal the rails because petitioner believed then that he and his companions had the authority to do so. Lastly, petitioner insists that the evidence linking him to the offense was only circumstantial. [10]

We find no cogent reason to reverse the findings and conclusions of the Sandiganbayan. The Sandiganbayan did not err in finding that Venturina was in conspiracy with the other accused in the crime of simple theft. Assuming *arquendo* that Venturina only "supervised" the cutting of the rails, that act was his own direct participation in the criminal conspiracy to steal government property. It is not indispensable that a co-conspirator should take a direct hand in every act. Conspiracy is the common design to commit a felony. It is not participation in all the details of the execution of the crime. All those who in one way or another helped and cooperated in the consummation of the crime are considered as co-principals.[11]

Conspiracy was evident from the coordinated movements of Venturina and his cohorts. The place where the rails and I-beams were located could not be reached by a truck. The truck had to be parked on the other side of a bridge. And so the accused took great pains in cutting the rails into shorter manageable pieces to reduce their weight and make the loading easier.

As a trackman who has joined several retrieval missions in the past, Venturina cannot deny that he knowingly took part in an illegal activity. He knew the proper procedure to be followed in salvaging operations. Rails at a length of about 30 feet are loaded "as-is" or in their full length by about six persons into a ten-wheeler truck. The rails are never cut. They are then brought to the PNR terminal in Manila or Caloocan City. But at the time of apprehension, Venturina was supervising Magan and Rojo in cutting the rails. Those two were not even employees of the PNR and the acetylene torch they were using belonged to Tebajia, also a private individual.

In retrieving rails, the team leader must be present at all times. In his absence, the operation is suspended. During the supposedly retrieval mission in San Rafael, Bulacan, on January 30, 1984. Engineer Pantaleon, Jr. was not with Venturina. The only recovery mission scheduled for that day was in Cabanatuan City.

To exculpate himself, Venturina claims that the retrieval mission in San Rafael, Bulacan was with the prior permission of Engineer Pantaleon, Jr. But the alleged authorization was patently anomalous. To begin with, the authority should come from the PNR General Manager and not from a team leader. Secondly, the authority did not indicate the area of operation. Neither did it specifically permit Venturina and his companions to cut the rails into smaller pieces prior to their being transported to the Stockpile Material Management yard in Caloocan City.

Petitioner asseverates that the prosecution has failed to show the element of *animo lucrandi* on his part as his act consisted solely of giving directions to the other accused. Whether or not Venturina had planned to gain from the asportation of the cut rails is not important where it has been sufficiently established that a conspiracy existed between Venturina and the other malefactors. Where theft has been committed through complicity, it is not necessary that each and everyone of the conspirators may have resolved to benefit personally from the taking. It should be enough that they intended that any one of them should benefit therefrom.

Intent is a mental state, the existence of which is made manifest by overt acts of a person. The intent to gain is presumed from all furtive taking of useful property appertaining to another unless special circumstances disclose a different motivation on the perpetrator's part. It is immaterial if there were a real or actual gain. The essential consideration is that there was an intent to gain.[12]

From the foregoing circumstances, petitioner cannot deny his complicity in the attempted theft. He was accosted by PNR security men while supervising two non-PNR employees in the cutting of abandoned rails. Venturina's unexplained presence in San Rafael, Bulacan on January 30, 1984 with two private individuals, the sight of 23 pieces of cut rails lying about, the use of a privately-owned acetylene torch and the outright disavowal by Engineer Pantaleon, Jr. of his signature on an alleged authority to cut the rails weigh heavily against petitioner's protestations of innocence. Indeed, the evidence arrayed against Venturina is so overwhelming that this Court is convinced that his guilt has been established beyond reasonable doubt. Nothing else can speak so eloquently of

Venturina's culpability than the unassailable fact that he was caught red-handed in the very act of attempting to steal government property. Were it not for the timely intervention of alert PNR security agents, then Venturina and his co-conspirators would have succeeded in loading the cut rails on a waiting truck and disposed of them for their personal benefit.

WHEREFORE, the assailed decision of the Sandiganbayan dated March 2, 1987 in Criminal Case No. 10481 is hereby AFFIRMED in toto. Costs against petitioner Venturina.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Criminal Case No. 10481, Rollo, p. 38.

[2] TSN, November 16, 1986, p. 19.

[3] Exhibits C, C-1 to C-10, E and E-1.

[4] TSN, pp. 6-8, 10-11, October 11, 1986; TSN, November 5, 1986, p. 15.

[5] Exhibit A.

[6] TSN, November 5, 1986, pp. 9-10, 12.

[7] Rollo, p. 20.

[8] Rollo, p. 13.

[9] Exhibits A and 2; TSN, November 20, 1986, pp. 2-5.

[10] Rollo, pp. 13 and 82.

[11] People vs. Valeriano, 90 Phil. 15; People vs. Lunar, No. L-15579, May 29, 1972, 45 SCRA 119.

[12] Omana vs. People, No. L-46807, January 31, 1989, 169 SCRA 677; People vs. Gulinao, G.R. Nos. 82264-66, December 4, 1989; People vs. Seranilla, G.R. No. 54090, May 9, 1988, 161 SCRA 193; People vs. Mercado, 65 Phil. 665; People vs. Sia Teb San, 54 Phil. 452.

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