FIRST DIVISION

[G.R. No. 249196, April 28, 2021]

DANTE LOPEZ Y ATANACIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

ZALAMEDA, J.:

Can a disputable presumption be the sole basis, the corner stone, of a conviction beyond reasonable doubt for the crime of fencing? Through this case, the Court underscores that without proper factual foundation, the presumption of fencing must be upended in favor of the presumption of innocence enjoyed by the accused.

No *prima facie* evidence or case shall arise in the absence of the required facts on which the same must operate. The prosecution cannot, and should not, merely depend on the operation of the presumption of fencing to establish moral certainty for convicting the accused. More importantly, the courts should be mindful in applying such presumption, subject to a careful scrutiny of the facts of each case. This, considering that unjust convictions result to forfeiture of life, liberty, and property.

The Case

This Petition for Review on *Certiorari*[1] seeks to reverse and set aside the Decision[2] dated 30 April 2019 and the Resolution[3] dated 03 September 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 41527, which affirmed with modification the Decision[4] dated 27 June 2017 of Branch 263, Regional Trial Court (RTC) of Marikina City in Criminal Case No. 14-15920-MK, finding Dante Lopez *y* Atanacio (petitioner) guilty beyond reasonable doubt of violation of Presidential Decree No. (PD) 1612, otherwise known as the Anti-Fencing Law of 1979.

Antecedents

Petitioner was charged with the crime of fencing in an Information that reads:

> "That on or about the 23rd day of February 2014, in the city of Marikina, Philippines and within the jurisdiction of this honorable Court, the above-named accused with intent to gain, did then and there willfully, unlawfully and knowingly possesses one blue MOUNTAIN BIKE with frame name "ARAYA" VALUED At One Hundred Thousand Pesos (P100,000.00) which he knows or should be known to him to have been the subject of robbery or thievery, belonging to private complainant RAFAEL MENDOZA y DELA

PAZ.

CONTRARY TO LAW."[5]

Upon arraignment, petitioner pleaded not guilty to the charge. After pre-trial was terminated, trial on the merits ensued.[6]

Version of the Prosecution

Private complainant Rafael Mendoza (Mendoza) averred that on 23 February 2014, he saw his bicycle at the corner of Katipunan and Ordonez Streets. He commanded the driver of said bicycle, Magno Lopez (Magno), to halt and asked him where he got the bicycle. Magno answered that the same was given to him by petitioner. They then went to the *barangay* for the blotter of the incident. At the *barangay*, it was agreed that the subject vehicle be turned over to Mendoza, but the following day the same was taken back as ordered by the *barangay* captain.[7]

Mendoza alleged that the said vehicle was stolen from him on 15 January 2011, which was reported in a police blotter the day after the incident. He insisted that he is the owner of the bicycle, having bought the same abroad.[8]

Jose Manalo Martinez corroborated Mendoza's allegations, averring that he used to bike with Mendoza.[9]

Version of the Defense

According to petitioner's brother, Magno, he met Mendoza on 23 February 2014 at around 4:00 p.m. to 5:00 p.m. while riding his bike at Katipunan Extension near Ordoñez Street. Allegedly, Mendoza suddenly cut him off and claimed the bike was his. So as to not prolong the argument, Magno invited Mendoza to the *barangay*. Magno described the bicycle as a blue Araya-made model Muddy Fox Frame with a Shimano Deore XT group set, with a handle bar made by Girvin, as shown in the pictures taken by him and his brother. Magno testified that he got the bike from petitioner in 2002. He pointed out that the handle bar and the front fork of his bicycle as compared to those shown in. the pictures are different.[10]

On the other hand, petitioner insisted that he used to own the subject bicycle. According to petitioner, he bought it from Bicycle Works located in Katipunan, Quezon City and presented evidence of the existence of said bicycle shop including its SEC Registration, Articles of Incorporation, and By-Laws. He could not present the receipt for the purchase of the bike since he bought: it from Bicycle Works twenty (20) years ago. He also presented two (2) notarized affidavits from Bicycle Works, one from its President, Leopoldo De Jesus (President), another from its Chief Mechanic, Carmelito Gomez (Chief Mechanic) as proof.[11]

Ruling of the RTC

On 27 June 2017, the RTC rendered its Decision finding petitioner guilty beyond reasonable doubt of the crime of fencing, to wit:

> WHEREFORE, premises considered, this court finds accused Dante Lopez y Atanacio, **GUILTY,** beyond reasonable doubt of the violation of P.D. 1612 (Anti-Fencing Law of 1979).
>
> He is hereby sentenced to suffer the penalty of imprisonment of **SEVEN (7) YEARS TO TWELVE (12) YEARS** imprisonment.
>
> With the return of the subject bicycle to the private complainant, this Court declares no civil liability against the accused.
>
> SO ORDERED.[12]

The RTC ruled that the claim of ownership by Mendoza prevails over that of petitioner.[13] It gave credence to the police blotter stating that on 15 January 2011, two (2) unidentified persons unlawfully and feloniously entered Mendoza's garage and took his Mountain Bike colored blue with frame name "ARAYA" made in Japan and worth Php100,000.00.

According to RTC, considering it was established that Mendoza owns the subject bicycle, the burden now shifted on the part of petitioner to overcome the presumption of fencing.[14] Moreover, the trial court underlined that Leopoldo's affidavit was not specific that the bicycle subject of the case is really the same item that petitioner bought from him in 1997 and the bike being claimed by Mendoza.[15]

Ruling of the CA

On 30 April 2019, the CA affirmed with modification petitioner's conviction, *viz*:

> **WHEREFORE,** the herein impugned Decision of the court *a quo* is hereby **AFFIRMED** with **MODIFICATION** in that accused-appellant is sentenced to the straight penalty of two (2) months of *arresto mayor*.
>
> **SO ORDERED.**[16]

In affirming the RTC, the CA underlined that petitioner failed to destroy the presumption of fencing.[17] However, it modified the penalty imposed by the RTC. The CA held that Mendoza failed to prove that the bicycle was indeed worth Php100,000.00. Consequently, when there is no available evidence to prove the value of the stolen property or that the prosecution failed to prove it, the corresponding penalty to be imposed should be the minimum penalty corresponding

to the theft in the value of Php5.00.[18]

Petitioner's Motion for Reconsideration was denied by the CA in its Resolution dated 03 September 2019.[19] Hence, this petition.[20]

Issues

Petitioner is now before this Court raising the following issues:

> A.
> THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF FACT AND LAW IN AFFIRMING THE TRIAL COURT AND CONVICTING THE PETITIONER BASED ON THE PRESUMPTION FOUND IN SECTION 5 OF P.D. 1612, OTHERWISE KNOWN AS THE ANTI-FENCING LAW, DESPITE FAILURE OF THE PROSECUTION TO PROVE FOREMOST ALL THE ELEMENTS OF THE SAID OFFENSE AND PROVE THE PETITIONER'S GUILT BEYOND REASONABLE DOUBT.
>
> B.
> THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF FACT AND LAW WHEN IT FAILED TO GIVE ANY PROBATIVE VALUE TO PETITIONER'S EVIDENCE ESPECIALLY TO THE NOTARIZED AFFIDAVIT OF OWNERSHIP, CONTRARY TO THE PRINCIPLES LAID DOWN IN THE CASE OF MARIANO LIM VS. PEOPLE OF THE PHILIPPINES.[21]

Essentially, the issue is whether or not the prosecution was able to establish the guilt of petitioner beyond reasonable doubt for the crime of fencing.

Ruling of the Court

The petition is meritorious.

At the outset, it must be underlined that only questions of law may be raised in petitions for review on *certiorari*. It is settled that in the exercise of the Supreme Court's power of review, the court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case.[22] This rule, however, is subject to a number of exceptions, including when the appellate court failed to notice certain relevant facts, which, if properly considered, would justify a different conclusion and when the judgment of the CA is premised on misapprehension of facts.[23] Said exception is present in the instant case.

Further, the general rule is that factual findings by the trial court deserve a high degree of respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could alter the result of the case.

However, a careful review of the evidence on record of the case compels us to take exception to the aforesaid rule.[24]

More importantly, proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.[25] The prosecution bears the primary duty to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion. We emphasize that a conviction cannot be made to rest on possibilities; strongest suspicion must not be permitted to sway judgment.[26]

With the foregoing principles in mind, We hold that there exists reasonable doubt that petitioner committed the crime charged against him.

The identity of the bicycle in issue
was not established; hence, the
presumption of fencing did not arise

Fencing is 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 other 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.[27] The essential elements of the crime of fencing are:

1. A crime of robbery or theft has been committed;

2. 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 said crime;

3. The accused knows 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 the accused, intent to gain for himself or for another.[28]

In the instant case, We find that the prosecution has failed to establish beyond reasonable doubt the identity of the bicycle in issue.

Apart from the police blotter of the alleged robbery, no evidence was presented to prove Mendoza's ownership of the bicycle in issue. The photos presented did not show any distinctive features to identify the bike. Worse, the evidence at hand did