Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

REYMUNDO MASIL *y* AVIAR,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 241837

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
HERNANDO,
INTING,
GAERLAN, and
DIMAAMPAO, *JJ.*

Promulgated:
JAN 05 2022

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RESOLUTION

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] filed by Reymundo Masil *y* Aviar (petitioner) assailing the Decision[2] dated June 13, 2018 and the Resolution[3] dated August 17, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 40074. The CA affirmed the Judgment[4] dated June 2, 2017 of Branch 123, Regional Trial Court (RTC), Caloocan City in Criminal Case No. C-84595 that convicted petitioner of the offense of Fencing, as defined and penalized under Presidential Decree No. (PD) 1612,[5] or the Anti-Fencing Law of 1979.

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[1] *Rollo*, pp. 11-22.
[2] *Id.* at 28-38; penned by Associate Justice Renato C. Francisco with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda (now a Member of the Court), concurring.
[3] *Id.* at 40-41.
[4] *Id.* at 62-71; penned by Judge Remigio M. Escalada, Jr.
[5] Approved on March 2, 1979.

The Antecedents

In an Information dated July 12, 2010, petitioner, along with a certain Wilfredo Santiago *y* Bontiago* (Wilfredo), was charged with the offense of Fencing, the accusatory portion of which reads:

> That on or about the 10th day of July, 2007 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with accused Wilfredo Santiago y Bontiago, have in his possession one (1) unit of utility vehicle with Plate Number NYE-443 worth Php400,000.00 and acting as seller, sell and delivered to Reymundo Masil y Aviar, owner of AE Junkshop the following spare parts of said vehicle as follows:
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> | | |
> |---|---|
> | 4-D-5 | Php5,000.00 |
> | Injection pump | 8,000.00 |
> | Fan Blade | |
> | Rocker Arm | 4,000.00 |
> | Air Breaker | 500.00 |
> | | xxxxxxxxxxxx |
> | | Php17,500.00 |
>
> owned by NIMFA ESTEBAN *y* NICOLAS, in the amount of Php17,500.00 said accused knowing that said vehicle is of dubious origin or has been derived from proceeds of the crime of carnapping, to the damage and prejudice of the latter.
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> CONTRARY TO LAW.[6]

When arraigned, both petitioner and co-accused Wilfredo pleaded not guilty to the offense charged in the Information.[7]

Trial ensued.

According to the prosecution, Nimfa N. Esteban (Nimfa) manages a passenger jeepney with Plate Number NYE-443 owned by her sister, Elizabeth Eustaquio. On July 4, 2010, she hired Eugene Labramonte (Eugene) as driver. On the scheduled date, Eugene took the jeepney from her residence to take passengers from Baclaran to Blumentritt. They

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* Also referred to as "Wilfredo Avendano *y* Bontiago @ Wilfredo Bontigao *y* Avendaño in some parts of the *rollo*. See *rollo*, p. 28.

6 *Id.* at 29.

7 *Id.* at 30

agreed that the return of the jeepney will be at 10:00 p.m. However, Eugene failed to return the jeepney at the agreed time. Nimfa looked for Eugene but to no avail. The next day, she reported the theft of the jeepney to the Philippine National Police (PNP) Anti-Carnapping Unit in Caloocan City. She also went to the Highway Patrol Group, PNP Headquarters, Camp Crame, Quezon City to report the incident.[8]

On July 9, 2010, Nimfa received a call from a concerned citizen telling her that a vehicle was seen being dismantled in Brgy. 180, Caloocan City. The report led to the apprehension of Wilfredo, who was caught in the act of dismantling the jeepney at a junk shop in Little Baguio, Caloocan City.[9] When confronted by the police officers, Wilfredo denied knowing Eugene but admitted that the other parts of the dismantled jeepney had already been sold to a junk shop owned by petitioner.[10]

Meanwhile, a *barangay tanod* tipped off Police Officer II Cesar Garcia (PO2 Garcia) that Eugene was detained in the *barangay* hall. Thereat, PO2 Garcia apprehended Eugene. Based on Eugene's admission, he sold the missing jeepney parts to AE Junk Shop owned by petitioner.[11]

With Wilfredo, the police officers proceeded to petitioner's junk shop where they saw and recovered the dismantled parts of the jeepney previously marked by Nimfa's husband, to wit: "the D-5, injection pump, fan blade, rocker arm, and air breather."[12] As the stolen items were recovered from the possession of petitioner, the police officers charged petitioner and Wilfredo with violation of PD 1612.

On the other hand, petitioner denied knowing Wilfredo. He argued that he came to know his co-accused and the complainants only on July 11, 2010 at the police station. Nevertheless, he admitted that he was engaged in a junk shop business since June 2010; and he had been purchasing motor vehicle parts.[13]

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8 *Id.* at 64.
9 *Id.* at 64-65.
10 *Id.* at 77.
11 *Id.* at 78.
12 *Id.* at 65.
13 *Id.* at 32.

The RTC Ruling

In the Judgment[14] dated June 2, 2017, the RTC found petitioner and Wilfredo guilty beyond reasonable doubt of the offense charged. It sentenced them to suffer the indeterminate penalty of five (5) years and three (3) months of *prision correccional* in its maximum period, as minimum, to six (6) years and eight (8) months of *prision mayor* in its minimum period, as maximum.[15]

The RTC found that the prosecution successfully established the presence of all the elements of the offense of Fencing. It noted that: (1) the police officers caught Wilfredo red-handed dismantling the lost jeepney; (2) Wilfredo later volunteered the information that he sold some of the dismantled parts to petitioner; and (3) Wilfredo led the police officers to petitioner's junk shop where the dismantled parts were recovered.[16] It gave more weight to the testimony of the prosecution witnesses over the unsubstantiated denials of petitioner and Wilfredo.[17]

Aggrieved, petitioner appealed to the CA.

The CA Ruling

In the Decision[18] dated June 13, 2018, the CA affirmed petitioner's conviction. It held that the storage of the dismantled parts of the jeepney in petitioner's junk shop manifested intent to gain on the part of petitioner who was engaged in the junk shop business.[19] Thus:

> Appellant's defense, which is essentially premised on mere denial, cannot be accorded probative weight, especially so when taken in the light of the superior positive evidence of the prosecution (a) that accused Wilfredo was caught red-handed actually dismantling the subject jeepney; (b) that upon being apprehended by the police officers, he admitted having sold some parts of the jeepney to appellant; (c) that accused Wilfredo led the police officers to appellant's junk shop; and (d) that the dismantled parts of the vehicle were recovered from the junk shop of appellant.

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14 *Id.* at 62-71.
15 *Id.* at 71.
16 *Id.* at 68.
17 *Id.* at 69.
18 *Id.* at 28-38.
19 *Id.* at 35.

> Time and again, the Supreme Court ruled that positive identification, where categorical and consistent and without any showing of ill-motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law. Worth-emphasizing is the fact that appellant did not present any evidence to show that the prosecution witnesses, in testifying against him, had ill-motive.
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> x x x x
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> In this case, the corroborating declarations of private complainant and the police witnesses before the court *a quo* were categorical and straight-forward. Accordingly, a finding on the credibility of witnesses, as here, with respect to the testimonies of the prosecution witnesses deserves a high degree of respect. There being no clear showing that the court *a quo* had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction, its findings stand.[20]

Undaunted, petitioner moved for reconsideration, but the CA denied the motion in a Resolution[21] dated August 17, 2018.

Hence, the instant petition.

The Issue

The issue for the Court's resolution is whether the CA correctly upheld petitioner's conviction for the offense of Fencing, defined and penalized under PD 1612, or the Anti-Fencing Law of 1979.

The Court's Ruling

Fencing is defined under Section 2 of PD 1612 as "as 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 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."[22]

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[20] *Id.* at 36-37.

[21] *Id.* at 40-41.

[22] *Estrella v. People*, G.R. No. 212942, June 17, 2020, citing *Tan v. People*, 372 Phil. 93, 102 (1999), citing *Dizon-Pamintuan v. People*, 304 Phil. 219, 228-229 (1994) and *People v. Judge De Guzman*, 297 Phil. 993, 997-998(1993).

The following are the essential elements of the crime of fencing: (a) a crime of robbery or theft has been committed; (b) the accused, who is not a principal or an accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the crime of robbery or theft; (c) the accused knew or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and (d) there is, on the part of the accused, an intent to gain for oneself or for another.[23]

The prosecution established the requisite quantum of evidence in proving beyond reasonable doubt all the elements of the offense of Fencing.

First, the evidence of the prosecution shows that, on July 4, 2010, the jeepney vehicle owned by Nimfa's sister was stolen by its driver who, in a separate case, was convicted of Qualified Theft.[24] Later, the police officers saw the lost jeepney being dismantled or cannibalized by petitioner's co-accused, Wilfredo.[25] Through the confession of Wilfredo, the police officers went to the junk shop of petitioner where they saw and recovered some of the dismantled parts of the jeepney.[26] The police officers were able to identify the dismantled parts through the markings placed thereon by Nimfa's husband.[27]

Second, petitioner never denied the fact that the missing parts of the lost jeepney were recovered from his junk shop, AE Junk Shop, in Caloocan City. He likewise admitted that he bought the dismantled parts from his co-accused, Wilfredo. He asserted that it was his wife who was first invited to the police station; but later on, he agreed to be held in her place and asserted that he was innocent of the charge.[28] Still the Court has consistently ruled in a number of cases that denial is a weak defense which cannot prevail over positive identification.[29]

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[23] *Cahulogan v. People*, 828 Phil. 742, 748 (2018); *Ong v. People*, 708 Phil. 565, 571 (2013), citing *Capili v. CA*, 392 Phil. 577, 592 (2000) and *Tan v. People*, 372 Phil. 93, 102-103 (1999).

[24] *Rollo*, p. 35.

[25] *Id.* at 64-65.

[26] *Id.* at 77.

[27] *Id.* at 65.

[28] *Id.* at 67.

Third, circumstances exist to forewarn a reasonable vigilant buyer that the object of the sale may have been derived from the proceeds of robbery or theft. Such circumstance may include the time and place of the sale, the nature and condition of the goods sold, and the legality of source.[30]

Petitioner knew or should have known that the articles, items, objects or anything of value had been derived from the proceeds of the crime of robbery or theft. The term "should have known" denotes that a person of reasonable prudence and intelligence ought to ascertain a fact in performance of his duty to another or govern his conduct upon the assumption that such fact exists.[31]

Petitioner, a junk shop owner since 2010, ought to have known the requisites and the protocols in buying or selling motor vehicle parts. Specifically, Section 6 of PD 1612 requires stores, establishments, or entities dealing in the buying and selling of any good, article, item, object or anything else of value obtained from an unlicensed dealer or supplier thereof to secure the necessary clearance or permit from the station commander of the Integrated National Police[32] in the town or city where that store, establishment or entity is located before offering the item for sale to the public.[33] Lamentably for petitioner, he failed to adduce evidence that in buying from Wilfredo, he asked for any proof of ownership of the jeepney parts. Had petitioner done so, his experience from the business would have given him doubt as to the legitimate ownership or source thereof.

Finally, fencing is *malum prohibitum.* Consequently, PD 1612 creates a *prima facie* presumption of fencing from evidence of possession by the accused of any good, article, item, object, or anything of value, which has been the subject of robbery or theft; and prescribes a higher penalty based on the value of the property.[34] In short, the law does not require proof of purchase of the stolen articles, as mere possession thereof is enough to give rise to a presumption of fencing.[35]

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[29] *People v. Orcullo, et al.*, G.R. No. 224593, February 6, 2019, citing *People v. Agcanas,* 674 Phil. 626, 632 (2011).

[30] *Ong v. People*, 708 Phil. 565, 573 (2013), citing *Dela Torre v. COMELEC*, 327 Phil. 1144, 1154-1155 (1996).

[31] *Id.* at 572.

[32] In 1991, the Integrated National Police was subsumed into the Philippine Constabulary to form what is now the Philippine National Police, as provided by Section 90 of RA 6975.

[33] *Ong v. People*, *supra* note 30.

[34] *Id.* at 574, citing *Dizon-Pamintuan v. People*, 304 Phil. 219, 229 (1994).

[35] *Dunlao v. People*, 329 Phil. 613, 620 (1996).

In the end, the Court finds no reason to deviate from the factual findings of the RTC, as affirmed by the CA, considering that there is no indication that it overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case. In fact, the RTC was in the best position to assess and determine the credibility of the witnesses presented by both parties; hence, due deference should be accorded to it.[36]

As to the penalty imposed by the RTC, the Court modifies it.

Under Section 3(a) of PD 1612, the penalty for Fencing is *prision mayor* if the value of the property involved is more than ₱12,000.00 but not exceeding ₱22,000.00, thus:

> SECTION 3. *Penalties*. — Any person guilty of fencing shall be punished as hereunder indicated:
>
> a) The penalty of *prision mayor*, if the value of the property involved is more than 12,000 pesos but not exceeding 22,000 pesos; if the value of such property exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, the penalty shall be termed *reclusion temporal* and the accessory penalty pertaining thereto provided in the Revised Penal Code shall also be imposed.

While the offense of Fencing is defined and penalized by PD 1612, a special penal law, the penalty provided therein is taken from the nomenclature in the Revised Penal Code (RPC).[37] In *Peralta v. People*,[38] the Court judiciously discussed the proper treatment of penalties found in special penal laws *vis-à-vis* Act No. 4103, *viz.*:

> Meanwhile, Sec. 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed. Be that as it may, the Court had clarified in the landmark ruling of *People v. Simon* that the situation is different

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[36] *Cahulogan v. People*, *supra* note 23 at 749.
[37] *Estrella v. People*, *supra* note 22.
[38] 817 Phil. 554 (2017).

> where although the offense is defined in a special law, the penalty therefore is taken from the technical nomenclature in the RPC. Under such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.[39]

Evidently, if the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules defined under the RPC.[40] Given that the value of the property involved in this case is ₱17,500.00, the penalty to be imposed is *prision mayor* in its medium period, which ranges from eight (8) years and one (1) day to ten (10) years.

Applying the Indeterminate Sentence Law, there being no mitigating or aggravating circumstances present in the case, the penalty of *prision mayor* in its medium period shall be imposed in its medium period, which is eight (8) years, eight (8) months and one (1) day to nine (9) years and four (4) months. Thus, the minimum term to be imposed is the penalty next lower in degree which is *prision mayor* in its minimum period which has a duration of six (6) years and one (1) day to eight (8) years. On the other hand, the maximum term shall be taken within the medium period of *prision mayor* in its medium period which has a duration of eight (8) years, eight (8) months and one (1) day to nine (9) years and four (4) months. Hence, the Court finds it proper to sentence petitioner to suffer the penalty of imprisonment for an indeterminate period of six (6) years, eight (8) months, and one (1) day of *prision mayor* in its minimum period, as minimum, to eight (8) years, eight (8) months and one (1) day of *prision mayor* in its medium period, as maximum.

Lastly, the Court reiterates its observation in *Estrella v. People*[41] regarding the enactment of Republic Act No. 10951[42] adjusting the values of the property and damage on which the various penalties under the RPC are based, thus:

> [T]he Court notes the recent enactment of Republic Act No. (RA) 10951 which adjusted the values of the property and damage on which various penalties are based, taking into consideration the

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[39] *Id.*, citing *Quimvel v. People*, 808 Phil. 889 (2017).

[40] *Estrella v. People*, *supra* note 22.

[41] G.R. No. 212942, June 17, 2020.

[42] 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.

present value or money as compared to its value way back in 1932 when the RPC was enacted. RA 10951 substantially amended the penalties prescribed for Theft under Article 309 of the RPC without concomitant adjustment for the offense of Fencing under PD 1612.

The Court is not unaware that the recent development would then result on instances where a Fence, which is theoretically a mere accessory to the crime of Robbery/Theft, will be punished more severely than the principal of such latter crimes. However, as can be clearly gleaned in RA 10951, the adjustment is applicable only to the crimes defined under the RPC and not under special penal laws such as PD 1612. The Court remains mindful of the fact that the determination of penalties is a policy matter that belongs to the legislative branch of the government which is beyond the ambit of judicial powers. Thus, this Court can not adjust the penalty to be imposed against the petitioner based on RA 10951 considering that the offense of Fencing is defined under PD 1612, a special penal law.

The Court already furnished the Houses of Congress, as well as the President of the Philippines, through the Department of Justice, copies of the case of *Cahulogan v. People* in order to alert them of the incongruence of penalties with the hope of arriving at the proper solution to this predicament.[43]

WHEREFORE, the petition is **DENIED**. The Decision dated June 13, 2018 and the Resolution dated August 17, 2018 of the Court of Appeals in CA-G.R. CR No. 40074 are **AFFIRMED** with **MODIFICATION** in that petitioner is sentenced to suffer the indeterminate penalty of six (6) years, eight (8) months and one (1) day of *prision mayor* in its minimum period, as minimum, to eight (8) years, eight (8) months and one (1) day of *prision mayor* in its medium period, as maximum.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

[43] *Estrella v. People*, *supra* note 22. Citations omitted.

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice