



Republic of the Philippines
SUPREME COURT
 Manila

CERTIFIED TRUE COPY

Wilfredo V. Lapitan
WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

NOV 14 2016

THIRD DIVISION

MARIANO LIM,
 Petitioner,

G.R. No. 211977

Present:

- versus -

VELASCO, JR., J., Chairperson,
PERALTA,
PEREZ,
REYES, and
PERLAS-BERNABE,* JJ.

**PEOPLE OF THE
 PHILIPPINES,**
 Respondent.

Promulgated:

October 12, 2016

X-----*Wilfredo V. Lapitan*-----X

DECISION

VELASCO, JR., J.:

The Case

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the Decision¹ dated July 30, 2013 and Resolution² dated February 28, 2014 of the Court of Appeals (CA), which affirmed the Decision³ dated February 17, 2009 of the Regional Trial Court (RTC), Branch 8 in Davao City, convicting petitioner Mariano Lim (Lim) for violating Presidential Decree No. 1612 (PD 1612), otherwise known as the Anti-Fencing Law of 1979.

The Facts

An Information dated June 27, 1997 charged Lim with the following:

That on or about January 16, 1997, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being then the proprietor of Basco Metal Supply

* Additional member per raffle dated September 15, 2014.

¹ *Rollo*, pp. 30-42. Penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles.

² *Id.* at 57-59.

³ *Id.* at 119-126. Penned by Presiding Judge Salvador M. Ibarreta, Jr.

located at Matina, Davao City, with intent to gain for himself, wilfully (sic), unlawfully and feloniously purchased and received for P400,000.00 one (1) unit Komatsu Road Grader with Chassis Model and Serial No. GD-51R-100049 and bearing an (sic) Engine Serial Number 6D951-55845 owned by Second Rural Road Improvement Project (SRRIP) PMO-DPWH of Isulan, Sultan Kudarat, being lodged for repair at the Facoma Compound of Poblacion Norala, South Cotabato, and possessed the same, knowing that said Komatsu Road Grader was stolen, thereby committing an act of fencing in violation of the Anti-Fencing Law of 1979, to the damage and prejudice of the aforesaid complainant in its true value of P2,000[,]000.00.

CONTRARY TO LAW.⁴

Upon arraignment, petitioner pleaded not guilty. Thereafter, trial on the merits ensued.⁵

Version of the Prosecution

The prosecution presented two witnesses: (1) Engr. Herminio Gulmatico, the project engineer of the Second Rural Road Improvement Project (SRRIP) PMO-DPWH of Isulan, Sultan Kudarat; and (2) SPO4 Alfredo T. Santillana. The testimonies of the prosecution witnesses were summarized by the trial court, as follows:

SPO4 Santillana testified that i. [S]ometime in January 1997, he was an investigator of the theft and robbery section of Police Precinct No. 3, Talomo, Davao City; ii. [I]n the afternoon of January 31, 1997, Engr. Herminio Gulmatico went to his office to seek assistance in the recovery of a Komatsu Road Grader bearing Engine Serial Number 6D951-55845 and Chassis No. GD-51R-100[0]49; iii. [H]e was informed by Gulmatico that said heavy equipment could be found at Basco Metal Metal (sic) Supply along Mc Arthur Highway, Davao City; iv. [T]his information was caused to be verified by the station commander of said Police Precinct and after finding out that it was accurate, a search warrant was applied for; and v. [T]he search warrant was served on Basco Metal Supply where the aforescribed heavy equipment was found.

Engr. Gulmatico for his part testified that: i. [H]e is the project engineer of the [SRRIP] PMO-DPWH of Isulan, Sultan Kudarat; ii. [O]n July 1, 1996, he received from Engineer Ireneo Veracion, the former project engineer, the aforesaid heavy equipment; iii. [S]ometime in June of 1997 the heavy equipment was in the Facoma Compound in Norala, South Cotabato undergoing repairs; iv. [A]round the third week of January, 1997, he was informed that the heavy equipment was removed from that compound by Petronilo Banosing; v. [H]e was also told that the heavy equipment was loaded on a ten wheeler truck and brought to Davao City particularly at Km. 3 Mc Arthur Highway; vi. [A]rmed with this information he proceeded to Davao City and sought the assistance of Talomo Police Precinct; vii. [T]he consequent search warrant applied for

⁴ Id. at 32.

⁵ Id.



by the police officers of that precinct was served on Basco Metal Supply where the heavy equipment was found.⁶

Version of the Defense

On the other hand, petitioner was presented as the sole witness for the defense. The trial court summarized petitioner's testimony, to wit:

Accused Mariano Lim did not present testimonial evidence other than his and testified, thus: i. [H]e bought the heavy equipment from Petronilo Banosing for Four Hundred Thousand (P400,000.00) Pesos; ii. Banosing showed him a Certificate of Ownership that stated that the heavy equipment is his; and, iii. [H]e checked with the DPWH in Manila and found out that the subject heavy equipment is not included in the inventory of equipment of the DPWH.⁷

Ruling of the RTC

The RTC found Lim guilty beyond reasonable doubt of the crime of fencing under PD 1612, to wit:

FOR THE FOREGOING[,] this Court finds accused[,] MARIANO LIM[,] GUILTY beyond reasonable doubt for violation of Presidential Decree No. 1612 otherwise known as the Anti-Fencing Law of 1979 and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of from **TWELVE (12) YEARS of PRISION MAYOR as Minimum to EIGHTEEN (18) YEARS of RECLUSION TEMPORAL as Maximum**. Accused is also directed to indemnify the DPWH the amount of One Hundred Thousand (P100,000.00) Pesos.

SO ORDERED.⁸

In imposing the penalty, the trial court applied the Indeterminate Sentence Law in relation to Section 3(a) of PD 1612, based on its own valuation of the heavy equipment considering that the prosecution did not present any evidence on this matter. The trial court set the value of the heavy equipment at one hundred thousand pesos (P100,000) after finding that essential parts of the engine were already removed at the time of its discovery.

Aggrieved, petitioner appealed the case to the CA.

⁶ Id. at 119-120.

⁷ Id. at 120-121.

⁸ Id. at 126.

Ruling of the CA

On July 30, 2013, the appellate court rendered the assailed Decision upholding the findings of the trial court, the dispositive portion of which reads:

WHEREFORE, premises considered, the decision appealed from is hereby **AFFIRMED** in toto.

SO ORDERED.⁹

Petitioner filed a Motion for Reconsideration but the CA denied the same in the assailed Resolution, ruling that the arguments raised had already been considered and thoroughly discussed in the assailed Decision.

Hence, the present petition.

The Issues

Petitioner raised the following assignment of errors:

I.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER FOR VIOLATION OF PRESIDENTIAL DECREE NO. 1612, OTHERWISE KNOWN AS THE ANTI-FENCING LAW OF 1979 BECAUSE THE CRIME OF THEFT HAS NOT BEEN PROVEN IN COURT AND THE PERSON ACCUSED OF THEFT IS AT-LARGE OR A FUGITIVE FROM JUSTICE.

II.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER NOTWITHSTANDING THE FACT THAT HE IS A PURCHASER FOR VALUE AND IN GOOD FAITH, WITHOUT INTENT TO GAIN.

III.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED WHEN IT CONSIDERED THE MEMORANDUM RECEIPT OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS AS EVIDENCE OF OWNERSHIP OF THE KOMATSU ROAD GRADER.

⁹ Id. at 41.

IV.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER EVEN IF HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.¹⁰

In its Comment,¹¹ public respondent raised the following issues:

I.

ALL THE ELEMENTS FOR THE OFFENSE OF VIOLATION OF THE ANTI-FENCING LAW AND THE GUILT OF PETITIONER WERE ESTABLISHED AND PROVED BY THE PROSECUTION BEYOND REASONABLE DOUBT.

II.

THE FACTUAL ISSUES RAISED BY PETITIONER DO NOT FALL UNDER THE RECOGNIZED EXCEPTIONS TO THE RULE THAT ONLY QUESTIONS OF LAW MAY BE ENTERTAINED IN A PETITION FOR REVIEW ON CERTIORARI UNDER RULE 45 OF THE RULES OF COURT.

The basic issue in the instant case is whether or not the CA erred in sustaining the petitioner's conviction. Central to resolving this issue is determining whether or not the elements of the crime of fencing were established by the prosecution.

The Court's Ruling

The petition is impressed with merit.

The following are the essential elements of the crime of fencing:

1. A crime of robbery or theft has been committed;
2. The accused, who is not a principal or 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

¹⁰ Id. at 15-16.

¹¹ Id. at 234-254.

4. There is on the part of the accused, intent to gain for himself or for another.¹²

In the present case, the trial court relied heavily on the testimony of Engr. Gulmatico in finding that all elements of fencing exist. The trial court said:

In the instant case the Court finds that the prosecution has established the existence of the first, second, third and fourth elements. A theft was committed when Petronilo Banosing took subject (sic) heavy equipment from Facoma Compound in Norala, South Cotabato on January 16, 1997 and a case for Theft or Criminal Case No. 275 was filed. The stolen heavy equipment, after a search warrant was issued, was found in the premises of Basco Metal Supply owned by the accused, Mariano Lim, located at Km 3, Matina, Davao City. Basco Metal Supply is in the business of buying used equipment.¹³

This Court has honored the principle that an appeal in a criminal case opens the whole action for review on any question including those not raised by the parties. The reason for this rule is that every circumstance in favor of the accused should be considered.¹⁴

After a careful and thorough review of the records, we are convinced that the trial court erred in convicting herein petitioner.

On the first element, we find that the prosecution failed to establish that theft had been committed.

Theft under Article 308 of the Revised Penal Code has been defined as the taking of someone's property without the owner's consent, for his personal gain, and without committing any violence against or intimidation of persons or force upon things. 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.¹⁵

While the CA correctly ruled that conviction of the principal in the crime of theft is not necessary for an accused to be found guilty of the crime

¹² *Norma Dizon-Pamintuan v. People of the Philippines*, G.R. No. 111426, July 11, 1994, 234 SCRA 63.

¹³ *Rollo*, p. 122.

¹⁴ *People of the Philippines v. Erlindo Yam-Id alias "Ely"*, G.R. No. 126116, June 21, 1999.

¹⁵ *Luis Marcos P. Laurel v. Hon. Zeus C. Abrogar, Presiding Judge of the Regional Trial Court, Makati City, Branch 150; People of the Philippines & Philippine Long Distance Telephone Company*, G.R. No. 155076, January 13, 2009.

of fencing, we disagree with its ruling that the prosecution sufficiently proved the DPWH's ownership of the Komatsu Grader.

During trial, the prosecution presented the testimony of Engr. Gulmatico, the project engineer for the SRRIP of the DPWH. Engr. Gulmatico testified on his discovery of the theft of one unit Komatsu Road Grader with engine number GD95L-55845 allegedly owned by the DPWH. However, except for his statement that the subject grader was procured by his office, Engr. Gulmatico failed to establish his or his office's ownership over the subject grader. Thus:

PROS. BELO

Q The subject of this case for violation of Anti Fencing law against the person of Mr. Mariano Lim is a one unit Komatsu Road Grader with engine number GD95L-55845, can you tell us if you are familiar with this particular unit?

A Actually, this grader was assigned to us sometime [in] 1989 it [was] lost 10 years after.

Q Tell us who was the accountable officer of this particular unit when it was lost?

A It was already M.R. to me during that time.

Q Do you have any evidence that the same unit (sic) or there was a Memorandum Receipt already issued to you?

A Yes, sir.

Q I am showing to you a document already marked as Exhibit "A" for the prosecution, tell us if this is the document, [M]emorandum Receipt you are referring to?

A Yes, sir.

Q May we pray, Your Honor, that the item indicated/described in this Memorandum Receipt be ordered marked as Exhibit "A-1". (So marked)

Q From whom did you receive this unit of which a Memorandum Receipt was issued to you?

A From the previous project engineer, sir.

Q There is a signature appearing over the name GERMENIO GULMATICO, tell us whose signature that, is that your signature?

A Yes, sir, that is my signature.

Q This signature indicates that you received the item under your accountability?

A Yes, sir.¹⁶

On cross-examination, Engr. Gulmatico admitted that he received no confirmation from the DPWH Manila office as to who purchased the subject grader:

ATTY. CHUA

Q You [are] also aware Mr. Witness that there are no markings because the unit was originally purchased by the World Bank?

A Actually, sir, there are markings we have engraved before but because the equipment was continuously used, it got erased, sir, we have three dump trucks, we have many equipments and we have marked it DPWH but because of the time that had past it got erased and considering the manner and the job that we are using it. Actually, the front of the grader [is] marked SRRIP, during that time but at that time that it was lost, it was erased when it was turned over to us.

Q But [can you] reiterate the fact that when it was MR to you there was no identification marks?

A Yes.

Q And of course you are not the person who erased those marks?

A Yes.

Q And you also admit going back to my earlier question that this unit was purchased by the World Bank?

A I don't know, sir what was the condition with our Office at Manila but as far as I know that our project was funded by the World Bank and I think the procurement was done in Manila, so it might be the World Bank or at the request of our office as funded by the World Bank.

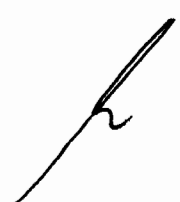
Q But you will admit that this particular SRRIP project was funded by the World Bank?

A Yes, sir.

Q Did you try to check with your DEPO in Cotabato City or in your Port Area Office in Manila whether this particular unit was one of those listed in the inventory of the DPWH, did you check?

A Actually, sir, I have some request in Manila that they will furnish us the original acquisition cost but the people in Manila do not give us time to that thing (sic), perhaps this might be the third time that I will have to request so that our Office can avail of those things and we can say further about it, sir.

¹⁶ TSN, April 10, 2001, pp. 4-5; rollo, pp. 165-166.



Q Did you not try to write or inquire from the Project Director Paliamen Mamaente of the Project Management Office of your department in port area whether this unit was actually purchased by the World Bank?

A Yes, I have, sir.

Q What was the reply of project Director Mamaente, if any?

A I did not receive any [reply], sir.¹⁷ x x x

Even the Memorandum Receipt submitted by the prosecution and relied upon by the trial court is wanting. Nowhere in the Memorandum Receipt does it state that the subject grader is owned by the DPWH. The portions which should show the date acquired, property number, classification number, and unit value for the grader were left blank. At best, the Memorandum Receipt is a mere indicator that the subject grader was received by Engr. Gulmatico for his safekeeping and responsibility.

Being the government agency in charge of construction projects, the DPWH is expected to have a database of all equipment and materials it uses for easy reference of its employees. The prosecution's failure to present a sufficient proof of ownership of the grader despite the many opportunities it had to do so places doubt on the DPWH's claim of ownership. Thus, it cannot be said that the first element of fencing had been established.

In fact, the prosecution even failed to conclusively establish that the grader had been stolen. Engr. Gulmatico's testimony on the alleged act of theft should not be given any weight considering that he had no personal knowledge of the actual theft. Most, if not his entire testimony, consisted of hearsay evidence as he relied mostly on the information given to him by various persons, to wit:

PROS. BELO

Q While under your accountability, can you recall if anything happened [with] this particular unit?

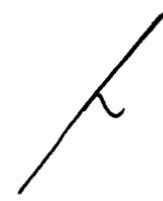
A On January 26, 1997, I was informed by my driver that this said grader was previously lodged for repair in the compound of Petronilo Banosing in the evening of January 26, 1997.

Q Can you still recall who informed you of the taking of this unit by one Petronilo Banosing?

A Yes, sir, it was my driver because I [told] him to visit once in a while our area in Nohralla.

Q Can you tell us what is the name of the driver?

¹⁷ TSN, April 10, 2001, pp. 18-20; *rollo*, pp. 179-181.



A Yes, Venecio Calderon.

x x x x

Q After you were informed of the fact that the item subject of this case was stolen, what action if any, did you take?

A During the filing of the case, we [waited] for almost two days and during that time, **Mr. Basilio Elaga, owner of the Pakoma Compound informed me** that a Ten Wheeler Truck coming from Isulan was the transportation used in taking that grader, so after two days of filing, we contacted all operators in Isulan and we found out a ten wheeler truck with plate no. MB8116 driven by Mr. Ricardo Mamon and being assisted by Mr. Digdigan as the grader was being transported to [an] unknown place.

Q Were you able to determine thereafter as to where the item was brought?

A When I conducted a thorough investigation and inquiries to **the truck helper, he informed me** that said grader was transported to Davao City, particularly it was dropped down at Km. 3, Mac Arthur Highway, Matina, Davao City.¹⁸ x x x (emphasis supplied)

Even upon clarificatory questioning by the trial court judge, Engr. Gulmatico's answers were still based on information provided to him by third persons, as follows:

COURT

Q **You said that you first learned of the fact of its having been stolen when your driver informed you that it was so stolen?**

A **Yes.**

Q After you received this information from your driver, you made inquiries as regards how it was stolen from the Pacoma Compound?

A Yes.

Q And the results of your inquiries showed that it was taken by a [ten] wheeler driven by Ricardo Mamon who [was] accompanied by Ronnie Digdigan?

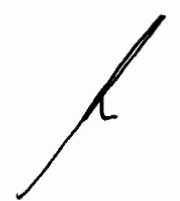
Q **After receiving this information, you were able to talk to this people?**

A **No, it was only Ronnie Digdigan, the helper.**

Q **This Digdigan informed you that the grader was transported to Davao City?**

A **Yes.**

¹⁸ TSN, April 10, 2001, pp. 6-8; *rollo*, pp. 167-169.



Q He specified to whom it was delivered?

A Yes, he told us that he dropped it at the compound near Robin Marketing at Km. 3, Matina, Davao City.

Q Did you ask from Digdigan who hired them to transport this grader?

A Yes.

Q What did Digdigan tell you?

A He told me that it was Nilo Banosing who hired them to get it from Pacoma.¹⁹ x x x (emphasis supplied)

Sec. 36, Rule 130 of the Rules of Court provides that witnesses can testify only with regard to facts of which they have personal knowledge; otherwise, their testimonies would be inadmissible for being hearsay.²⁰ Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath.²¹

Consequently, hearsay evidence, whether objected to or not, has no probative value unless it is shown that the evidence falls within any of the exceptions to the hearsay rule as provided in the Rules of Court.²² However, none of the exceptions applies to the present case.

A cursory reading of Engr. Gulmatico's testimony shows that his statements pertaining to the alleged theft are all based on information which he claims to have received from third persons, all of whom were never presented to testify under oath in court. Thus, it was erroneous for the trial court to give probative value on Engr. Gulmatico's testimony considering that the truth and credibility of such statements cannot be ascertained for being mere hearsay.

Even assuming *arguendo* that theft had been committed, the third element of fencing is wanting in this case.

In ruling that petitioner knew or should have known that the grader was the object of theft, the trial court held that petitioner was unable to rebut the presumption under PD 1612, thus:

¹⁹ TSN, April 10, 2001, pp. 35-37; *rollo*, pp. 196-198.

²⁰ *Melanio Mallari y Liberato v. People of the Philippines*, G.R. No. 153911, December 10, 2004; citing *People of the Philippines v. Manhuyod Jr.*, 352 Phil. 866 (1998).

²¹ *Rogelio Dantis v. Julio Maghinang, Jr.*, G.R. No. 191696, April 10, 2013.

²² *Melanio Mallari y Liberato v. People of the Philippines*, G.R. No. 153911, December 10, 2004; citing *People of the Philippines v. Sacapaño*, 372 Phil. 543 (1999) and *People of the Philippines v. Crispin*, 383 Phil. 919 (2000).

Accused was unable to rebut the presumption under PD1612. The Certificate of Ownership executed by seller is unavailing. Suffice it to state that said document being self-serving should not have been relied upon by the accused. It might even be stated that this document should have made him even more wary that the seller did not own the heavy equipment sold to him. The unauthenticated list of equipment purportedly prepared by the DPWH that did not include the heavy equipment and submitted by the accused as part of his defense is also unavailing. Put simply, he verified with the DPWH its ownership of the heavy equipment long after the instant case was filed. What is more, the list he presented was merely a photocopy whose authenticity is doubtful. Under Section 6 of PD 1612, what he should have done was to secure a clearance/permit from the police.²³

The trial court ruled that petitioner should not have relied upon the Certificate of Ownership presented by Banosing as it is self-serving. Instead, petitioner should have secured a clearance or permit from the police, in compliance with Sec. 6 of PD 1612.

The CA went even further and placed the burden on petitioner, stating:

In this case, the accused-appellant is engaged in buying and selling equipment as the proprietor of Basco Metal Supply. As a businessman who regularly engaged in buying and selling equipment, the accused-appellant should have exercised more diligence and prudence in ascertaining whether Petronilo Ban[o]sing was indeed the real owner of the Komatsu Grader. Moreover, the circumstances of the sale should have put the accused-appellant on guard and should have impelled him to exercise more caution in dealing with Petronilo Ban[o]sing who was selling not an ordinary run down equipment but a heavy duty Komatsu grader which can only be owned by a select few who engage in land development. Instead, the accused-appellant simply relied on the Affidavit of Ownership and the representations of Petronilo Ban[o]sing that he was a contractor, which is but a last ditch attempt, albeit futile, to exculpate himself from criminal liability.²⁴

We disagree.

On the presumption that fencing had been committed as provided by Sec. 5 of PD 1612, we rule that petitioner was able to overcome the same upon his presentation of the Affidavit of Ownership which he secured from Petronilo Banosing.

Both the RTC and the CA failed to consider that the Affidavit of Ownership given by Petronilo Banosing to petitioner was a duly notarized

²³ *Rollo*, pp. 124-125.

²⁴ *Id.* at 40.

document which, by virtue of its notarization, enjoys a presumption of regularity, as elaborated in *Ocampo v. Land Bank of the Philippines*:

It is well settled that a document acknowledged before a notary public is a public document that enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be presented evidence that is clear and convincing. Absent such evidence, the presumption must be upheld. In addition, one who denies the due execution of a deed where one's signature appears has the burden of proving that contrary to the recital in the *jurat*, one never appeared before the notary public and acknowledged the deed to be a voluntary act. We have also held that a notarized instrument is admissible in evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity.²⁵ (citations omitted)


Respondent argues that the presumption of regularity of the notarized Affidavit of Ownership had been overturned. We rule otherwise. As pointed out by respondent, to overcome the presumption of regularity of notarized documents, it is necessary to contradict it with "evidence that is clear, convincing and more than merely preponderant." Contrary to respondent's assertion, the ownership of the subject grader was not conclusively established by the prosecution. As earlier stated, Engr. Gulmatico was unable to confirm its ownership in his testimony. Further, the Memorandum Receipt also failed to establish this. Despite the many opportunities to submit additional proof of ownership, the prosecution failed to do so.

The trial court also erred in applying Sec. 6 of PD 1612 to the present case:

While one who is in possession of the proceeds of robbery or theft is presumed to have knowledge of the fact that said items were stolen or (sic) PD 1612 provides a safeguard or a protection for a would be buyer of second hand articles. Thus, Section 6 of said law provides:

"SEC. 6. Clearance/Permit to Sell/Used Second Hand Articles. For purposes of this Act, all stores, establishments or entities dealing in the buy and sell of any good, article item, object of anything of value obtained from an unlicensed dealer or supplier thereof, shall before offering the same for sale to the public, secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where such store, establishment or entity is located. The Chief of Constabulary/Director General, Integrated National Police shall promulgate such rules and regulations to carry out the provisions of this section. Any person who fails to secure the clearance or permit required by this section or who violates any of the

²⁵ G.R. No. 164968, July 3, 2009, 591 SCRA 562, 571-572.



provisions of the rules and regulations promulgated thereunder shall upon conviction be punished as a fence.”

The aforementioned section simply means that a person who is engaged in the buying and selling of an item from an unlicensed dealer or supplier shall, before offering the same for sale to the public[,] secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where such establishment or entity is located and any person who fails to secure the clearance or permit required by this section, shall upon conviction be punished as a fence. (underscoring in the original)

x x x Under Section 6 of PD 1612, what he should have done was to secure a clearance/permit from the police.²⁶

It appears that both the RTC and the CA ruled that petitioner should have first secured a clearance or a permit from the police, in compliance with Sec. 6 of PD 1612. However, said provision is inapplicable to the present case.

Sec. 6 of PD 1612 provides:

SEC. 6. Clearance/Permit to Sell/Used Second Hand Articles. For purposes of this Act, **all stores, establishments or entities dealing in the buy and sell of any good, article, item, object or anything of value** obtained from an unlicensed dealer or supplier thereof, **shall before offering the same for sale to the public**, secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where such store, establishment or entity is located. The Chief of Constabulary/Director General, Integrated National Police shall promulgate such rules and regulations to carry out the provisions of this section. Any person who fails to secure the clearance or permit required by this section or who violates any of the provisions of the rules and regulations promulgated thereunder shall upon conviction be punished as a fence. (emphasis supplied)

Clearly, the clearance stated in Sec. 6 of PD 1612 is only required if several conditions are met: *first*, that the person, store, establishment or entity is in the business of buying and selling of any good, article, item, object, or anything of value; *second*, that such thing of value was obtained from an unlicensed dealer or supplier thereof; and *third*, that such thing of value is to be offered for sale to the public.

In the present case, the first and third requisites were not met. Nowhere was it established that petitioner was engaged in the business of buy and sell. Neither was the prosecution able to establish that petitioner intended to sell or was actually selling the subject grader to the public.

²⁶ Rollo, pp. 124-125.

During his cross-examination, petitioner testified:

PROS. SEPULVEDA

Q What business are you engaged in?

A I am buying used equipment.

Q Such as grader?

A Yes.²⁷

Despite the lack of evidence supporting such conclusion, the CA even made a presumption that petitioner was engaged in the business of buy and sell in the assailed Decision, thereby erroneously applying Sec. 6, to wit:

In this case, **the accused-appellant is engaged in buying and selling equipment** as the proprietor of Basco Metal Supply. **As a businessman who regularly engaged in buying and selling equipment**, the accused-appellant should have exercised more diligence and prudence in ascertaining whether Petronilo Ban[o]sing was indeed the real owner of the Komatsu Grader. x x x

x x x The accused-appellant, who is engaged in the business of buying and selling equipment, clearly purchased the Komatsu Grader (sic) with the intention of re-selling the grader and its parts for profit.²⁸

It is puzzling how the CA arrived at this conclusion when nowhere in the testimonies of the witnesses was it shown that petitioner intended to re-sell the subject grader to the public. The fact that the subject grader was not intended to be sold to the public is even further bolstered by the prosecution's witnesses' discovery that the grader was found in several pieces and in different locations within petitioner's compound. Thus, it was erroneous for the CA to make such a conclusion when the evidence presented does not support it.

Furthermore, requiring petitioner to secure the police certification is an act of futility considering that at the time when the subject grader was being offered to petitioner, no police report of the alleged theft has yet been made. To recall, petitioner purchased the subject grader from Petronilo Banosing on January 17, 1997, as evidenced by the Deed of Sale of the same date.²⁹ Yet, it was only on January 26, 1997 that Engr. Gulmatico discovered the alleged theft:

²⁷ TSN, July 19, 2004, pp. 12-13; *rollo*, pp. 215-216.

²⁸ *Rollo*, p. 40.

²⁹ TSN, July 19, 2004, pp. 4-5; *rollo*, pp. 207-208.

PROS. BELO

Q While under your accountability, can you recall if anything happened in this particular unit?

A On January 26, 1997, **I was informed by my driver** that this said grader was previously lodged for repair in the compound of Petronilo Banosing in the evening of January 26, 1997.³⁰

Engr. Gulmatico further testified that he only reported the matter to the police on January 27, 1997, or 10 days after the subject grader was already sold to herein petitioner, as follows:

PROS. BELO

Q After you were informed that this was taken by somebody, what action, if any, did you take?

A January 26 was a Monday so I went to the district the next day to file a case or gather information (sic) about the Nohralla and after the inquest there we found out that one Petronilo Banosing was the culprit and we file[d] a case against him before Judge Ayko.³¹

Thus, even if petitioner had secured the police clearance in compliance with Sec. 6 of PD 1612, it would not have shown that the grader was stolen since no theft had yet been reported at that time.

It is also worthy to note that, due to the prosecution's failure to present any evidence on the grader's actual value, the trial court assessed its value at one hundred thousand pesos (P100,000) since parts of the engine were already missing at the time of its recovery. However, petitioner testified that he paid Petronilo Banosing the amount of four hundred thousand pesos (P400,000). The disparity in the assessed value of the grader and the amount paid by petitioner would show that petitioner believed in good faith in the representations of Petronilo Banosing. Indeed, it is contrary to common human experience for a businessman to pay a consideration much higher than the actual value of an item unless he was made to believe otherwise.

Finally, we find that the conviction of petitioner violated his constitutional right to be informed of the nature and cause of the accusation against him.

In *Andaya v. People of the Philippines*,³² we ruled that:

³⁰ TSN, April 10, 2001, p. 6; *rollo*, p. 167.

³¹ TSN, April 10, 2001, p. 7; *rollo*, p. 168.

³² G.R. No. 168486, June 27, 2006.

It is fundamental that every element constituting the offense must be alleged in the information. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.

The Information charging petitioner reads:

That on or about January 16, 1997, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being then the proprietor of Basco Metal Supply located at Matina, Davao City, with intent to gain for himself, wilfully (sic), unlawfully and feloniously purchased and received for P400,000.00 one (1) unit Komatsu Road Grader with Chassis Model and Serial No. GD-51R-100049 and bearing an (sic) Engine Serial Number 6D951-55845 owned by Second Rural Road Improvement Project (SRRIP) PMO-DPWH of Isulan, Sultan Kudarat, being lodged for repair at the Facoma Compound of Poblacion Norala, South Cotabato, and possessed the same, **knowing that said Komatsu Road Grader was stolen**, thereby committing an act of fencing in violation of the Anti-Fencing Law of 1979, to the damage and prejudice of the aforesaid complainant in its true value of P2,000[,],000.00.

CONTRARY TO LAW.³³ (emphasis supplied)

The Information presumes that petitioner knew of the alleged theft of the subject grader, pertaining to the first part of the third element of the crime of fencing, to wit:

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.³⁴ (emphasis supplied)

The trial court, however, convicted petitioner on the ground that he should have known that the subject grader was derived from the proceeds of theft, pertaining to the second part of the third element:

³³ *Rollo*, p. 32.

³⁴ *Norma Dizon-Pamintuan v. People of the Philippines*, G.R. No. 111426, July 11, 1994, 234 SCRA 63.


Accused was unable to rebut the presumption under PD1612. The Certificate of Ownership executed by seller is unavailing. Suffice it to state that said document being self-serving should not have been relied upon by the accused. **It might even be stated that this document should have made him even more wary that the seller did not own the heavy equipment sold to him.** The unauthenticated list of equipment purportedly prepared by the DPWH that did not include the heavy equipment and submitted by the accused as part of his defense is also unavailing. Put simply, he verified with the DPWH its ownership of the heavy equipment long after the instant case was filed. What is more, the list he presented was merely a photocopy whose authenticity is doubtful. Under Section 6 of PD 1612, what he should have done was to secure a clearance/permit from the police.³⁵ (emphasis supplied)

From the foregoing, we find that the CA erred in affirming the trial court's findings and in convicting herein petitioner. It is necessary to remember that in all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove **each and every element of the crime charged in the information** to warrant a finding of guilt for the said crime.³⁶ Furthermore, the information must correctly reflect the charges against the accused before any conviction may be made.

In the case at bar, the prosecution failed to prove the first and third essential elements of the crime charged in the information. Thus, petitioner should be acquitted due to insufficiency of evidence and reasonable doubt.

WHEREFORE, the Decision dated July 30, 2013 and the Resolution dated February 28, 2014 of the Court of Appeals in CA-G.R. CR No. 00740-MIN, affirming the Decision dated February 17, 2009 issued by the Regional Trial Court of Davao City, Branch 8, which found petitioner Mariano Lim guilty beyond reasonable doubt of violating Presidential Decree No. 1612, otherwise known as the Anti-Fencing Law of 1979, are hereby **REVERSED** and **SET ASIDE**. Petitioner Mariano Lim is hereby **ACQUITTED** based on insufficiency of evidence and reasonable doubt.

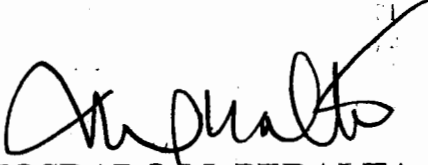
SO ORDERED.

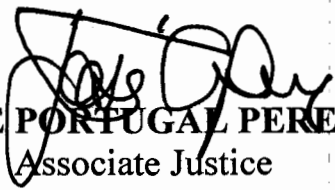

PRESBITERO J. VELASCO, JR.
Associate Justice

³⁵ *Rollo*, pp. 124-125.


³⁶ *Noe S. Andaya v. People of the Philippines*, G.R. No. 168486, June 27, 2006.

WE CONCUR:


DIOSDADO M. PERALTA
 Associate Justice



JOSE PORTUGAL PEREZ
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice


ESTELA M. PERLAS-BERNABE
 Associate Justice

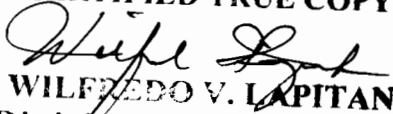
ATTESTATION


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

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.

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division


ANTONIO T. CARPIO
 Acting Chief Justice

NOV 14 2016