

FIRST DIVISION

[G.R. NO. 163927, January 27, 2006]

**ALFONSO D. GAVIOLA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a petition for review of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 24413 affirming the ruling^[2] of the Regional Trial Court (RTC) of Nava, Biliran, Branch 16, in Criminal Case No. N-1901, where petitioner Alfonso Gaviola was convicted of qualified theft.

The antecedents are as follows:

On May 25, 1954, Elias Gaviola filed a complaint against Eusebio Mejarito in the then Court of First Instance of Carigara, Leyte, for quieting of title with a plea for injunctive relief. The suit involved a 40,500-square-meter parcel of coconut land located in Barrio Calbani, Maripipi, Leyte, identified as Cadastral Lot 1301 and covered by Tax Declaration (TD) No. 743.^[3] The case was docketed as Civil Case No. 111. Eusebio, for his part, claimed ownership over the property.

On July 29, 1955, the trial court ordered the dismissal of the complaint and declared Eusebio the lawful owner of the property. The dispositive portion of the decision reads:

WHEREFORE, for the foregoing, the Court renders judgment dismissing the plaintiffs' complaint and declaring the defendants the absolute owners and entitled to the possession of the disputed land. The preliminary injunction which was granted by this Court through Judge Lorenzo Carlitos is ordered dissolved, with costs against the plaintiffs.

SO ORDERED.^[4]

The decision became final and executory. On September 3, 1955, the trial court ordered the sheriff to place Eusebio in possession of the property.^[5] The sheriff complied with the order on December 19, 1958.^[6]

In the meantime, Eusebio died intestate and was survived by his son, Cleto. Elias Gaviola also died intestate and was survived by his son, Alfonso.

Almost 30 years thereafter, on October 1985, Cleto filed a complaint against Alfonso and four others for recovery of possession of a parcel of land and execution of judgment in Civil Case No. 111. The property involved was located on the north of Lot 1301 and covered by TD No. 1546. The case was docketed as Civil Case No. B-

0600.

The plaintiff therein alleged that the houses of the defendants were located in the property that had been adjudicated to his father, Eusebio Mejarito, in Civil Case No. 111. He prayed that the court issue judgment as follows:

- a) Ordering [the] immediate execution of judgment in Civil Case No. 111, against defendants Segundo Gaviola and Alfonso Gaviola;
- b) Ordering all defendants evicted from any portion of the land they presently occupy as residential;
- c) Ordering all defendants to pay rent in favor of the plaintiff with legal interests imposed reckoned from June 1984 until full payment of what is due and/or until their complete and absolute eviction from their respective residences which rent liabilities when computed annually for each of them is in the sum of PESOS: THREE THOUSAND SIX HUNDRED (P3,600.00), Philippine Currency;
- d) Ordering defendants to pay plaintiff jointly and severally the sum of PESOS: THIRTY THOUSAND (P30,000.00), Philippine Currency, representing moral damages;
- e) Ordering defendants to pay plaintiff jointly and severally the sum of PESOS: TWENTY-FIVE THOUSAND (P25,000.00), Philippine Currency, representing attorney's fee and litigation expenses.

Plaintiff prays for such relief and other remedies as may be just and equitable in the premises.^[7]

In their answer to the complaint, the defendants averred that the property in which their houses were located is different from that which was adjudicated by the court in Civil Case No. 111 to Eusebio Mejarito.

The parties could not agree on the identification and metes and bounds of the parcel of land claimed and owned by the plaintiff and those claimed and owned by the defendants. This impelled the court to appoint Bienvenido Ricafort, the Officer-in-Charge of the sub-office of the Provincial Assessor, as Commissioner, to resurvey the property subject of the complaint. A sketch of the property was prepared, indicating the location of the plaintiff's lot (Lot 1301) and the parcel of land where the house of Gaviola stood (Lot 1311). The Commissioner also prepared a report^[8] stating that the property adjudicated to Eusebio Mejarito in Civil Case No. 111 was Cadastral Lot No. 1301, while that which belonged to Elias Gaviola was Cadastral Lot No. 1311; and the old one-storey house of defendant Alfonso Gaviola was located in the latter lot. The defendant did not object to the report.^[9]

On May 4, 1990, the court rendered judgment in favor of the defendants in Civil Case No. B-0600 and ordered the complaint dismissed. The court ruled that the parcels of land occupied by the defendants, inclusive of Lot 1311, were different from the property adjudicated to Eusebio Mejarito in Civil Case No. 111, which is actually Lot 1301. The court also ruled that the plaintiff had no cause of action for the execution of the court's decision in Civil Case No. 111 because such decision had

long been enforced, per report of the sheriff.^[10]

Eusebio appealed the decision to the CA which rendered judgment on September 18, 1992, affirming the decision of the RTC.^[11] The appellate court declared that the house of Alfonso Gaviola was located in Lot 1311 covered by TD 1611 under the name of Elias Gaviola. Cleto filed a petition for review on *certiorari* with this Court, which was denied due course in a Resolution^[12] dated March 24, 1993. Thus, the CA decision became final and executory. The trial court issued a writ of execution, a copy of which Sheriff Ludenilo S. Ador served on the defendants on August 5, 1993.^[13]

In the meantime, Cleto Mejarito left the Philippines and stayed in the United States of America. He entrusted the land to the care of his nephew, Rafael Lozano.

At 7:00 a.m. on September 6, 1997, Jovencio Mejarito, a nephew of Cleto Mejarito, and a barangay councilman, saw Gavino Gaviola, Rodrigo Gaviola and Domingo Caingcoy climbing the coconut trees in Lot 1301. Under the supervision of the spouses Alfonso and Leticia Gaviola, they gathered 1,500 coconuts worth P3,000.00 from the coconut trees.^[14] The Officer-in-Charge of the Maripipi Police Station then filed a criminal complaint for qualified theft against the spouses Gaviola and those who gathered the coconuts in the municipal trial court.^[15] In the meantime, the coconuts were entrusted to the care of the *barangay* captain.

On February 6, 1998, an Information was filed with the RTC of Naval, Biliran, against the spouses Alfonso and Leticia Gaviola for qualified theft. The accusatory portion of the decision reads:

That on or about the 6th day of September 1997, at around 9 o'clock in the morning at Brgy. Calbani, Municipality of Maripipi, Province of Biliran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, and with intent to gain, did then and there unlawfully, feloniously, deliberately took, harvested and gathered one thousand five hundred (1,500) coconut fruits from the plantation of Cleto Mejarito without the consent and authority of the latter, to the damage and prejudice of the owner amounting to P3,000.00.

Contrary to Law.^[16]

Alfonso admitted that the coconuts were taken upon his instructions, but insisted that the trees from which they were taken were planted on Lot 1311, the property he had inherited from his father, Elias Gaviola; the property of private complainant Cleto Mejarito, Lot 1301, was adjacent to his lot. Alfonso testified that the property was placed in his possession by the sheriff since August 5, 1993, and that since then he had been gathering coconuts every three months without being confronted or prosecuted by anybody.^[17] He insisted that his claim was based on the decision of the RTC in Civil Case No. B-0600, which was affirmed by the CA.^[18]

On April 13, 2000, the RTC rendered judgment convicting Alfonso of qualified theft. The *fallo* of the decision reads:

WHEREFORE, this Court finds the accused Alfonso Gaviola y Dimakiling guilty beyond reasonable doubt of the crime of qualified theft; hereby imposing upon him the indeterminate penalty of imprisonment from Five (5) Years, Five (5) Months and Ten (10) days of prision correccional, maximum period, as the minimum, to Eight (8) Years and One (1) day of prision mayor, minimum, as the maximum.

The accused shall pay the private complainant Cleto Mejarito, through his duly authorized representative, exemplary damages in the amount of P20,000.00 and liquidated damages in the amount of P3,000.00.

SO ORDERED.^[19]

The trial court ruled that the accused took the coconuts from the coconut trees planted on Cadastral Lot 1301 which was owned by Cleto Mejarito, and not on his own property, Lot 1311, as he claimed.

Alfonso Gaviola appealed the decision to the CA which rendered judgment, on October 1, 2003, affirming the decision of the RTC. He then filed a motion for reconsideration of the decision, which the appellate court denied.

Alfonso, now the petitioner, raises the following issues in the instant petition: (1) whether the prosecution proved beyond reasonable doubt that he had intent to gain when the coconuts were taken upon his instruction; and (2) whether he is liable for exemplary and liquidated damages.

On the first issue, petitioner avers that the prosecution failed to prove *animus lucrandi* (intent to gain) on his part. He asserts that he had been taking coconuts from the property in broad daylight three times a year since August 5, 1993 on his honest belief that he was the owner of the land where the coconut trees were planted. He points out that it was only after he took coconuts on September 6, 1997 that he was charged of qualified theft.

Moreover, his honest belief that he owned the land negates intent to steal, an essential element of the felony of theft. He argues that the RTC in Civil Case No. B-0600 declared him to be the owner of the property where the coconut trees were planted; the property was placed in his possession by the sheriff and, since then, he had planted bananas and gathered coconuts from the coconut trees.

In its comment on the petition, the Office of the Solicitor General avers that the decision of the RTC, which was affirmed by the CA, is in accord with the evidence on record. The OSG maintains that under the decision of the then CFI in Civil Case No. 111, the RTC in Civil Case No. B-0600 and that of the CA affirming on appeal the RTC ruling, the owner of Lot 1301, the property from which the coconuts were taken, was Eusebio Mejarito, the private complainant's father.

We rule against the petitioner.

Article 308 of the Revised Penal Code defines theft as follows:

Art. 308. *Who are liable for theft.*— Theft is committed by any person who, with intent to gain but without violence, against or intimidation of

persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and
3. *Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.*^[20]

Thus, the elements of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.^[21]

The provision was taken from Article 530 of the Spanish Penal Code which reads:

1. *Los que con ánimo de lucrarse, y sin violencia o intimidación en las personas ni fuerza en las cosas, toman las cosas muebles ajenas sin la voluntad, de su dueño.*
2. *Los que encontrándose una cosa perdida y sabiendo quién es su dueño se la apropiaren con intencion de lucro.*
3. *Los dañadores que sustrajeren o utilizaren los frutos u objeto del daño causado, salvo los casos previstos en los artículos 606, num. 1., 2. y 3; 608, num. 1; 610, num. 1.; 611;613; segundo párrafo del 617 y 618. (Art. 437 del Cod. Penal de 1850. – Art. 379, Cdo. Franc. – Art. 331, Código Brasil. – Art. 151, Cod. Austr. – Arts. 461 y 508, Cod. Belg. – Art. 242, Cod. Alem. – Arts. 422 y 423, Cod. Port. – Art. 402, Cod. Ital.)*^[22]

According to Article 310 of the Revised Penal Code, theft is qualified if coconuts are taken from the premises of a plantation:

Art. 310. *Qualified theft.* – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.