



Republic of the Philippines

Supreme Court
Baguio City

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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SECOND DIVISION

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FLORENTINO G. DUEÑAS, JR.,
Petitioner,

G.R. No. 211701

Present:

- versus -

LEONEN, S.A.J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

JAN 11 2023

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DECISION

KHO, JR., J.:

Before the Court is a petition for review on *certiorari*¹ assailing the Decision² dated September 24, 2013 and the Resolution³ dated March 4, 2014 of the Court of Appeals (CA) in CA-G.R. CR No. 33880 which modified the Decision⁴ dated June 15, 2010 of the Regional Trial Court of Makati City, Branch 147 (RTC) in Crim. Case No. 05-157 convicting petitioner Florentino G. Dueñas, Jr. (Dueñas) of the crime of Carnapping. The CA found Dueñas guilty beyond reasonable doubt of the crime of Qualified Theft, and accordingly, sentenced him to suffer the penalty of *reclusion perpetua* and ordered him to pay private complainant Automall Philippines Corporation (Automall) ₱310,000.00, equivalent to the proceeds of the sale of the vehicle, less ₱40,000.00 already paid to Automall, or a total of ₱270,000.00, plus

¹ Rollo, pp. 7-24.

² Id. at 26-38. Penned by Associate Justice Samuel H. Gaerlan (now a Member of the Court) with Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr., concurring.

³ Id. at 48.

⁴ CA rollo, pp. 88-95. Penned by Acting Presiding Judge Oscar B. Pimentel.

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interest of six percent (6%) per annum from the filing of the Information until full payment.

The Facts

This case stemmed from an Information⁵ filed before the RTC charging Dueñas and a certain Richard Salcedo (Salcedo) with the crime of Qualified Theft defined and penalized under Article 310 in relation to Article 308 of the Revised Penal Code (RPC), as amended, the accusatory portion of which reads:

That on or about the 7th day of May 2004, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, being then employed as Sales Manager and Finance Officer of complainant AUTOMALL PHILS. CORPORATION, respectively enjoying the trust and confidence reposed upon them, with intent to gain and with grave abuse of confidence, unfaithfulness and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away the proceeds of the sale of the 1999 Color White Honda Civic 1.6 Vti MT, with Serial No. P6FDI-P402766, Engine No. PADEK1540XV102784 bearing Plate No. WTZ-603 in the amount of ₱310,000.00 belonging to said complainant, AUTOMALL PHILS. CORPORATION, herein represented by Jose Paolo Castrillo, to the damage and prejudice of the said complainant in the aforementioned amount.

CONTRARY TO LAW.⁶

Dueñas pleaded not guilty of the crime charged.⁷ After the pre-trial was terminated,⁸ the case was sent to the archives twice upon agreement of the parties, without prejudice to its reinstatement.⁹ In an Order¹⁰ dated October 5, 2006, the RTC granted the motion to revive the case¹¹ for the second time and the initial presentation of prosecution's evidence was set on November 27, 2006.

The prosecution presented Jose Paolo Briones Castrillo (Castrillo), Automall's Director for Business Development, as its only witness.¹² Castrillo testified that Dueñas was the Sales Manager of Automall who was tasked to track the vehicle inventory and deal directly with Honda Cars Makati (Honda Makati) relative to Automall's trade-in program with said company. Under said program, Honda Makati's clients who wish to buy a brand new vehicle

⁵ Records, p. 1.

⁶ Id.

⁷ Id. at 78.

⁸ Id. at 83.

⁹ Id. at 101 and 166.

¹⁰ Id. at 193.

¹¹ Id. at 167-171.

¹² Id. at 212 and 232.

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could trade in their pre-owned Honda vehicle which Automall will purchase. Automall will remit the price of the old Honda vehicle to Honda Makati and the same will form part of the client's payment for a new vehicle. The old Honda vehicle will then be displayed in Automall's showroom for sale to the secondary market. In line with this, Dueñas was tasked to check the old Honda vehicles subject to Automall's purchase and pick up the same after the payment has been received by Honda Makati.¹³

Castrillo alleged that when he and his father, Carlito Castrillo (Carlo), Automall's president, were out of the country, Automall purchased an old Honda vehicle from a client of Honda Makati under the said trade-in program. Since they were the signatories for Automall's check, they were able to arrange with Honda Makati for the unit to be first delivered and the payment thereof to be remitted upon their return to the country. Accordingly, Castrillo received a billing for ₱295,000.00 from Honda Makati for the old Honda vehicle when he returned. However, Castrillo found out that said unit was not in Automall's showroom nor was there any record of its sale to the secondary market. Since Castrillo did not want to ruin Automall's business relation with Honda Makati, he was forced to make the payment. After Automall's payment to Honda Makati, Castrillo confronted Dueñas who admitted that he sold the old Honda vehicle for ₱310,000.00. Dissatisfied with his profit, Dueñas used the proceeds of the sale to purchase another unit which he intended to sell again for a higher return. Dueñas wrote a letter¹⁴ dated June 22, 2004 narrating the facts that transpired in the subject incident.¹⁵

After the prosecution formally rested its case, a Motion for Leave to File and Admit Attached Demurrer to Evidence¹⁶ and Demurrer to Evidence¹⁷ were thereafter filed by co-accused Salcedo. In an Order¹⁸ dated January 28, 2008, the RTC granted Salcedo's demurrer to evidence and dismissed the case against him.

The presentation of Dueñas' evidence was initially set on September 17, 2007.¹⁹ However, due to several postponements at Dueñas' instance, his presentation was deemed waived in an Order²⁰ dated July 6, 2009. The promulgation of judgment was then set on September 10, 2009.²¹ Nevertheless, in an Order²² dated December 4, 2009, the RTC granted the prosecution's Motion (to Renew Bail Bond and to be Allowed to Present Evidence).²³ On January 25, 2010, Dueñas' testimony was presented.²⁴

¹³ CA rollo, p. 89.

¹⁴ Records, pp. 25-26.

¹⁵ CA rollo, pp. 89-90.

¹⁶ Records, pp. 358-362.

¹⁷ Id. at 363-380.

¹⁸ Id. at 412-413. Penned by Presiding Judge Maria Cristina J. Comejo.

¹⁹ Id. at 286.

²⁰ Id. at 553.

²¹ Id. at 554.

²² Id. at 585.

²³ Id. at 586-587.

²⁴ Id. at 608.

Dueñas testified that as Automall's Sales Manager, he appraised a Honda Civic VTi 1999 model (Honda Civic) for trade-in with Automall at ₱295,000.00. After the sale was concluded, Castrillo asked if it is possible to subsequently sell the Honda Civic at "fast break," which means it will be sold "as is" and without repair, usually to a secondhand dealer. Fast break entails less paperwork and taxes as the deed of sale is open and the car will no longer go through Automall and instead go straight to the buyer. Dueñas informed Castrillo that he was able to find a buyer willing to pay ₱350,000.00²⁵ for the Honda Civic, which Castrillo approved. However, after the sale, Dueñas did not turn over the proceeds as Castrillo told him that Carlo may not be happy with said transaction which only generated a ₱20,000.00 profit, as compared to non-fast break transactions, wherein the unit goes through Automall and would usually yield a profit of ₱50,000.00. Accordingly, Dueñas tried to find a car that he could "fast break" for a higher yield.²⁶

Dueñas was able to talk with a certain Annette Gamboa (Gamboa) who informed him about a Toyota 2002 model (Toyota car) in Pampanga which Automall could buy for ₱250,000.00 and sell at "fast break" for ₱300,000.00, thereby generating a ₱50,000.00 profit. Dueñas thereafter called Castrillo to inform him of said prospect. After talking with Gamboa over the phone, Castrillo told Dueñas to give ₱250,000.00 to Gamboa as she will bring the Toyota car to Automall the next day. Dueñas followed Castrillo's instructions. However, Gamboa failed to deliver the car to Automall. Dueñas tried to call Gamboa but she could no longer be contacted. Upon Castrillo's instructions, Dueñas went to Pampanga but to no avail.²⁷

Worried that his father would fire him from the company, Castrillo proposed to Dueñas that the latter take all the blame but they will divide the payment of the proceeds paid to Gamboa. Dueñas acceded and issued checks in the total amount of ₱365,000.00; ₱40,000.00²⁸ of which, covered by Maybank Check No. 5882622,²⁹ was cleared by the bank.³⁰

After the defense rested, the case was submitted for decision.³¹

²⁵ Based on Dueñas' testimony on direct examination, the buyer was willing to buy the car for ₱315,000.00, not ₱350,000.00. As a matter of fact, the profit of Automall on said transaction was ₱20,000.00. This may be a typographical error by the RTC. (See TSN, January 25, 2010, pp. 19 and 22.)

²⁶ CA *rollo*, pp. 90-91.

²⁷ Id. at 91-92.

²⁸ In the Pre-Trial Order dated March 22, 2005, Automall admitted that the Check No. 5882622 dated June 29, 2004 issued by Dueñas in its favor was honored by the bank. (Records, p. 83.)

²⁹ "Check No. 2622" in some parts of the *rollo* and records.

³⁰ CA *rollo*, p. 92.

³¹ Records, p. 608.

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The RTC Ruling

In a Decision³² dated June 15, 2010, the RTC found Dueñas guilty beyond reasonable doubt of the crime of Carnapping defined by Section 2 of Republic Act No. (RA) 6539,³³ otherwise known as the “Anti-Carnapping Act of 1972,” and punished under Section 20 of RA 7659,³⁴ which amended Section 14 of RA 6539 – contrary to the charge of Qualified Theft in the Information. Accordingly, Dueñas was sentenced to suffer the penalty of imprisonment for an indeterminate period of not less than fourteen (14) years and eight (8) months, but not more than seventeen (17) years and four (4) months, and ordered to pay Automall the amount of ₱295,000.00, the value of the vehicle, plus interest of twelve percent (12%) per annum from the filing of the Information until fully paid.³⁵

The RTC held that Dueñas was reposed with Automall’s trust and confidence. As the Sales Manager, he was tasked to man the showroom, keep track of the vehicle inventory, check the unit to be bought by his company, and pick-up the unit after payment has been received by Honda Makati, pursuant to the trade-in program. In this case, there is no dispute that the car was given to Automall, and Dueñas was directed to sell the same to a third party and the proceeds thereof will form part of the amount to be paid by the owner of the car in the purchase of a new unit with Honda Makati. However, instead of selling to the third party, Dueñas, without Automall’s knowledge and consent, took the vehicle and did not return it. Neither did Dueñas, if ever he sold it to a third party through “fast break,” as he alleged, turn over the proceeds of the sale to Automall. Considering that the subject of the taking is a car, and the same was done by Dueñas with intent to gain, without Automall’s knowledge and consent, and without force, violence against or intimidation upon person, the crime committed is Carnapping under RA 6539, and not Qualified Theft under Article 310 of the RPC.³⁶

Dueñas filed a Notice of Appeal³⁷ with the RTC on September 15, 2010. It was given due course in an Order³⁸ dated September 21, 2010. In his appeal, Dueñas contended that: (1) there was no proof to establish his criminal liability; (2) he was convicted of an offense based on insufficient evidence; and (3) the RTC’s Decision is violative of his rights to be informed of the nature and cause of the accusation against him.³⁹

³² CA rollo, pp. 88-95.

³³ Entitled “AN ACT PREVENTING AND PENALIZING CARNAPPING,” approved on August 26, 1972.

³⁴ Entitled “AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES,” approved on December 13, 1993.

³⁵ CA rollo, p. 95.

³⁶ Id. at 93-95.

³⁷ Records, p. 635.

³⁸ Id. at 637.

³⁹ CA rollo, p. 175.

The CA Ruling

In a Decision⁴⁰ dated September 24, 2013, the CA denied the appeal but modified the RTC's ruling by convicting Dueñas of the crime of Qualified Theft. Accordingly, the CA sentenced Dueñas to suffer the penalty of *reclusion perpetua* and ordered him to pay Automall the amount of ₱310,000.00, equivalent to the proceeds of the sale of the vehicle, less the ₱40,000.00 already paid to Automall, plus interest of six percent (6%) per annum from the filing of the Information until fully paid.⁴¹

The CA held that Dueñas' conviction for the crime of Carnapping under RA 6539 is a violation of his right to be informed of the nature of the accusation against him, as the act for which he was convicted is different from that alleged in the Information. The recitals in the Information, on the one hand, shows that the object of the indictment for Qualified Theft with grave abuse of confidence is the proceeds of the sale of a 1999 Color White Honda Civic with plate number WTZ-603, unlike the object of his conviction for Carnapping which is the Honda Civic itself. Thus, Dueñas' conviction for Carnapping by the RTC cannot be sustained.⁴²

Nonetheless, the CA found Dueñas guilty of the crime of Qualified Theft. The CA held that all of the following elements for said crime are present, namely: (1) there was taking of personal property; (2) the said property belongs to another; (3) the taking was accomplished without violence or intimidation against person, or force upon things; (4) the taking was done without the consent of the owner; (5) the taking was done with intent to gain; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.⁴³

First, Dueñas admitted to the taking of the ₱310,000.00 proceeds of the sale of the subject Honda Civic albeit his defense that he appropriated the same in Automall's behalf. *Second*, there was no dispute that said proceeds belong to Automall. *Third*, the taking thereof was accomplished without the use of violence or intimidation against persons, nor force upon things. *Fourth*, the CA did not give credence to Dueñas' contention that the proceeds were used to purchase another vehicle from a certain Gamboa, and that it was known to and with Castrillo's consent. *Fifth*, the CA did not find any evidence to prove the alleged transaction with Gamboa to establish that Dueñas merely acted in good faith in allegedly deciding to buy another car using the proceeds of the sale of the Honda Civic. *Sixth*, the taking was done with grave abuse of confidence as Dueñas' position entailed a high degree of confidence from Automall as he was granted access to funds collectible from clients.⁴⁴

⁴⁰ *Rollo*, pp. 26-38.

⁴¹ *Id.* at 37.

⁴² *Id.* at 31-34.

⁴³ *Id.* at 34-35.

⁴⁴ *Id.* at 35-36.

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Dueñas filed a Motion for Reconsideration,⁴⁵ which the CA denied in a Resolution⁴⁶ dated March 4, 2014. Aggrieved, Dueñas filed the present petition.

The Issue Before the Court

The issue before the Court is whether or not the CA erred in convicting Dueñas of the crime of Qualified Theft.

Dueñas alleges that not all the elements of Qualified Theft were sufficiently established in this case, namely: Dueñas' intent to gain and unlawful taking of the proceeds of the sale of the Honda Civic.

Dueñas argued that the use of the proceeds from the Honda Civic's sale to buy a Toyota car was well within his authority as Automall's Sales Manager and in the regular course of its business. Dueñas expected that the sale of the Toyota car on "fast break" after its purchase from Gamboa would generate a return more favorable to Automall as compared to the earlier sale of the Honda Civic. He "only acted in good faith and in pursuit of what he thought was beneficial to x x x Automall."⁴⁷ Castrillo was in fact informed of said purchase and even talked with Gamboa about it. As a badge of good faith, Dueñas did not leave Automall and instead opted to indemnify the company for its loss. Dueñas' letter dated June 22, 2004 was merely written by him pursuant to the scheme proposed by Castrillo to cover up the failed transaction with Gamboa. Lastly, Dueñas avers that his testimony on the purchase of the Toyota car from Gamboa was never denied by Castrillo and the prosecution failed to present rebuttal evidence on said transaction.⁴⁸

The People of the Philippines, represented by the Office of the Solicitor General (OSG), on the other hand, avers that all the elements of the crime of Qualified Theft is present in the instant case.

The People argued that it has been established that Dueñas took the proceeds of the sale of the Honda Civic belonging to Automall without the latter's consent and without violence or intimidation against person or force upon things, but with intent to gain and grave abuse of confidence. Dueñas' defense that the disposition of the proceeds of the Honda Civic's sale to buy a Toyota car was consented by Castrillo does not persuade as he did not present any proof in support thereof, nor has he presented any documentation that the proceeds were indeed paid to Gamboa. Dueñas' letter proves that the transaction with Gamboa was his own decision. Moreover, Dueñas' intent to

⁴⁵ Id. at 39-46.

⁴⁶ Id. at 48.

⁴⁷ Id. 13.

⁴⁸ Id. at 12-13.

gain may be presumed from the furtive taking of the proceeds of the sale of the Honda Civic, unless special circumstances reveal a different intent on his part. In this case, no such special circumstance exists, thus Dueñas' intent to gain may be presumed. Lastly, the prosecution has nothing to rebut since the burden to prove that he did not steal the proceeds of the sale of the Honda Civic fell on Dueñas.⁴⁹

The Court's Ruling

The appeal is without merit.

Preliminarily, the Court notes that Dueñas elevated the matter before the Court through a petition for review on *certiorari*. Although as a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court;⁵⁰ an appeal on the CA's decision shall be made by a mere notice of appeal in cases wherein the CA imposed the penalty of "*reclusion perpetua*, life imprisonment or a lesser penalty."⁵¹ In this case, Dueñas clearly availed of a wrong mode of appeal by filing a petition for review on *certiorari* despite having been sentenced by the CA of *reclusion perpetua*. Nonetheless, in the interest of substantial justice, the Court will treat his petition as an ordinary appeal in order to resolve the substantive issue at hand with finality.

Theft, as defined by Article 308 of the RPC, "is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent." Under Article 310 of the RPC, said act shall fall under the crime of Qualified Theft if committed with grave abuse of discretion, among others, to wit:

ART. 310. Qualified theft. – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

⁴⁹ Id. at 144-154.

⁵⁰ Section 3 (e), Rule 122 of the Revised Rules on Criminal Procedure reads:

Section 3. *How appeal taken.* —

x x x x

(e) Except as provided in the last paragraph of section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45.

⁵¹ Section 13 (c), Rule 124 of the Revised Rules on Criminal Procedure reads:

Section 13. *Certification or appeal of case to the Supreme Court.* —

x x x x

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

The elements of qualified theft are as follows: “(1) there was a taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4) the taking was done with intent to gain; (5) the taking was accomplished without violence or intimidation against person, or force upon things; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.”⁵²

On the other hand, Carnapping, as defined by Section 2 of RA 6539, as amended, is the “the taking, with intent to gain, of a motor vehicle belonging to another without the latter’s consent, or by means of violence against or intimidation of persons, or by using force upon things.” The elements of carnapping are as follows: “(1) the taking of a motor vehicle which belongs to another; (2) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (3) the taking is done with intent to gain.”⁵³

“Carnapping is essentially the robbery or theft of a motorized vehicle, the concept of unlawful taking in theft, robbery[,] and carnapping being the same.”⁵⁴ Thus, the unlawful taking of motor vehicles was removed under the purview of qualified theft and is now covered by RA 6539, as amended, or the “Anti-Carnapping Act of 1972.”⁵⁵

Dueñas, as Automall’s Sales Manager, has the authority to sell traded-in cars, specifically, the Honda Civic; thus, as pointed out by the CA, the recitals in the Information show that the subject of Dueñas’ indictment for Qualified Theft were the proceeds of the sale of said motor vehicle, and not the Honda Civic itself, as erroneously held by the RTC. Since Dueñas was accused of the unlawful taking of said proceeds and not the Honda Civic itself, the CA correctly considered Dueñas’ indictment as one for Qualified Theft, rather than for Carnapping.

Verily, the prosecution was able to prove all the above-stated elements for Qualified Theft.

The presence of the **first** and **second elements** in this case was undisputed. Castrillo testified that Dueñas admitted to him that the Honda Civic that was acquired by Automall under its trade-in program with Honda Makati was sold by Dueñas. However, the proceeds of the sale were not turned over by Dueñas to Automall. This was admitted by Dueñas when he testified

⁵² *People v. Santos*, G.R. No. 237982, October 14, 2020 [Per C.J. Peralta, First Division].

⁵³ *Silver v. Daray*, 859 Phil. 408, 429 (2019) [Per J. Lazaro-Javier, Second Division], citing *People v. Bustinera*, 475 Phil. 190, 203 (2004) [Per J. Carpio Morales, Third Division].

⁵⁴ *People v. Bustinera*, *id.* at 203; citations omitted.

⁵⁵ *Id.*, citing *Tan v. People*, 379 Phil. 999, 1009 (2000) [Per C.J. Davide, Jr., First Division] and *People v. Lobitania*, 437 Phil. 213, 229 (2002) [Per Curiam, *En Banc*].

on cross-examination that he picked up the Honda Civic from Honda Makati's client⁵⁶ and thereafter sold it for ₱315,000.00. Thus, it is clear that Dueñas took and received the proceeds of the sale⁵⁷ but did not turn over the same to Automall, but instead, allegedly used the proceeds to buy a Toyota car from Gamboa.

On the **third element**, Dueñas' defense that the proceeds from the sale of the Honda Civic were used to purchase a Toyota car from Gamboa with Castrillo's consent, which unfortunately did not work out, does not persuade for reasons as will be explained hereunder.

First, Dueñas' contention that his transaction with Gamboa was in view of Castrillo's apprehension that the profit generated from the sale of the Honda Civic would not be agreeable to Carlo is incredulous. Dueñas, on direct examination, stated that Castrillo actually consented to the sale of Honda Civic at ₱315,000.00 to a certain Ronnie.⁵⁸ Thus, it is absurd for Castrillo to tell Dueñas afterwards that Automall's profit of ₱20,000.00 from said transaction is not enough.⁵⁹

Second, his claim that the use of the proceeds to purchase a Toyota car from Gamboa was with Castrillo's consent is belied by the tenor of his letter⁶⁰ dated June 22, 2004, wherein it was stated that he sold the Honda Civic immediately after he realized his mistake in appraising it. The sale was allegedly in view of his plan to buy a new car that he can sell subsequently for a higher profit, to wit:

Realizing that I made a mistake in appraising it, I sold the car immediately for ₱310,000 with at least ₱15,000 profit. I took it to myself so as to cover up my mistake, to buy a car again so as to earn a bigger profit.
x x x⁶¹

On cross-examination, Dueñas admitted that he could not present any evidence that Castrillo consented to the transaction with Gamboa on the purchase of the Toyota car, *viz.*:

Atty. Gonzales:

Q: Again, Mr. Witness, aside from your allegation, do you have any proof that JP Castrillo authorized the purchase of this vehicle from your cousin?

Witness:

A: None.⁶²

⁵⁶ TSN, January 25, 2010, p. 47.

⁵⁷ Id. at 50 and 52.

⁵⁸ Id. at 19-20.

⁵⁹ Id. at 21-23.

⁶⁰ Records, pp. 25-26.

⁶¹ Id. at 25.

⁶² TSN, January 25, 2010, pp. 53.

Third, Dueñas did not present evidence on the existence of the transaction with Gamboa, or his efforts to locate her when the alleged Toyota car was not delivered to Automall. Neither was there an acknowledgment by Gamboa of her receipt of the ₱250,000.00 as purchase price of the Toyota car nor testimony from any person whom Dueñas allegedly called in his efforts to locate Gamboa.⁶³

On the **fourth element**, Dueñas' intent to gain is presumed from his act of taking the proceeds of the sale of the Honda Civic and his failure to turn over the same to Automall without the latter's consent. Intent to gain may be presumed as the motive from all "furtive taking of useful property appertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator."⁶⁴ Moreover, in the case of *People v. Mejares*,⁶⁵ through now Senior Associate Justice Marvic M.V.F. Leonen, the Court held that in cases wherein there is proof of actual taking, the burden of proof shifts to the defense to show that there was no intent to gain on the part of the accused-appellant.⁶⁶ This is the burden that the defense failed to discharge. As discussed above, the Court finds that there are no special circumstances in this case which would reveal a different intent on the part of Dueñas in taking the proceeds of the sale of the Honda Civic; thus, his intent to gain is presumed.

On the **fifth element**, Dueñas admitted that he received the proceeds through the sale of the Honda Civic, which was acquired by Automall under its trade-in program with Honda Makati. Verily, he was able to obtain the same without the use of violence or intimidation against person, or force upon things.

Finally, on the **sixth element**, Dueñas likewise admitted that he was the sales and trade-in manager of Automall, which is involved in selling imported and secondhand cars.⁶⁷ Specifically, he was entrusted with the appraisal of the cars that are intended to be traded in with Honda Makati, and its subsequent sale to the secondhand market. Notably, it is Dueñas' authority to sell the traded-in cars that have removed his offense from the ambit of Carnapping into its proper classification as Qualified Theft, as his offense focused on his failure to remit the proceeds of the Honda Civic after selling the same, which he is authorized to do. As he had been granted access to funds due to Automall for the sale of the traded-in cars, Dueñas enjoys Automall's trust and confidence. However, Dueñas gravely abused this relation when he failed to remit the proceeds of the Honda Civic's sale to Automall.⁶⁸

Contrary to Dueñas' contention that the prosecution did not rebut his allegation that he purchased the Toyota car from Gamboa, certainly, there is

⁶³ Id. at 32.

⁶⁴ *Consulta v. People*, 598 Phil. 464, 471 (2009) [Per J. Carpio Morales, Second Division]; citation omitted.

⁶⁵ 823 Phil. 459 (2018) [Per J. Leonen, Third Division].

⁶⁶ Id. at 469.

⁶⁷ TSN, January 25, 2010, p. 7.

⁶⁸ *Matrido v. People*, 610 Phil. 203, 212 (2009) [Per J. Carpio Morales, Second Division].

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nothing for Automall to rebut as Dueñas was not able to discharge the burden of evidence to show that he did not intend to take the proceeds of the sale of the Honda Civic without Automall's consent. Bare allegations that are unsubstantiated with evidence are not equivalent to proof.⁶⁹

The above disquisition points to the soundness of CA's conclusion that Dueñas was guilty beyond reasonable doubt of the crime of Qualified Theft.

Lastly, a review of the records would disclose that there is a discrepancy between the amount of proceeds of the Honda Civic's sale in the Information with Dueñas' testimonies. The Information provides that the proceeds is ₱310,000.00 as attested by Castrillo and as evidenced by Dueñas' letter dated June 22, 2004. However, a scrutiny of Dueñas' testimonies shows that he allegedly sold the Honda Civic for ₱315,000.00, thus the ₱20,000.00 profit by Automall. It is settled that an accused cannot be convicted of any offense unless it is charged in the Information on which they are tried or necessarily included therein.⁷⁰ Accordingly, the Court holds that Dueñas is only liable for ₱310,000.00 as charged in the Information.

Anent the proper penalty to be imposed on Dueñas, it is well to stress that pending the final resolution of this case, RA 10951⁷¹ was enacted into law. As may be gleaned from the law's title, it adjusted the value of the property and the amount of damage on which various penalties are based, taking into consideration the present value of money, as opposed to its archaic values when the RPC was enacted in 1932.⁷² While it is conceded that Dueñas committed the crime way before the enactment of RA 10951, the newly-enacted law expressly provides for retroactive effect if it is favorable to the accused,⁷³ as in this case.

Section 81 of RA 10951 adjusted the graduated values wherein the penalties for Theft are based. Pertinent portions of which read:

Section 81. Article 309 of the same Act is hereby amended to read as follows:

“ART. 309. *Penalties.* – Any person guilty of theft shall be punished by:

x x x x

3. The penalty of *prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty

⁶⁹ *Brodeth v. People*, 821 Phil. 871, 886 (2017) [Per J. Martires, Third Division].

⁷⁰ *Villarba v. CA*, G.R. No. 227777, June 15, 2020.

⁷¹ 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,” July 25, 2017.

⁷² See Article I of the REVISED PENAL CODE.

⁷³ See Section 100 of RA 10951. See also *Rivac v. People*, G.R. No. 224673, January 22, 2018.

ATC

thousand pesos (P20,000) but does not exceed Six hundred thousand pesos (P600,000).

x x x x

Thus, applying the provisions of RA 10951, as well as the Indeterminate Sentence Law, on the fact that the aggregate value of the stolen amount is ₱310,000.00, and further considering the increase of the aforesaid penalty by two (2) degrees in instances of Qualified Theft pursuant to Article 310 of the RPC and the absence of any mitigating or aggravating circumstances, the Court finds it proper to sentence Dueñas to suffer the penalty of imprisonment for an indeterminate period of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prision mayor*, as maximum.

Finally, the monetary awards due to Automall shall earn legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment pursuant to prevailing jurisprudence.⁷⁴

ACCORDINGLY, the instant petition is **DENIED**. The Decision dated September 24, 2013 and the Resolution dated March 4, 2014 of the Court of Appeals in CA-G.R. CR No. 33880 finding petitioner Florentino G. Dueñas, Jr. (Dueñas) guilty beyond reasonable doubt of the crime of Qualified Theft, as defined and penalized under Article 310 in relation to Article 308 of the Revised Penal Code, as amended, are hereby **AFFIRMED** with **MODIFICATION** such that Dueñas is sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prision mayor*, as maximum. He is further **ORDERED** to pay Automall Philippines Corporation the amount of ₱310,000.00, equivalent to the proceeds of the sale of the vehicle, less ₱40,000.00 already paid to Automall Philippines Corporation, or a total of ₱270,000.00, with legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment.

SO ORDERED.


ANTONIO T. KHO, JR.

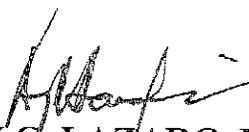
Associate Justice

⁷⁴ *People v. Jugueta*, 783 Phil. 806, 854 (2016) [Per J. Peralta, *En Banc*].

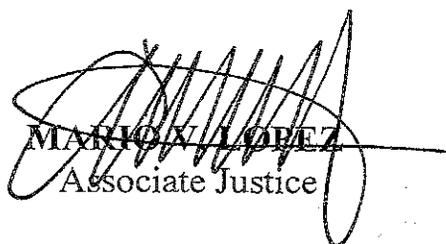
WE CONCUR:



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson



AMY C. LAZARO-JAVIER
Associate Justice



MARION LOPEZ
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

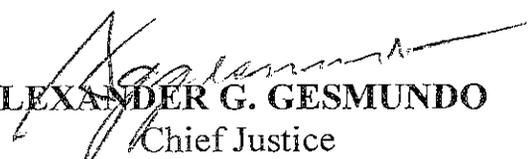
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision 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