

RAFAEL ABUNDO, PETITIONER, VS. SANDIGANBAYAN & PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 97880. January 15, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for review on certiorari of the decision dated January 11, 1991 of the Sandiganbayan in Criminal Case No. 14395 1, entitled "People of the Philippines vs. Rafael Abundo y Arcilla," finding the petitioner guilty beyond reasonable doubt of the crime of qualified theft alleged in the following information to which the accused, upon arraignment, pleaded not guilty.

"That in or about the month of October, 1985, in Virac, Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the said accused, a public officer, being then the District Engineer of the Department (then Ministry) of Public Works and Highways (DPWH) Office, Virac, Catanduanes, and as such have access and control of the motorpool of the DPWH, committing the offense in relation to his duties, and taking advantage of his official position, with intent to gain and with grave abuse of confidence, did then and there wilfully, unlawfully and feloniously take and steal, without the consent of the government, the chassis of Willys Jeep valued at P15,000.00 in the Inventory and Inspection Report of Unserviceable Property dated December 2, 1982, of the DPWH, Virac, Catanduanes, to the damage and prejudice of the government." (p. 56, Rollo.)

After trial, judgment was promulgated on January 11, 1991 by the Sandiganbayan, finding -

"the accused, RAFAEL ABUNDO y ARCILLA, guilty beyond reasonable doubt as principal of the crime of qualified theft defined in Article 310 of the Revised Penal Code and, accordingly, impose upon him the indeterminate sentence of FOUR (4) MONTHS and ONE (1) DAY of arresto mayor as minimum to TWO (2) YEARS, FOUR (4) MONTHS, and ONE (1) DAY of prision correccional as maximum. With costs." (p. 76, Rollo.)

In his petition for review of the Sandiganbayan's decision, the appellant asserts that the Sandiganbayan erred in not finding that there was no unlawful taking and no malice in his request for the use of the junk chassis and that its delivery to him was with the consent of the owner, the Government, through the legal custodian of the junk chassis, the Motor Pool Officer.

In his "Manifestation in Lieu of Comment," the Solicitor General recommended that the decision of the Sandiganbayan be reversed and set aside and that the appellant be acquitted of the crime charged.

The decisive facts are undisputed. They were established by the prosecution and supplied with details by the defense.

"It appears that the government owned the Willys type jeep with engine No. 45-2779455 and chassis No. 57348-73618. As of February 3, 1983, the vehicle was in the physical and legal custody of the Area Equipment Services, Bureau of Equipment, DPWH, Virac, Catanduanes (TSN, August 20, 1990, pp. 20, 26). The Survey

Report for National Equipment of that date described it as unserviceable and beyond economical repair (Exhibit 5). It was included in the Inventory and Inspection Report of Unserviceable Property subject to disposal by the Area Equipment Services (see Exhibits 2 and 8).

"On October 23, 1985, Rafael A. Abundo, then District Engineer, DPWH, Virac, Catanduanes, wrote a request for 'the use of one old chassis among the pile of junks scattered in the capitol compound.' (Exhibit 4.) Upon receipt thereof, Marcelo R. Alberto, Motor Pool Officer and Officer-in-Charge of the Area Equipment Services in Catanduanes, acted favorably. Accordingly, the chassis with Serial No. 57348-73618 was dismantled from the Willys type jeep with engine No. 45-279455, reconditioned by welding and painting, installed with the engine owned by Abundo (Exhibit B TSN, June 5, 1990, p. 31) and delivered by Romeo M. Go, the Property Custodian (TSN, August 20, 1990, pp. 29, 37, 40), to him to be used in repairing or assembling a private jeep. Abundo signed the corresponding Memorandum Receipt for the chassis (Exhibit 2). Typewritten on the receipt is a note signed by Alberto that 'this chassis is included in the I and I Report (Inventory and Inspection Report) for properties subject to disposal by the Area Equipment Services.' For this reason, Alberto (sic) received the chassis subject to the condition, also typewritten on the receipt, that he would 'negotiate with the winning highest bidder for the junk property after the public auction or return same in case of failure to agree on cost.'

The chassis, with the engine of Abundo installed thereon, was taken out of the capitol compound (Exhibit B) and brought to a shop owned by Leon Caten for the installation of a body. The proposed body, however, did not fit the chassis. Because Napoleon Co, another Chinese dealer, offered to sell and install a stainless jeep body on the old chassis owned by Abundo, he decided to return, through his driver, the government chassis to the capitol site from where it was originally taken. The chassis having been actually returned in December 1985, the Memorandum Receipt therefor was, in turn, returned to the driver. The chassis was now (August 20, 1990) stored in the compound in San Isidro, Virac, Catanduanes, to which it was transferred in November 1987 (TSN, August 20, 1990, pp. 12-14, 61, 62-63, 64)." (pp. 67-69, Rollo; underscoring supplied.)

Upon a sworn letter-complaint filed in the office of the Provincial Fiscal of Catanduanes on October 27, 1987 by a certain Willie San Juan, the petitioner was charged with qualified theft of the jeep chassis before the Sandiganbayan.

The lone issue in this case is whether the petitioner was properly convicted of qualified theft.

As pointed out by the petitioner's counsel, with whom the Solicitor General agrees, the essential elements of the crime of theft are the following:

- There must be a taking;
- The property belongs to another;
- The taking was done with intent to gain;
- That it was done without the consent of the owner; and
- That it was accomplished without violence or intimidation of persons nor force upon things (Santos vs. People, 181 SCRA 487).

Absent any of the elements of the crime, the prosecution must fail.

In this case, the element of lack of the owner's consent to the taking of the junk chassis was absent, for the records show that the petitioner, as District Engineer of the DPWH at Virac, Catanduanes, made a request in writing, duly addressed to the Area Equipment Services Office, to be allowed to use one old jeep chassis among the pile of junk motor vehicles lying idle in the Capitol compound. His request was granted by Equipment Engineer Marcelo R. Alberto, the Motor Pool Officer. A memorandum receipt was issued and signed by the petitioner and Engineer

Alberto. Pursuant thereto, Romeo Go, the Supply Officer and Property Custodian of the Catanduanes Area Equipment Services, authorized the petitioner's driver, Geronimo Romero, to take the chassis out of the DPWH site in the Capitol Compound. Petitioner's driver proceeded to the site and upon presentation of his authority to the driver-mechanic and his helpers, the subject chassis was dismantled by the mechanic and his helpers and the petitioner's engine was mounted on it. Petitioner's driver thereafter drove the chassis, equipped with petitioner's engine, out of the compound.

The facts clearly show that there was no furtive taking or unlawful asportation in the criminal sense of the chassis. The physical and juridical possession of the subject chassis was transferred to the petitioner, at his request, with the consent of the Motor Pool Officer, Engineer Alberto. The delivery of the chassis to the petitioner was properly documented. The transfer or "turn over" (p. 9, Solicitor General's Manifestation) was subject to the condition, stated in the Memorandum Receipt, that:

"The recipient official promises to negotiate with the winning highest bidder for the junk property after the public auction or return same in case of failure to agree on cost." (p. 21, Rollo.)

The petitioner took the junk chassis with the consent or acquiescence of the public officials who had legal and physical possession of it. The consent of the owner, the Government, represented by the Property Custodian, Romeo M. Go, and the Motor Pool Officer, Marcelo R. Alberto, was not lacking.

"It is universally recognized that the crime of theft implies an invasion of possession, and this doctrine is well accepted in both the common-law and civil law jurisdictions. It follows therefore, that there cannot be theft when the owner has voluntarily parted with the possession of the thing" (Underscoring ours; *People vs. Aw Yong Chiow Soo*, 43 Phil. 942, 945.)

As observed by the Solicitor-General:

"It must be emphasized that both petitioner and Alberto thought and believed the latter to be clothed with the authority to lend out the subject chassis. It was upon this honest perception that both acted accordingly - on the part of petitioner by requesting in writing for the use of the junk chassis and on the part of Alberto by consenting thereto, finally culminating in the issuance of a Memorandum Receipt. Needless to state, a thief does not ask for permission to steal, x x x." (p. 174, Rollo.)

A felonious taking characterizes the crime of theft. A taking which is done with the consent or acquiescence of the owner of the property is not felonious (p. 192, Revised Penal Code, 1988 Ed., Aquino, citing the cases of *Nieves de Vera*, 43 Phil. 1000, 1007; *Isaac* 51 O.G. 2410). Lack of malice or criminal intent on the part of petitioner was sufficiently established in this case.

Since the prosecution failed to prove that theft was committed by Abundo, it is unnecessary to discuss whether the theft was simple or qualified.

The Sandiganbayan invoked against Abundo Section 4(2) of P.D. No. 1445 (Government Auditing Code) which provides that unserviceable government property should either be destroyed or sold at public auction if it still has some value. The court said:

"As disclosed by the defense evidence, the Willys type jeep with engine no. 45-279455 from which the chassis involved was dismantled, was determined to be unserviceable and beyond economical repair, and included in the Inventory and Inspection Report for disposal by public auction. The determination and inclusion were presumably done in accordance with Section 79 of PD 1445, under which unserviceable government property shall be destroyed, if found to be valueless or unsaleable, or sold at public auction, if still valuable. The unserviceable government property cannot be legally 'loaned' to any person pending destruction or sale thereof, even if the 'lender' is a public officer who would, on some occasions, use it while performing his

official duties. We are of the well-considered opinion that Alberto had no authority to issue the chassis to Abundo for his use in repairing or assembling a private vehicle, notwithstanding the condition that Abundo would negotiate with the winning bidder or turn over the chassis in case of failure to agree on the cost." (pp. 174-175, Rollo.)

However, the Sandiganbayan overlooked a pertinent provision of the same Section 79, P.D. 1445 which allows a private sale of such property:

"Sec. 79. Destruction or sale of unserviceable property. — When government property has become unserviceable for any cause, or is no longer needed, it shall, upon application of the officer accountable therefor, be inspected by the head of the agency or his duly authorized representative in the presence of the auditor concerned and, if found to be valueless or unsaleable, it may be destroyed in their presence. If found to be valuable, it may be sold at public auction . . . In the event that public auction fails, the property may be sold at a private sale . . ." (Underscoring supplied; p. 176, Rollo.)

The Solicitor General aptly remarked that:

"To start with, it is not precise to state that under Section 79 of P.D. No. 1445 unserviceable government property 'shall be destroyed if found to be valueless or unsaleable or sold at public auction, if still valuable' or that the 'unserviceable government property can not be legally 'loaned' to any person pending destruction or sale thereof. . .

"Verily, the alternatives enumerated under Section 79 are permissive and not mandatory as shown by the use of the word 'may.' There is likewise no express prohibition therein on property being loaned out especially to public officers who shall use the same for public and official purposes." (pp. 175-176, Rollo.)

Even assuming that Engineer Alberto was not authorized to lend the junk chassis to the petitioner, that circumstance did not make the petitioner criminally liable for qualified theft, for he acted in good faith, believing that Alberto was so authorized. If at all, the liability of whoever violated P.D. 1445 would only be civil or administrative, not criminal (*Villacorta vs. People*, 145 SCRA 425).

Not enough importance was given by the Sandiganbayan to the petitioner's testimony "that he made the letter-request to Alberto with the intention of assembling another vehicle to replace his old government service vehicle which often bogged down (tsn, August 20, 1990, p. 61). Indeed, as then District Engineer of the DPWH at Virac, Catanduanes, petitioner had to be mobile and ambulant. If he could put together a "new" working vehicle, it would manifestly aid him in the performance of his duties. His desire to become more efficient in the public service, through the acquisition of more efficient means of transportation, should not be equated with a desire for unlawful gain (p. 179, Rollo). Moreover, the charge against him was rendered moot by the return of the subject chassis to the DPWH in December 1985, almost two years before the complaint of Willie San Juan was filed against him on October 27, 1987.

As the prosecution in this case failed to prove the petitioner's guilt beyond reasonable doubt or overcome the constitutional presumption of innocence in his favor (*People vs. Capitin*, 165 SCRA 47), it behooves us to set aside the judgment of the trial court against him.

WHEREFORE, the appealed decision is reversed and set aside. The appellant Rafael Abundo is acquitted of the crime charged, with costs de oficio.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Medialdea, Regalado, Davide, Jr., and Romero, JJ., concur. Nocon, J., no part.

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