



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

JAIME ONG y ONG,
Petitioner,

G.R. No. 190475

Present:

- versus -

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

APR 10 2013

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DECISION

SERENO, *CJ*:

Before the Court is an appeal from the Decision¹ dated 18 August 2009 of the Court of Appeals (CA), which affirmed the Decision² dated 06 January 2006 of the Regional Trial Court (RTC), Branch 37, Manila. The RTC had convicted accused Jaime Ong y Ong (Ong) of the crime of violation of Presidential Decree No. (P.D.) 1612, otherwise known as the Anti-Fencing Law.

Ong was charged in an Information³ dated 25 May 1995 as follows:

That on or about February 17, 1995, in the City of Manila, Philippines, the said accused, with intent of gain for himself or for another, did then and there wilfully, unlawfully and feloniously receive

¹ CA Decision in CA-G.R. CR No. 30213 penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Portia Aliño-Hormachuelos and Fernanda Lampas Peralta; *rollo*, pp. 41-58.

² RTC Decision in Criminal Case No. 143578 penned by Judge Vicente A. Hidalgo, *id.* at 32-40.

³ Information dated 25 May 1995, *id.* at 31.

and acquire from unknown person involving thirteen (13) truck tires worth ₱65, 975.00, belonging to FRANCISCO AZAJAR Y LEE, and thereafter selling One (1) truck tire knowing the same to have been derived from the crime of robbery.

CONTRARY TO LAW.

Upon arraignment, Ong entered a plea of “not guilty.” Trial on the merits ensued, and the RTC found him guilty beyond reasonable doubt of violation of P.D. 1612. The dispositive portion of its Decision reads:

WHEREFORE, premises considered, this Court finds that the prosecution has established the guilt of the accused JAIME ONG y ONG beyond reasonable doubt for violation of Presidential Decree No. 1612 also known as Anti-Fencing Law and is hereby sentenced to suffer the penalty of imprisonment of 10 years and 1 day to 16 years with accessory penalty of temporary disqualification.

SO ORDERED.⁴

Dissatisfied with the judgment, Ong appealed to the CA. After a review of the records, the RTC’s finding of guilt was affirmed by the appellate court in a Decision dated 18 August 2009.

Ong then filed the instant appeal before this Court.

THE FACTS

The version of the prosecution, which was supported by the CA, is as follows:

Private complainant was the owner of forty-four (44) *Firestone* truck tires, described as T494 1100 by 20 by 14. He acquired the same for the total amount of ₱223,401.81 from Philtread Tire and Rubber Corporation, a domestic corporation engaged in the manufacturing and marketing of *Firestone* tires. Private complainant's acquisition was evidenced by Sales Invoice No. 4565 dated November 10, 1994 and an Inventory List acknowledging receipt of the tires specifically described by their serial numbers. Private complainant marked the tires using a piece of chalk before storing them inside the warehouse in 720 San Jose St., corner Sta. Catalina St., Barangay San Antonio Valley 1, Sucat, Parañaque, owned by his relative Teody Guano. Jose Cabal, Guano's caretaker of the warehouse, was in charge of the tires. After appellant sold six (6) tires sometime in January 1995, thirty-eight (38) tires remained inside the warehouse.

On February 17, 1995, private complainant learned from caretaker Jose Cabal that all thirty-eight (38) truck tires were stolen from the

⁴ Id. at 40.

warehouse, the gate of which was forcibly opened. Private complainant, together with caretaker Cabal, reported the robbery to the Southern Police District at Fort Bonifacio.

Pending the police investigation, private complainant canvassed from numerous business establishments in an attempt to locate the stolen tires. On February 24, 1995, private complainant chanced upon *Jong's Marketing*, a store selling tires in Paco, Manila, owned and operated by appellant. Private complainant inquired if appellant was selling any Model T494 1100 by 20 by 14 ply *Firestone* tires, to which the latter replied in the affirmative. Appellant brought out a tire fitting the description, which private complainant recognized as one of the tires stolen from his warehouse, based on the chalk marking and the serial number thereon. Private complainant asked appellant if he had any more of such tires in stock, which was again answered in the affirmative. Private complainant then left the store and reported the matter to Chief Inspector Mariano Fegarido of the Southern Police District.

On February 27, 1995, the Southern Police District formed a team to conduct a buy-bust operation on appellant's store in Paco, Manila. The team was composed of six (6) members, led by SPO3 Oscar Guerrero and supervised by Senior Inspector Noel Tan. Private complainant's companion Tito Atienza was appointed as the poseur-buyer.

On that same day of February 27, 1995, the buy-bust team, in coordination with the Western Police District, proceeded to appellant's store in Paco, Manila. The team arrived thereat at around 3:00 in the afternoon. Poseur-buyer Tito Atienza proceeded to the store while the rest of the team posted themselves across the street. Atienza asked appellant if he had any T494 1100 by 20 by 14 *Firestone* truck tires available. The latter immediately produced one tire from his display, which Atienza bought for ₱5,000.00. Atienza asked appellant if he had any more in stock. Appellant then instructed his helpers to bring out twelve (12) more tires from his warehouse, which was located beside his store. After the twelve (12) truck tires were brought in, private complainant entered the store, inspected them and found that they were the same tires which were stolen from him, based on their serial numbers. Private complainant then gave the prearranged signal to the buy-bust team confirming that the tires in appellant's shop were the same tires stolen from the warehouse.

After seeing private complainant give the pre-arranged signal, the buy-bust team went inside appellant's store. However, appellant insisted that his arrest and the confiscation of the stolen truck tires be witnessed by representatives from the *barangay* and his own lawyer. Resultantly, it was already past 10:00 in the evening when appellant, together with the tires, was brought to the police station for investigation and inventory. Overall, the buy-bust team was able to confiscate thirteen (13) tires, including the one initially bought by poseur-buyer Tito Atienza. The tires were confirmed by private complainant as stolen from his warehouse.⁵

⁵ Id at. 43-46.

For his part, accused Ong solely testified in his defense, alleging that he had been engaged in the business of buying and selling tires for twenty-four (24) years and denying that he had any knowledge that he was selling stolen tires in Jong Marketing. He further averred that on 18 February 1995, a certain Ramon Go (Go) offered to sell thirteen (13) Firestone truck tires allegedly from Dagat-dagatan, Caloocan City, for ₱3,500 each. Ong bought all the tires for ₱45,500, for which he was issued a Sales Invoice dated 18 February 1995 and with the letterhead Gold Link Hardware & General Merchandise (Gold Link).⁶

Ong displayed one (1) of the tires in his store and kept all the twelve (12) others in his bodega. The poseur-buyer bought the displayed tire in his store and came back to ask for more tires. Ten minutes later, policemen went inside the store, confiscated the tires, arrested Ong and told him that those items were stolen tires.⁷

The RTC found that the prosecution had sufficiently established that all thirteen (13) tires found in the possession of Ong constituted a *prima facie* evidence of fencing. Having failed to overcome the presumption by mere denials, he was found guilty beyond reasonable doubt of violation of P.D. 1612.⁸

On appeal, the CA affirmed the RTC's findings with modification by reducing the minimum penalty from ten (10) years and one (1) day to six (6) years of *prision correccional*.⁹

OUR RULING

The Petition has no merit.

Fencing is defined in Section 2(a) of P.D. 1612 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.”

The essential elements of the crime of fencing are as follows: (1) a crime of robbery or theft has been committed; (2) the accused, who is not a principal or on 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

⁶ Id. at 46.

⁷ Id.

⁸ Id. at 47.

⁹ Id. at 57.

robbery or theft; (3) 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 (4) there is, on the part of one accused, intent to gain for oneself or for another.¹⁰

We agree with the RTC and the CA that the prosecution has met the requisite quantum of evidence in proving that all the elements of fencing are present in this case.

First, the owner of the tires, private complainant Francisco Azajar (Azajar), whose testimony was corroborated by Jose Cabal - the caretaker of the warehouse where the thirty-eight (38) tires were stolen – testified that the crime of robbery had been committed on 17 February 1995. Azajar was able to prove ownership of the tires through Sales Invoice No. 4565¹¹ dated 10 November 1994 and an Inventory List.¹² Witnesses for the prosecution likewise testified that robbery was reported as evidenced by their *Sinumpaang Salaysay*¹³ taken at the Southern Police District at Fort Bonifacio.¹⁴ The report led to the conduct of a buy-bust operation at Jong Markerting, Paco, Manila on 27 February 1995.

Second, although there was no evidence to link Ong as the perpetrator of the robbery, he never denied the fact that thirteen (13) tires of Azajar were caught in his possession. The facts do not establish that Ong was neither a principal nor an accomplice in the crime of robbery, but thirteen (13) out of thirty-eight (38) missing tires were found in his possession. This Court finds that the serial numbers of stolen tires corresponds to those found in Ong's possession.¹⁵ Ong likewise admitted that he bought the said tires from Go of Gold Link in the total amount of ₱45,500 where he was issued Sales Invoice No. 980.¹⁶

Third, 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. The words "should know" denote the fact that a person of reasonable prudence and intelligence would ascertain the fact in performance of his duty to another or would govern his conduct upon assumption that such fact exists.¹⁷ Ong, who was in the business of buy and sell of tires for the past twenty-four (24) years,¹⁸ ought to have known the ordinary course of business in purchasing from an unknown seller. Admittedly, Go approached Ong and offered to sell the thirteen (13) tires

¹⁰ *Capili v. Court of Appeals*, 392 Phil. 577, 592 (2000); *Tan v. People*, 372 Phil. 93, 102-103 (1999) citing *Dizon-Pamintuan v. People*, G.R. No. 111426, 11 July 1994, 234 SCRA 63, 71-72.

¹¹ Exhibit "A", records p. 250.

¹² Exhibit "A-1" and "A-2", id. at. 251.

¹³ *Sinumpaang Salaysay* dated 20 February 1995, Exhibit "G" and "I", id. at 263, 266.

¹⁴ TSN 23 November 1995, pp. 22-26.

¹⁵ Exhibits "A-1" and "A-2" vis-à-vis Exhibits "N-1" and "N-6." Records. pp. 251 and 272.

¹⁶ Exhibit "2-A", id. at 316.

¹⁷ *Tan v. People*, supra at 106.

¹⁸ TSN 14 December 2004, p. 3.

and he did not even ask for proof of ownership of the tires.¹⁹ The entire transaction, from the proposal to buy until the delivery of tires happened in just one day.²⁰ His experience from the business should have given him doubt as to the legitimate ownership of the tires considering that it was his first time to transact with Go and the manner it was sold is as if Go was just peddling the thirteen (13) tires in the streets.

In *Dela Torre v. COMELEC*,²¹ this Court had enunciated that:

[C]ircumstances normally exist to forewarn, for instance, a reasonably vigilant buyer that the object of the sale may have been derived from the proceeds of robbery or theft. Such circumstances include the time and place of the sale, both of which may not be in accord with the usual practices of commerce. The nature and condition of the goods sold, and the fact that the seller is not regularly engaged in the business of selling goods may likewise suggest the illegality of their source, and therefore should caution the buyer. This justifies the presumption found in Section 5 of P.D. No. 1612 that “*mere possession of any goods, . . . , object or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing*” — a presumption that is, according to the Court, “*reasonable for no other natural or logical inference can arise from the established fact of . . . possession of the proceeds of the crime of robbery or theft.*”^{xxx}.²²

Moreover, Ong knew the requirement of the law in selling second hand tires. Section 6 of P.D. 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 in the town or city where that store, establishment or entity is located before offering the item for sale to the public. In fact, Ong has practiced the procedure of obtaining clearances from the police station for some used tires he wanted to resell but, in this particular transaction, he was remiss in his duty as a diligent businessman who should have exercised prudence.

In his defense, Ong argued that he relied on the receipt issued to him by Go. Logically, and for all practical purposes, the issuance of a sales invoice or receipt is proof of a legitimate transaction and may be raised as a defense in the charge of fencing; however, that defense is disputable.²³ In this case, the validity of the issuance of the receipt was disputed, and the prosecution was able to prove that Gold Link and its address were fictitious.²⁴ Ong failed to overcome the evidence presented by the

¹⁹ TSN 28 April 2005, p.6.

²⁰ Id. at 4.

²¹ 327 Phil 1144 (1996).

²² Id. at 1154 – 1155.

²³ *D.M. Consunji, Inc. v. Esguerra*, 328 Phil. 1168, 1181 (1996).

²⁴ TSN 21 June 2001, pp. 3-9; Exhibit “M,” records, p. 270.

prosecution and to prove the legitimacy of the transaction. Thus, he was unable to rebut the *prima facie* presumption under Section 5 of P.D. 1612.

Finally, there was evident intent to gain for himself, considering that during the buy-bust operation, Ong was actually caught selling the stolen tires in his store, Jong Marketing.


Fencing is *malum prohibitum*, and P.D. 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.²⁵

The RTC and the CA correctly computed the imposable penalty based on ₱5,075 for each tire recovered, or in the total amount of ₱65,975. Records show that Azajar had purchased forty-four (44) tires from Philtread in the total amount of ₱223,401.81.²⁶ Section 3 (p) of Rule 131 of the Revised Rules of Court provides a disputable presumption that private transactions have been fair and regular. Thus, the presumption of regularity in the ordinary course of business is not overturned in the absence of the evidence challenging the regularity of the transaction between Azajar and Philtread.

In fine, after a careful perusal of the records and the evidence adduced by the parties, we do not find sufficient basis to reverse the ruling of the CA affirming the trial court's conviction of Ong for violation of P.D. 1612 and modifying the minimum penalty imposed by reducing it to six (6) years of *prision correccional*.

WHEREFORE, premises considered, the Petition is **DENIED** for lack of merit. Accordingly, the assailed Decision of the Court of Appeals in CA-G.R. CR No. 30213 is hereby **AFFIRMED**.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice

²⁵ *Dizon-Pamintuan v. People*, supra at 72.

²⁶ Supra note 6.

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


MARIA LOURDES P. A. SERENO
Chief Justice