

FIRST DIVISION

[G.R. No. 190475, April 10, 2013]

**JAIME ONG Y ONG, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

SERENO, C.J.:

Before the Court is an appeal from the Decision^[1] dated 18 August 2009 of the Court of Appeals (CA), which affirmed the Decision^[2] 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 Information^[3] 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 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 P223,401.81 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 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]

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 P3,500 each. Ong bought all the tires for P45,500, 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