



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MA. MIMIE CRESCENCIO,
Petitioner,

G.R. No. 205015

Present:

VELASCO, JR., J.,
Chairperson,
PERALTA,
DEL CASTILLO,*
VILLARAMA, JR., and
REYES, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

November 19, 2014

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DECISION

REYES, J.:

This case stemmed from Ma. Mimie Crescencio's (petitioner) conviction for violation of Section 68¹ of Presidential Decree (P.D.) No.

* Additional member per Special Order No. 1872 dated November 4, 2014 *vice* Associate Justice Francis H. Jardeleza.

¹ **Sec. 68. Cutting, Gathering and/or collecting Timber, or Other Forest Products without License.** Any person who shall cut, gather, collect, removed timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

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705,² otherwise known as the Revised Forestry Code of the Philippines (Forestry Code), as amended by Executive Order (E.O.) No. 277,³ rendered by the Regional Trial Court (RTC) of Talibon, Bohol, Branch 52, in Criminal Case No. 96-27, on August 12, 2008.⁴ The Court of Appeals (CA), in CA-G.R. CR No. 01162, dismissed the appeal in its Resolution⁵ dated April 15, 2011 for failure to serve a copy of the Appellant's Brief to the Office of the Solicitor General (OSG). The CA, in its Resolution⁶ dated November 19, 2012, also denied the petitioner's motion for reconsideration of the said resolution.

The Facts

Acting on an information that there was a stockpile of lumber or forest products in the vicinity of the house of the petitioner, Eufemio Abaniel (Abaniel), the Chief of the Forest Protection Unit of Department of Environment and Natural Resources (DENR) - Community Environment and Natural Resources Office, Talibon, Bohol, together with Forest Rangers Urcino Butal (Butal), Alfredo Bastasa and Celso Ramos (Ramos) went to the petitioner's house at Balico, Talibon, Bohol on March 15, 1994 at 3:00 p.m. Upon arriving thereat, they saw forest products lying under the house of the petitioner and at the shoreline about two meters away from the petitioner's house. As the DENR personnel tried to investigate from the neighborhood as to who was the owner of the lumber, the petitioner admitted its ownership. Thereafter, the DENR personnel entered the premises of the petitioner's house without a search warrant.⁷

Upon inspection, 24 pieces of *magsihagon* lumber, which is equivalent to 452 board feet, were discovered. When the DENR personnel asked for documents to support the petitioner's claim of ownership, the latter showed to them Official Receipt No. 35053 issued by Pengavitor Enterprises where she allegedly bought the said lumber. However, when the DENR personnel scaled the lumber, they found out that the dimensions and the species of the lumber did not tally with the items mentioned in the receipt. The said receipt showed that the petitioner bought 10 pieces of red *lawaan* lumber with sizes 2x6x18 and 5 pieces with sizes 2x8x16 on March 13, 1994. On the other hand, the lumber in the petitioner's house, on March 15,

² Revising PRESIDENTIAL DECREE NO. 389, otherwise known AS THE FORESTRY REFORM CODE OF THE PHILIPPINES.

³ Amending Section 68 of Presidential Decree No. 705, as amended, otherwise known as the Revised Forestry Code of the Philippines, for the purpose of penalizing possession of timber or other forest products without the legal documents required by existing forest laws, authorizing the confiscation of illegally cut, gathered, removed and possessed forest products, and granting rewards to informers of violations of forestry laws, rules and regulations.

⁴ Issued by Presiding Judge Irma Zita V. Masamayor; *rollo*, pp. 45-56.

⁵ Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Portia Aliño-Hormachuelos and Gabriel T. Ingles, concurring; *id.* 39-40.

⁶ *Id.* at 42-44.

⁷ *Id.* at 50.

1994, was 24 pieces of *magsihagon* lumber of three different sizes, to wit: 20 pieces 2x6x18; 3 pieces 2x8x18; and 1 piece 2x10x12.⁸

Since the petitioner could not present any other receipt, Abaniel ordered the confiscation of the lumber, asked for police assistance, and told the petitioner that they were going to transport the confiscated lumber to the DENR office for safekeeping. Seizure Receipt No. 004157 and a Statement Showing the Number/Pieces and Volume of Lumber Being Confiscated,⁹ which showed the value of the lumber to be ₱9,040.00, were issued to the petitioner. Forest Rangers Butal and Ramos corroborated Abaniel's testimony.¹⁰

SPO1 Desiderio Garcia testified that upon the request of Abaniel for police assistance, he and PO3 Antonio Crescencio went to the house of the petitioner where they saw some lumber which was later loaded on a cargo truck. Thereafter, they escorted the transport of the lumber to the DENR office in San Roque, Talibon, Bohol.¹¹

On the other hand, the lone witness of the defense, Lolita Crescencio, admitted that the seized lumber were owned by the petitioner but claimed that the latter bought it from Pengavitor Enterprises of Trinidad, Bohol and from Java Marketing in Ubay, Bohol.¹² However, the defense had only the Official Receipt No. 35053 issued by Pengavitor Enterprises which, however, did not tally with the forest products confiscated.

On May 17, 1994, the petitioner was charged by the Provincial Prosecutor of Tagbilaran City, Bohol, with violation of Section 68 of P.D. No. 705, as amended by E.O. No. 277. The Information¹³ alleged:

That on or about the 15th day of March, 1994, in the municipality of Talibon, Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to possess and to gain for her own benefit, without any legal document as required under existing jurisprudence, laws and regulations, and without any lawful authority under existing rules and regulation of DENR Forest Management Sector, willfully, unlawfully and illegally possess and have under her custody and control forest products consisting of twenty-four (24) pieces of *magsihagon* lumber with a volume of 452 board feet and a total value of Nine Thousand Forty (₱9,040.00) Pesos, Philippine

⁸ Id. at 52-53.

⁹ Id. at 62.

¹⁰ Id. at 52.

¹¹ Id. at 52, 65.

¹² Id. at 50-51.

¹³ Id. at 57-58.

Currency; to the damage and prejudice of the Republic of the Philippines.¹⁴

During the arraignment on July 15, 1997, the petitioner pleaded not guilty to the offense charged. Thereafter, trial ensued.¹⁵

On August 12, 2008, the RTC rendered judgment¹⁶ convicting the petitioner of the offense charged and sentenced her to imprisonment of six (6) years and one (1) day of *prision mayor* as minimum to eleven (11) years and six (6) months and twenty-one (21) days of *prision mayor* as maximum. The RTC also ordered the confiscation of the seized lumber owned by the petitioner.¹⁷

As expected, the petitioner appealed the decision to the CA. However, in its Resolution¹⁸ dated April 15, 2011, the CA dismissed the appeal outright because the petitioner failed to furnish the OSG a copy of the Appellant's Brief in violation of the Rules of Court. The petitioner moved for reconsideration but it was denied by the CA, in its Resolution¹⁹ dated November 19, 2012. Hence, this petition for review on *certiorari*.

The Issue

The core issue to be resolved is whether or not the CA's dismissal of the appeal due to the petitioner's failure to serve a copy of the Appellant's Brief to the OSG is proper, in view of the attendant factual circumstances and in the interest of substantial justice.

Ruling of the Court

In this case, the petitioner asks for a relaxation of the rigid rules of technical procedure and submits that the CA erred in dismissing her appeal purely on the basis of mere technicalities.

¹⁴ Id. at 57.

¹⁵ Id. at 45.

¹⁶ Id. at 45-56.

¹⁷ Id. at 55.

¹⁸ Id. at 39-40.

¹⁹ Id. at 42-44.

Confronted with issues of this nature, this Court is mindful of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits and of dispensing with technicalities whenever compelling reasons so warrant or when the purpose of justice requires it.²⁰

The Court has constantly pronounced that “[t]he rules of procedure ought not to be applied in a very rigid, technical sense, for they have been adopted to help secure – not override – substantial justice. For this reason, courts must proceed with caution so as not to deprive a party of statutory appeal; rather, they must ensure that all litigants are granted the amplest opportunity for the proper and just ventilation of their causes, free from the constraint of technicalities.”²¹

It is clear that without at all touching on the substantive aspects of the petitioner’s cause, the appellate court opted not to decide the case on the merits. The subject of the appeal was the decision of the RTC convicting the petitioner of violation of the Forestry Code and sentencing her to suffer an imprisonment of no less than six (6) years to eleven (11) years.

In this case, there is nothing in the record that shows any deliberate intent on the part of the petitioner to subvert and delay the final disposition of the case. In fact, when the petitioner learned that her appeal was dismissed by the CA for failure to serve a copy of her Appellant’s Brief to the OSG, she immediately confronted her previous counsel who denied having filed such brief. As the petitioner was very much worried of being incarcerated, she asked her previous counsel to withdraw from the case. Thus, the petitioner submits that the outright denial of her appeal is due to the incompetence and ignorance of her former counsel who even lied about the fact that he has indeed filed an Appellant’s Brief.

As a general rule, the inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court’s indulgence except: (a) where the reckless or gross negligence of counsel deprives the client of due process of law; (b) when application of the rule will result in outright deprivation of the client’s liberty or property; or (c) where the interests of justice so require.²²

²⁰ *The Government of the Kingdom of Belgium v. Hon. Court of Appeals, et al.*, 574 Phil. 380, 388 (2008).

²¹ *Atty. Calo v. Spouses Villanueva*, 516 Phil. 340, 349 (2006), citing *Remulla v. Manlongat*, 484 Phil. 832, 841 (2004).

²² *Supra* note 20, at 396.

Here, the petitioner submits that the inadvertence of her counsel to serve a copy of the Appellant's Brief to the OSG is a persuasive reason or a compelling justification to forego the Rules of Procedure as the wanton recklessness or gross negligence of her counsel has deprived her of due process of law which will result in the outright deprivation of her liberty.

In this regard, the Court agrees that the CA should have taken a liberal view of the rules and ruled on the merits of the appeal, especially when what is involved is no less than the petitioner's liberty.

Nonetheless, even if the Court brushes aside the technicality issue, it will still find that the prosecution was able to prove beyond reasonable doubt the petitioner's culpability.

In attempting to escape liability, the petitioner contends that: (a) she had the supporting documents to show that she bought the questioned lumber from legitimate sources; and (b) the warrantless search and seizure conducted by the DENR personnel was illegal and, thus, the items seized should not have been admitted in evidence against her.

The Constitution recognizes the right of the people to be secured in their persons, houses, papers, and effects against unreasonable searches and seizures.²³ Nonetheless, the constitutional prohibition against warrantless searches and seizures admits of certain exceptions, one of which is seizure of evidence in plain view. Under the plain view doctrine, objects falling in the "plain view" of an officer, who has a right to be in the position to have that view, are subject to seizure and may be presented as evidence.²⁴

There is no question that the DENR personnel were not armed with a search warrant when they went to the house of the petitioner. When the DENR personnel arrived at the petitioner's house, the lumbers were lying under the latter's house and at the shoreline about two meters away from the house of the petitioner. It is clear, therefore, that the said lumber is plainly exposed to sight. Hence, the seizure of the lumber outside the petitioner's house falls within the purview of the plain view doctrine.

²³ Article III. Bill of Rights

x x x x

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

²⁴ *Miclat, Jr. v. People*, G.R. No. 176077, August 31, 2011, 656 SCRA 539, 552-553, citing *People v. Lagman, et al.*, 593 Phil. 617, 628 (2008).

Besides, the DENR personnel had the authority to arrest the petitioner, even without a warrant. Section 80²⁵ of the Forestry Code authorizes the forestry officer or employee of the DENR or any personnel of the Philippine National Police to arrest, even without a warrant, any person who has committed or is committing in his presence any of the offenses defined by the Forestry Code and to seize and confiscate the tools and equipment used in committing the offense or the forest products gathered or taken by the offender. Clearly, in the course of such lawful intrusion, the DENR personnel had inadvertently come across the lumber which evidently incriminated the petitioner.

The fact of possession by the petitioner of the 24 pieces of *magsihagon* lumber, as well as her subsequent failure to produce the legal documents as required under existing forest laws and regulations constitute criminal liability for violation of the Forestry Code. Under Section 68 of the Forestry Code, there are two distinct and separate offenses punished, namely: (1) cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and (2) possession of timber or other forest products without the legal documents required under existing forest laws and regulations.²⁶

In the second offense, it is immaterial whether the cutting, gathering, collecting and removal of the forest products are legal or not. Mere possession of forest products without the proper documents consummates the crime. Whether or not the lumber comes from a legal source is immaterial because the Forestry Code is a special law which considers mere possession of timber or other forest products without the proper documentation as *malum prohibitum*.²⁷

In the present case, the *magsihagon* lumber were admittedly owned by the petitioner but unfortunately no permit evidencing authority to possess said lumber was duly presented. Thus, the Information correctly charged the petitioner with the second offense which is consummated by the mere possession of forest products without the proper documents. The prosecution adduced several documents to prove that the lumber was confiscated from the petitioner, namely: a Statement Showing the

²⁵ **Sec. 80. Arrest; Institution of Criminal Actions.** – A forest officer or employee of the Bureau or any personnel of the Philippine Constabulary/Philippine National Police shall arrest even without warrant any person who has committed or is committing in his presence any of the offenses defined in this chapter. He shall also seize and confiscate, in favor of the Government, the tools and equipment used in committing the offense, and the forest products cut, gathered or taken by the offender in the process of committing the offense. x x x.

²⁶ *Aquino v. People*, 611 Phil. 442, 450 (2009).

²⁷ *Id.* at 451.

Number/Pieces and Volume of Lumber Being Confiscated on March 15, 1994, seizure receipt, a photograph of the house of the petitioner, and a photograph of the confiscated lumber. Moreso, the direct and affirmative testimony of the DENR personnel as state witnesses on the circumstances surrounding the apprehension well establishes the petitioner's liability.

As to the impossible penalty on the petitioner, the RTC imposed an indeterminate sentence of six (6) years and one (1) day of *prision mayor* as minimum to eleven (11) years, six (6) months and twenty-one (21) days of *prision mayor* as maximum.

The Court does not agree. This Court notes that the estimated value of the confiscated pieces of lumber, as appearing in the Statement Showing the Number/Pieces and Volume of Lumber Being Confiscated is ₱9,040.00 which is alleged in the Information. However, except for the testimonies of Abaniel and Butal that this amount is the estimate based on prevailing local price as stated in the apprehension receipt they issued, the prosecution did not present any proof as to the value of the lumber.

Clearly, this evidence does not suffice. The Court had ruled that in order to prove the amount of the property taken for fixing the penalty impossible against the accused under Article 309 of the Revised Penal Code (RPC), the prosecution must present more than a mere uncorroborated "estimate" of such fact. In the absence of independent and reliable corroboration of such estimate, courts may either apply the minimum penalty under Article 309 or fix the value of the property taken based on the attendant circumstances of the case.²⁸ Hence, the lower court erred in finding that the value of the confiscated lumber is ₱9,040.00 for no evidence of such value was established during the trial.

Accordingly, the Court imposes on the petitioner the minimum penalty under Article 309(6)²⁹ of the RPC, which is *arresto mayor* in its minimum and medium periods. However, considering that violation of Section 68 of the Forestry Code is punished as Qualified Theft under Article 310³⁰ in relation to Article 309 of the RPC, the statutory penalty shall be increased by two degrees, that is, to *prision correccional* in its medium and maximum periods or within the range of three (3) years, six (6) months and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days,

²⁸ *Merida v. People*, 577 Phil. 243, 258-259 (2008).

²⁹ **Art. 309. Penalties.** — Any person guilty of theft shall be punished by:

x x x x

6. Arresto mayor in its minimum and medium periods, if such value does not exceed 5 pesos.

³⁰ **Art. 310. Qualified theft.** — The crime of qualified theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article x x x.

considering that there are no attending mitigating or aggravating circumstance in the commission of the offense.


In accordance with current jurisprudence³¹ and taking into account the Indeterminate Sentence Law, the Court finds it proper to impose on the petitioner, in view of the circumstances obtaining here, the penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to three (3) years, six (6) months and twenty-one (21) days of *prision correccional*, as maximum.

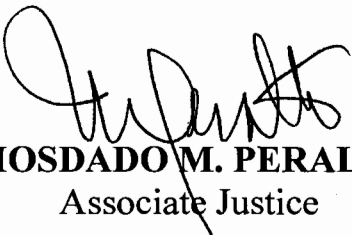
WHEREFORE, the Decision on August 12, 2008 of the Regional Trial Court of Talibon, Bohol, Branch 52, in Criminal Case No. 96-27, is **AFFIRMED** with the **MODIFICATION** that petitioner Ma. Mimie Crescencio is sentenced to suffer the indeterminate penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to three (3) years, six (6) months and twenty-one (21) days of *prision correccional*, as maximum.

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice


WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


³¹ *Merida v. People*, supra note 28.



MARTIN S. VILLARAMA, JR.
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.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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.



MARIA LOURDES P. A. SERENO
Chief Justice

