

SEVENTEENTH DIVISION

[CA-G.R. CR No. 36219, February 06, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERNANDO PANTE Y RANGASA, ACCUSED-APPELLANT,**

D E C I S I O N

GARCIA, R. R. J.:

Before Us is an appeal filed by accused-appellant Fernando Pante y Rangasa from the Judgment^[1] dated January 23, 2013 of the Regional Trial Court (RTC), Branch 33, Pili, Camarines Sur in Criminal Case No. P-3806 finding him and his co-accused Realito Belleza guilty beyond reasonable doubt of the crime of Theft defined and penalized by Article 308, par. 2, subpar. (1) of the Revised Penal Code (RPC), the dispositive portion of which reads:

WHEREFORE, in view of the foregoing judgment is hereby rendered as follows:

1. Finding the accused REALITO BELLEZA, "GUILTY" beyond reasonable doubt of the crime of Theft defined and penalized under Article 308, par. 1 of the Revised Penal Code and taking into account the presence of privilege mitigating circumstance of minority and imposing upon him the indeterminate penalty of *4 months and 1 day of arresto mayor as minimum to 5 years, 4 months and 1 day of prision correccional as maximum*. The father and, in case of his death or incapacity, the mother, are ordered to pay the private complainant Dawson Word the sum of P52,500.00 as actual damages.

2. Finding the accused CHRISTOPHER MALCO, "NOT GUILTY" of the crime of theft under Article 308, par. 1 of the Revised Penal Code for failure of the prosecution to prove his guilt beyond reasonable doubt. Similarly, the father and, in case of his death or incapacity, the mother, are ordered to pay the private complainant Dawson Word the sum of P25,000.00 as actual damages since the accused was still a minor when the crime was committed.

3. Finding the accused FERNANDO PANTE, "GUILTY" beyond reasonable doubt of the crime of Theft under Article 308, par. 1 of the Revised Penal Code and imposing the penalty of imprisonment ranging from *2 years 4 months and 1 day of prision correccional as minimum to 9 years and 1 day of prision mayor as maximum*. He is ordered to pay the private complainant Dawson Word the sum of P59,120.00 as actual damages.

SO ORDERED.^[2]

THE FACTS

In an Information³ dated June 1, 2005 filed before the RTC of Pili, Camarines Sur, appellant Fernando Pante and accused minors Realito Belleza and Christopher Malco were charged with the crime of Theft defined and penalized by Article 308, par. 2, subpar. (1) of the Revised Penal Code (RPC), committed as follows:

That [*sometime*] on December 11, 2004, in barangay Palestina, Pili, Camarines Sur, Philippines, and within the jurisdiction of the Honorable Court, the said accused, conspiring, confederating and helping one another, without the consent of the owner, nor force, violence or intimidation, after having found the amount of US\$4,550.00 or (P254,800.00) and P27,000.00, belonging to Dawson D. Word, and without delivering the same to its owner or authority, and once in possession of said amount, with intent to gain, did then and there wilfully, unlawfully and feloniously, covert the said amount for their own personal use and benefit, to the damage and prejudice of Dawson D. Word.

ACTS CONTRARY TO LAW.

Upon arraignment, all three (3) accused entered separate pleas of *not guilty* to the charge.

Trial on the merits ensued thereafter.

The prosecution presented four (4) witnesses, namely: private complainant Dawson Word; minor Florante Baal; SPO4 Pedro Corporal; and SPO4 Jovito de Castro.

The version of the prosecution may be summarized as follows:

On December 10, 2004, private complainant, an American national, and his maid dropped by the People's Mart in Naga City, Camarines Sur to buy fish using their car. He had with him the amount of \$4,550.00 and P27,000.00 bundled together in a rubber band which was placed on his lap. He always brings big amounts of money ready for the hospitalization and medicines of his son, Jon Paul Word. He gave P1,000.00 to his maid for the fish. While he was arranging his money inside the car, his maid arrived. He placed his money in between his legs and drove back home to his apartment in Barangay Palestina. Upon arrival, he parked his vehicle in front of his residence and got off his car totally forgetting his money placed between his legs. As such, the bundled money fell on the road near his vehicle. At around 5:30 a.m. of the following day, minor Florante Baal, a worker in the bakery of the Belleza family located just across the apartment of private complainant was sitting near the bakery's gate. He noticed a bundle of money bills around three (3) inches thick wrapped in a rubber band lying on the ground near private complainant's car. He then saw accused Realito Belleza, while riding his bicycle, go near the car and picked up the money before heading inside his house. That same morning, private complainant realized that he had lost his money and looked for the same. He went outside his apartment particularly inside the car but could no longer locate it. With the help of his landlord, he conducted his own investigation and learned that Baal saw accused Realito pick up the bundled money bills under his vehicle. Baal also confided that accused Realito warned him not to tell anyone about the find

especially private complainant.^[4] This prompted private complainant to go to the house of the Bellezas and talk to the father of accused Realito about the return of the money. However, the family denied any involvement in the loss of private complainant's money.

On December 21, 2004, private complainant went to the police complaining about his lost money. Upon investigation, it was found that the finder of the money was accused Realito. The police then went to the house of the Bellezas where accused Realito admitted that he found the money under the vehicle of private complainant which was parked in front of his apartment.^[5] He also averred that part of the money was shared with his cousin, accused minor Christopher Malco and appellant Fernando Pante, a worker in the Belleza family's bakery business. His parents also decided to return the money amounting to \$1,300 dollars as shown by the Receipt^[6] signed by his father Joselito Belleza, Sr. On the same day, the police went to the house of accused Malco who also admitted having received \$500 but could no longer return the same because he already spent it. Thereafter, the police proceeded to appellant Pante's house at Hibago, Ocampo, Camarines Sur who likewise admitted that accused Realito gave him a share in the amount of \$1,700 dollars. Out of this amount, appellant Pante only returned \$300 dollars, cash of P4,660.00 pesos, one (1) unit of JVC Component, and one (1) gas stove with a tank. Appellant Pante also gave a receipt^[7] from Monton Hardware showing that he bought construction materials. However, some of these items were already used so the police did not bother to get them. All the returned money and items from the three (3) accused were turned over to private complainant and listed in the receipt^[8] dated December 21, 2004.

On January 10, 2005, private complainant's son Jon Paul Word died at the Aquinas University Hospital in Legazpi City, Albay as shown by his Certificate of Death^[9].

The defense presented its witnesses, namely: accused Realito; his mother Amanda Belleza; accused Malco; and appellant Pante.

Accused Realito testified that at the time of the incident he was only sixteen^[10] (16) years old. He clarified that what he found was only thirty (30) pieces of \$100 US dollars bills and no peso denomination. He found the money on the ground in the early morning of December 11, 2004 while riding his mountain bike outside their gate. He put the money in his pocket and continued to deliver bread. He kept it in his cabinet so that if somebody will look for it, he could return it. He then went to his cousin, accused Malco, to inquire on what to do with the money. While he and accused Malco were conversing, appellant Pante overheard them. Being the only adult, appellant Pante told them to get the money and go to the tree house. On their way there, appellant Pante grabbed the money and counted it. Appellant Pante got seventeen (17) pieces of \$100 US dollar bills. Five (5) pieces were given to accused Malco while the remaining \$2,350 was kept by accused Realito. Appellant Pante went home with his share and never returned.

Amanda Belleza, mother of accused Realito, testified that on December 20, 2004, his son told them that he found thirty (30) pieces of dollars. This prompted her husband to report the same to the police authorities. She also denied having bought new appliances, toys, and truckload of flour for their bakery business.

Accused Malco, who was only seventeen (17) years old at the time of incident, admitted that accused Realito gave him \$500 dollars on the same day private complainant lost his money. However, he returned the whole amount so that accused Realito could give it back to private complainant. He added that he was not tempted to spend it because it was not his.

Appellant Fernando Pante, who was then twenty-nine (29) years old, testified that around 6:30 p.m. of December 11, 2004, he saw accused minors Realito and Malco passed by the back of the bakery carrying several items such as a playstation and new shoes. He inquired from the two where they got the money and learned that accused Realito found some dollars. He admitted having received ten (10) dollar bills from accused Realito as his "*balato*". He kept it inside his pocket and asked permission to go home. He decided to keep first the money for four (4) days but exchanged it to pesos. He bought a JVC component, a gas stove with a tank and a CD cassette. On December 21, 2004, while he was attending the construction of his house, the police came and demanded the return of the money lost by private complainant. He told his wife to get the remaining \$300 dollars and P4,660.00 pesos and turned it over to the police. He also returned the JVC component and the gas stove with a tank. A receipt for the same was issued by the police.

In the assailed Judgment^[11] dated May 15, 2013, the court a quo found appellant Pante and accused Realito guilty beyond reasonable doubt of the crime of Theft defined and penalized under Article 308, par. 2, subpar. (1) of the Revised Penal Code. The prosecution was able to prove that private complainant lost his dollar bills in the amount of \$4,550 US dollars and was found by accused Realito. Instead of informing the authorities or returning it to the owner, he shared part of the find to accused Malco and appellant Pante. They cannot deny that they have no interest in the money because they kept it and spent part of the money by buying several items. They only returned the remaining money and the items they bought when the police investigators arrived. All of the accused were held civilly liable to pay the unreturned amount of private complainant. The court a quo, however, acquitted accused Malco from any criminal liability because there was an admission on his part that he was only given a share and that he knew who the owner was. He was only civilly liable for failure to return the money. The pertinent portions of the assailed Judgment are quoted:

x x x

This Court is convinced that the private complainant lost dollar bills in the amount of \$4,550 but not as to the peso denomination since he did not present any document that would prove that aside from the dollar bills, peso bills were included in the bundle of money lost. Accused Belleza admitted the bundle of money found by him was only in dollar denominations. The three accused divided it, Pante got \$1,700, Malco got \$500 and Belleza got \$2,350.

This Court found Realito's actions inconsistent with his claim that he had no intention to take the money for his personal gain. The Court is also not convinced that the parents of Realito had no knowledge that their son found the money. It should be noted that one day after the private complainant lost his money, the Belleza family bought truckload of flour,

baking ingredients, appliances, toys and cellphones. They had no justification as to where the money came from. For reasons only known to them, they never bothered to inform the authorities about the money. The private complainant even had a talk with the father and beg for the return of his money since he needed it for the medication of his son, who was at that time in the hospital, Realito and his parents pretended to hear nothing. Were it not for the investigation of the police, accused would not have admitted and returned the money. Their act indicated that they had no intention to return the money. Because of the incident, private complainant's son eventually died.

On the part of the two other accused, they knew from the very start that the money was not theirs and that it was only found by Realito. Pante even told the two minors that they will not return the money. They admitted in open Court that they are aware of a provision in law that if somebody found a lost property, they have the obligation to return it to its owner or if the owner is unknown, to report it to the authorities. In this case, instead of doing so or encouraging Realito to return the money to the private complainant or to the authorities, Pante, who was of age, got his share and went home.

Given accused's admission to having found money, keeping it in their possession without informing the authorities about the same and spending part of it, plus the positive evidence submitted by the prosecution, accused's denial that they have no interest in the money cannot be given credence.

Under the law, delay in the delivery of lost property to the local authorities is immaterial, when the finder surrendered it voluntarily to the owner when the latter came to their house to get it. In this case, the return of Belleza of the partial amount to the owner cannot be considered voluntary since the private complainant had occasions when he went to the house of the accused and beg for the return of his money. That happened the day after his money was lost. The return was only made by the accused when the police investigators arrived.

In the case of Pante, the return was not also voluntary since he already knew that the private complainant was looking for his money. In fact, Belleza and Malco testified that they went to the house of Pante to get the money but the latter told them that they will not return the money to the private complainant. Pante admitted his liability only when the police investigator who went to his house. The element of voluntariness is wanting in the case of Belleza and Pante. What was evident is the presence of the element of "Intent to gain". x x x.

Also under the law, a person is guilty of theft as a finder of lost property who retained part of it with intent to gain. In this case, although the accused returned part of the money, they are still liable for the unreturned part.

For accused Christopher Malco, this Court finds him civilly but not criminally liable because, while he could not return the money given to