



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated August 15, 2022 which reads as follows:

“G.R. No. 221325 (Ramil Pancho Fajardo, petitioner, v. People of the Philippines, respondent). – Assailed in this petition¹ for review under Rule 45 of the Rules of Court are the Decision² dated June 22, 2015 and the Resolution³ dated October 29, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35822, which affirmed with modification the Decision⁴ dated May 20, 2013 of the Regional Trial Court of Infanta, Quezon, Branch 65 (RTC) finding petitioner Ramil Pancho Fajardo (petitioner) guilty beyond reasonable doubt of Theft.

Facts

This case stemmed from an Information dated February 3, 2010 filed before the RTC charging petitioner with the crime of Theft, defined and penalized under Articles 308 and 309 of the Revised Penal Code (RPC), the accusatory portion of which, reads:⁵

That on or about the 21st day of September 2009, in the Municipality of Real, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, did then and there willfully, unlawfully and feloniously take, steal and carry away by concealing one (1) motorized banca named M/B SYVEL 6 owned by Primex Coco Products, Inc., a domestic corporation organized and existing under Philippine laws herein represented by its Plant Manager Eutropia M. Umali, valued at Five Hundred Fifty Thousand Pesos (Php550,000.00), Philippine currency, without its knowledge and consent, to its damage and prejudice in the afore-stated sum.

CONTRARY TO LAW.

¹ *Rollo*, pp. 10-16.

² *Id.* at 21-32. Penned by Associate Justice Ranton M. Dato, Jr. with Associate Justices Manuel M. Barrios and Maria Elisa Sempio Diy, concurring.

³ *Id.* at 34-36.

⁴ *Id.* at 51-65. Penned by Presiding Judge Arnelo C. Mesa.

⁵ *Id.* at 21-22.

mt

Upon arraignment, petitioner pleaded not guilty. Hence, trial ensued.⁶

Private complainant Primex Coco Products, Inc. (Primex), represented by its Factory Plant Manager, Eutropia M. Umali (Umali), testified that Primex is engaged in the business of desiccated coconut. Petitioner offered to buy coconuts in Polillo and Real, Quezon to be delivered to Primex. Hence, Primex authorized and financed petitioner to buy a motorized banca. Petitioner bought M/B SYVEL 6 (subject banca) as evidenced by a *Bilhang Lubusan Ng Sasakyang Pang Dagat Na May Makina*⁷ executed on January 5, 2009 (First *Bilhang Lubusan*) which was signed by petitioner for Primex. Petitioner was then only able to make two (2) or three (3) deliveries. When petitioner no longer delivered coconuts, Primex verbally demanded for the return of the subject banca and a final written demand letter dated September 30, 2009 was sent to petitioner, which he ignored.⁸

The prosecution also presented Abelardo T. Salgo (Salgo), seller of the subject banca, who turned out to be a hostile witness. He testified that the subject banca was sold to petitioner and not Primex and presented a document entitled *Bilhang Lubusan Ng Sasakyang Pang Dagat Na May Makina*⁹ (Second *Bilhang Lubusan*). It was however pointed out that the document has an insertion of the description of the subject banca. When Salgo was confronted with the First *Bilhang Lubusan*, he denied seeing such document and claimed he cannot recall it.¹⁰

On the other hand, petitioner denied the theft. Petitioner testified that he owns the banca and denied that he signed or has seen the First *Bilhang Lubusan*. Petitioner testified that sometime in October 2009, a certain Boyet Salgo, owner of the subject banca and M/B SYVEL 2, approached him and offered the boats for sale. Petitioner agreed to buy the subject banca for ₱350,000.00 instead of Salgo's original selling price of ₱500,000.00 so long as petitioner will shoulder the expense of getting the boat in Subic.¹¹

The defense then submitted a photocopy of a certified photocopy of the Second *Bilhang Lubusan* dated January 24, 2009, executed by Abelardo T. Salgo in favor of Ramil P. Fajardo.¹²

⁶ See id. at 22 and 51.

⁷ The First *Bilhang Lubusan* states:

Na, alang-alang sa halagang LIMANG DAAN LIMAMPUNG LIBONG PISO (550,000.00php), salaping Pilipino, na sa ukin ay ibinayad at kusang-loob kong tinanggap mula sa PRIMEX COCO PRODUCTS, INC. na matatagpuan sa Bo. Mangilag, Candelaria, Quezon, sa pamamagitan ni Ramil P. Fajardo, may sapat na gulang, naninirahan at may pahatirang sulat sa Poblacion, Polillo, Quezon, dito ay nagbibili, naglilipat at nagsasalin sa pamamagitan ng bilhang lubusan ng sasakyang pandagat na may makina na naglalarawan sa itaas nito. (Id. at 23.)

⁸ Id. at 22-23.

⁹ RTC Records, p. 196.

¹⁰ See *rollo*, pp. 53-55.

¹¹ See id. at 55-56.

¹² Id. at 25.

The RTC Ruling

In a Decision¹³ dated May 20, 2013, the RTC convicted petitioner of Theft, as defined and penalized under Articles 308 and 309 (1) of the RPC. Accordingly, petitioner was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and ordered to return to Primex the subject or to pay the latter the amount of ₱550,000.00, whichever is feasible and/or reasonable at the option of Primex. Petitioner was also made to suffer all the accessory penalties and to pay the costs of the suit.¹⁴

The RTC found that Primex is the true and real owner of the subject banca. For this finding, the RTC believed the version of the prosecution as more logical, consistent, and in accord with human nature and experience of mankind as against the conflicting, illogical, and inconsistent version of the petitioner. The RTC noted the following inconsistencies in the version of the petitioner: *first*, petitioner testified that he was approached to buy the subject banca sometime in **October 2009**, yet it appears that Primex has demanded for the return of the subject banca on September 30, 2009, not to mention that petitioner offered in court the Second *Bilhang Lubusan* with date of **January 24, 2009**; and *second*, petitioner testified that he bought the subject banca for ₱350,000.00 yet the Second *Bilhang Lubusan* showed that it was sold for only ₱200,000.00. With these inconsistencies, the RTC ruled that petitioner's claim of ownership cannot be given any weight.¹⁵

Thus, the RTC concluded that all the elements of the crime of Theft are present in this case, *i.e.*, the subject banca belongs to Primex, there was *animus lucrandi* on the part of petitioner, the taking was done without the consent of the owner and the same was without the use of violence against or intimidation of person or force upon things. The RTC found that although petitioner was entrusted with the custody of the subject banca, such custody involves only the transfer of physical possession and not its juridical possession.¹⁶

Aggrieved, petitioner appealed¹⁷ before the CA arguing that the RTC erred in convicting him of Theft for the following reasons: (1) the element of taking of personal property without the consent of the owner is not present considering that Umali admitted that Primex entrusted the subject banca to petitioner and in fact it was petitioner who signed the deed of sale, albeit in the name of Primex which shows that an agency was created

¹³ Id. at 62-79.

¹⁴ Id. at 64-65.

¹⁵ See id. at 57-64.

¹⁶ Id.

¹⁷ See Notice of Appeal dated June 10, 2013; id. at 77-78. See also Appeal Memorandum (For the Accused-Appellant) dated November 20, 2013; id. at 80-89.

making this case civil in nature; (2) there is agency between Primex and the petitioner because petitioner acquired not only the physical possession but juridical possession; and (3) there is lack of evidence to establish proof beyond reasonable doubt considering that a legal relationship of agency was established.¹⁸

The CA Ruling

In a Decision¹⁹ dated June 22, 2015, the CA affirmed petitioner's conviction with modification, adjusting his sentence to imprisonment for an indeterminate period of six (6) years of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.²⁰

The CA ruled that the findings of fact of the RTC cannot be disturbed on appeal considering that there is no showing that the RTC had overlooked, misunderstood or misapplied some facts or circumstances of weight and significance which, if considered, would alter the result of the case.²¹

Nevertheless, the CA assessed the case and arrived at the same conclusion that all the elements of Theft are present. *First*, there was taking of personal property which is the subject banca. *Second*, the property belongs to another which, in this case, is Primex. The CA ruled that the testimonies of petitioner that he owns the subject banca and that of Salgo selling the subject banca to petitioner cannot prevail over the documentary evidence which is the First *Bilhang Lubusan*. Moreover, petitioner contradicted his defense of ownership in the RTC when he argued in his Appeal Memorandum that he is an agent of Primex and, as such, cannot be guilty of Theft but merely be held civilly liable. Hence, the RTC correctly ruled that Primex owns the subject banca. *Third*, the taking of the subject banca by petitioner was done with intent to gain or *animus lucrandi* considering that petitioner admitted that at the time of trial, the subject banca was in the possession of his business partner and he is receiving payments as consideration for the use of the subject banca. *Fourth*, the taking of subject banca was without the consent of Primex considering that Primex has demanded for its return which petitioner ignored. *Last*, the taking of subject banca was accomplished without violence or intimidation of persons nor force upon things.²²

Petitioner moved for reconsideration maintaining that the two elements – (1) that the subject property belongs to another and (2) that the taking was done without the consent of the owner – are absent.²³

¹⁸ See *id.* at 84-87.

¹⁹ *Id.* at 21-32.

²⁰ *Id.* at 32.

²¹ See *id.* at 26-27.

²² See *id.* at 27-30.

²³ *Id.* at 34.

The CA denied the reconsideration in a Resolution²⁴ dated October 29, 2015. The CA amplified that the subject banca is owned by Primex as proved by the First *Bilhang Lubusan*. In fact, even petitioner contradicted his claim of ownership when he alleged to be an agent of Primex in his Appeal Memorandum. As to the element of taking, the CA reiterated that the juridical possession of the banca did not pass to petitioner but was merely entrusted with material or physical possession of it, hence, his misappropriation of the same constitutes theft.²⁵

Hence, this petition.

The Issue Before the Court

The issue before the Court is whether the CA erred in affirming petitioner's conviction of Theft.

Petitioner alleges that the CA patently erred in affirming his conviction despite the lack of two elements (the said property belongs to another and the taking was done without the consent of the owner) of the crime of Theft. On the first missing element, petitioner alleges that he owns the banca as proved by the following: (1) Second *Bilhang Lubusan* dated January 24, 2009; and (2) the testimony of the seller, Salgo, when he was presented by the prosecution that Salgo sold the subject banca to petitioner. On the second missing element, petitioner alleges that the testimony of Umali that Primex entrusted the subject banca to petitioner for the purpose of purchasing coconuts for Primex indubitably shows that there was no taking of the subject banca without the consent of the supposed owner.²⁶

Respondent People of the Philippines manifests²⁷ that it will adopt as comment its Appellee's Brief dated March 25, 2014 and Comment dated September 21, 2015 filed before the CA, considering that the arguments raised by petitioner in the instant petition are mere rehash of the arguments contained in the appellant's brief filed before the CA.

The Court's Ruling

The petition is denied.

At the outset, it must be emphasized that this Court is not a trier of facts, and a petition for review on *certiorari* is limited to reviewing questions of

²⁴ Id. at 34-36.

²⁵ See id. at 34-35.

²⁶ Id. at 14-15.

²⁷ Id. at 121-123.

law, subject to this Court's discretion and other exceptions discussed in *Pascual v. Burgos*.²⁸ Any claim to these exceptions 'must be alleged, substantiated, and proved by the parties [before] this Court may evaluate and review the facts of the case.'²⁹

Here, the issue raised by petitioner is substantially factual, *i.e.*, whether petitioner is guilty of Theft considering the absence of the two elements of Theft, hence, outside the purview of a Rule 45 petition. Petitioner failed to offer any explanation why his petition should be given due course despite raising questions of fact. Therefore, the petition should be dismissed outright.

Even if the Court evaluates the petition on the merits, the same shall still be dismissed due to lack of merit.

In this case, both the RTC and the CA correctly found that all the elements of Theft are present. To reiterate, the elements of this crime are as follows: (1) that there be 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 against or intimidation of persons or force upon things.³⁰

In an attempt to absolve himself of criminal liability, petitioner argues that the CA erred in affirming his conviction because petitioner owns the subject banca hence the taking of personal property of another is lacking and that if there was taking, it was done with the consent of the owner. Hence, we will only focus on these two elements.

As correctly ruled by the CA, the subject banca is owned by Primex. Not only was this supported by the First *Bilihang Lubusan*, the testimony of petitioner contradicts his documentary submission in its material points – the price of the subject banca which he testified to be at ₱350,000.00 while the document Second *Bilihang Lubusan* showed ₱200,000.00; and when Salgo approached him to sell the subject banca in October 2009 even if the Second *Bilihang Lubusan* was dated January 24, 2009 – which shows that his defense of ownership cannot be given weight. Worse, petitioner changed his defense from being the owner of the subject banca before the RTC to being an agent of Primex before the CA. This inconsistent defense of petitioner actually proved that he does not own the banca especially so since he argued that he is an agent of Primex.

²⁸ 776 Phil. 167 (2016).

²⁹ *Id.* at 169.

³⁰ *Miranda v. People*, 680 Phil. 126, 133 (2012).

As to the element of taking without the consent of Primex, petitioner argues that the subject banca was entrusted to him. While petitioner is correct that Primex admitted to have allowed petitioner to use the subject banca, as it was exactly the purpose of why it was bought in the first place – for petitioner to use the subject banca and deliver coconuts to Primex – petitioner lost sight of the fact that Primex demanded the return of the subject banca when petitioner continuously failed to deliver coconuts. This is where there was taking without the consent of the owner. As testified to by Umali, Primex sent demand letter to petitioner to return the subject banca and Umali made repeated demands via phone call for the return of the banca, which petitioner ignored.³¹

Given the foregoing, the Court finds no cogent reason to reverse the findings of the courts *a quo*. It is well-settled that the findings by the trial court, as affirmed by the appellate court, are conclusive absent any evidence that both courts ignored or misinterpreted facts and circumstances which could warrant reversal of the findings.³²

While petitioner's guilt is proven beyond reasonable doubt for the crime of Theft, the imposable penalty must, however, be modified in accordance with Republic Act No. (RA) 10951,³³ which provides for a retroactivity.³⁴ Given this, it is proper for this Court to adjust the penalty to be imposed on petitioner.

Article 309 of the RPC, as amended by Section 81 of RA 10951, now prescribes the 'penalty of *prision correccional* in its minimum and medium periods,' when the value of the property stolen is more than ₱20,000.00 but does not exceed ₱600,000.00. This is the prescribed penalty in this case considering that the value of the stolen property is ₱550,000.00.

Applying the Indeterminate Sentence Law, and considering the absence of any modifying circumstances, petitioner should be sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to two (2) years, eleven (11) months, and ten (10) days of *prision correccional*, as maximum.

As regards petitioner's civil liability *ex delicto*, case law elucidates that '[t]he purpose of the law is to place the offended party as much as possible in

³¹ *Rollo*, p. 23.

³² See *Miranda v. People*, *supra* at 134-135.

³³ Entitled "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE', AS AMENDED," approved on August 29, 2017.

³⁴ Section 100. *Retroactive Effect*. - This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.

the same condition as he was before the offense was committed against him. So if the crime consist in the taking away of his property, the first remedy granted is that of restitution of the thing taken away. If restitution cannot be made, the law allows the offended party the next best thing, reparation.³⁵

Here, since the crime of Theft committed by petitioner consists in the taking away of Primex's personal property, particularly the subject banca, then petitioner should be ordered to return the same to Primex. If this is no longer feasible, then petitioner should be ordered to pay the value of the subject banca, which pursuant to the facts established herein, is valued at ₱550,000.00. Should petitioner resort to reparation, the amount of ₱550,000.00 representing the value of the banca should earn legal interest at the rate of six percent (6%) per annum from finality of the ruling until full payment, in accordance with prevailing jurisprudence.³⁶

FOR THESE REASONS, the petition is **DENIED**. The Decision dated June 22, 2015 and the Resolution dated October 29, 2015 of the Court of Appeals in CA-G.R. CR No. 35822 finding petitioner Ramil Pancho Fajardo **GUILTY** beyond reasonable doubt of the crime of Theft, as defined and penalized under Article 308 in relation to Article 309 of the Revised Penal Code are hereby **AFFIRMED with MODIFICATION**. Accordingly, he is sentenced to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to two (2) years, eleven (11) months, and ten (10) days of *prision correccional*, as maximum. Furthermore, he is ordered to restitute the private complainant, Primex Coco Products, Inc. by returning the banca named M/B SYVEL 6. If restitution is no longer feasible, he is instead ordered to pay the private complainant the amount of ₱550,000.00 representing the value of the banca, plus legal interest at the rate of six percent (6%) per annum from finality of this Resolution until full payment.

SO ORDERED.”

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court ^{mm} 2/6

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³⁵ *People v. Mostasesa*, 94 Phil. 243, 244 (1954).

³⁶ *See Nacar v. Gallery Frames*, 716 Phil. 267, 282-283 (2013).

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HON. PRESIDING JUDGE (reg)
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Infanta Quezon
(Crim. Case No. 2010-28-I)

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*with copy of CA Decision dated June 22, 2015
Please notify the Court of any change in your address.
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