THIRD DIVISION

G.R. No. 218969 – FERNANDO PANTE *y* RANGASA, *Petitioner*, v. PEOPLE OF THE PHILIPPINES, *Respondent*.

Promulgated:

January 18, 2021

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SEPARATE CONCURRING OPINION

DELOS SANTOS, *J.*:

I concur with the *ponencia* ably-written by my esteemed colleague, Associate Justice Ramon Paul L. Hernando, and submit this Opinion to express my thoughts and stress on some particular points.

Petitioner Fernando Pante *y* Rangasa (Pante) was charged with theft under Article 308, paragraph 2 (1), of the Revised Penal Code (RPC), which provides:

> **Article 308.** Who are liable for theft. x x x
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> Theft is likewise committed by:
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> 1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
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> x x x x

Reading the above provision, it is noteworthy that it does not matter if the finder knows the true owner of the lost property for him to be convicted of the crime of theft for failure to return the same. As pointed out in the *ponencia*, the RPC does not require that the thief must know the owner of the lost property; the subject penal provision gives the finder the option to return the lost property not only to the owner thereof but also to the local authorities. This is an apparent change from the second subsection of Article 517 of the 1870 *Codigo Penal*, enforced in the Philippines prior to the effectivity of the Revised Penal Code in 1932, which requires that the finder must have knowledge of the identity of the true owner of the misplaced or lost thing,[1] to wit: "*Son reos de hurto: . . . (2) Los que encontrándose una cosa perdida y sabiendo quién es su dueño se la apropriaren co intención de lucro*"[2] or, if translated, says, "*Those are guilty of theft: . . . . 2. Who, finding*

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[1] See *People v. Avila*, 44 Phil. 720 (1923).

[2] See *Valenzuela v. People*, G.R. No. 160188, June 21, 2007.

a lost thing, and knowing who the owner is, appropriate it with intent to gain."[3]

Relevant to the above discussion is the provision under Article 719 of the New Civil Code of the Philippines which sheds light on a situation where the finder of a lost property does not know the owner of the thing found. It provides:

> **Article 719.** Whoever finds a movable, which is not treasure, must return it to its previous possessor. If the latter is unknown, the finder shall immediately deposit it with the mayor of the city or municipality where the finding has taken place.
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> The finding shall be publicly announced by the mayor for two consecutive weeks in the way he deems best.
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> If the movable cannot be kept without deterioration, or without expenses which considerably diminish its value, it shall be sold at public auction eight days after the publication.
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> Six months from the publication having elapsed without the owner having appeared, the thing found, or its value, shall be awarded to the finder. The finder and the owner shall be obliged, as the case may be, to reimburse the expenses.

As it stands now, the proper thing for a finder of a lost property of unknown owner, except hidden treasure, to do is to return or turn it over to the proper authority, who is the mayor of the city or municipality where the finding has taken place. Thereafter, the provision in Article 719 shall apply. Nevertheless, the failure, *per se,* to turn it over to the mayor does not constitute the crime of theft. *People v. Rodrigo*[4] instructs that there must be a deliberate failure on the part of the finder to return the lost thing. Thus:

> [U]nder paragraph 2, subparagraph (1), the elements are (1) the finding of lost property; and (2) the failure of the finder to deliver the same to the local authorities or to its owner. In this kind of theft intent of gain is inferred from the deliberate failure to deliver the lost property to the proper person, the finder knowing that the property does not belong to him.

As such, if a finder of lost thing of unknown owner turns it over to other local authorities or to any individual with the instruction or intention of returning it to the owner or to the proper authority, he could not be held guilty of the crime of theft. Such action negates the intent not to return the thing to the proper persons, much less an intent to gain or to appropriate the lost property. On the other hand, if the finder uses or appropriates the thing found or keeps the same for an unreasonable period of time, he is certainly guilty of theft. Such action constitutes a deliberate failure to deliver the lost

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[3] *People v. Avila*, supra note 1.
[4] 123 Phil. 310 (1983).

property to the proper persons which is punished under Article 308 paragraph 2 (1).

In this case, the actions of Pante clearly establish that there was a deliberate intention on his part not to return or turn over the lost dollar bills he received from his minor co-accused to the owner or to the proper authority. First, he knew that the dollar bills were not owned but were just found by his minor co-accused.[5] Second, he took a portion of the lost dollar bills, kept the same for a few days, and exchanged them to Philippine Currency.[6] Third, he instructed his minor co-accused not to return the money. Fourth, he used the money to buy JVC component, a gas stove with a tank, a CD cassette, and construction materials.[7] Concomitantly, not only that Pante did not have the intention to return the lost property to the owner or to proper authorities, he likewise appropriated the same for his own gain and benefit. Thus, he is guilty of the crime of theft.

Furthermore, I agree with the *ponencia* in rejecting Pante's argument that he cannot be convicted of theft because he is not a finder of the lost property. The *ponente* has appropriately cited the case of *People v. Avila*[8] to elucidate that the finder under Article 308, par. 2 (1) is not limited to the actual finder or "finder in fact" of the lost property but also extends to the "finder in law" or one who receives the lost property from the actual finder and then appropriates the same or deliberately fails to return it to the owner or to proper authorities.

I must stress, though, that for one to be considered a "finder in law" and be held guilty for the crime of theft, he must have received the lost property from the actual finder who has no intention to appropriate the said property. This is the scenario under which the ruling in *People v. Avila* (*Avila*) was arrived at by the Court. In that case, it was the driver of the *carretela* which actually found the purse containing money, gold coins, and jewels, left by his passenger inside the aforesaid carriage. He, however, handed the purse to the accused therein, who happened to be police officer, and asked him to deliver it to the owner. The accused therein, instead of returning it, appropriated the purse with all its contents. Accordingly, the Court pointed out the principal question in the said case to wit:

> The principal question presented for consideration is one of law x x x. In other words, is this form of theft limited to the actual finder, using the word in its literal and most limited sense, or does it include misappropriation by any one into whose hands the property may be placed by the actual finder for delivery to the true and known owner? x x x

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5 *Ponencia*, p. 3.
6 Id. at 4, 6-7.
7 Id. at 7.
8 Supra note 1.

In ruling that the accused is guilty of theft, the Court in *Avila* held that "the accused occupied towards the purse, from the time he took it into his hands, precisely the same relation as if he had picked it up himself."[9] It underscored that "the accused was a finder in law, if not in fact; and his act in appropriating the property was of precisely the same character as if it had been originally found by him."[10] Citing English and American jurisprudence, the Court further ruled that "one who receives property from the finder thereof assumes, in legal contemplation, by voluntary substitution, as to the property and the owner, the relation occupied by the finder, placing himself in the finder's stead. In such a case, whether the person taking the property in guilty must be determined on the same principles that govern in the case of the actual finder."[11] To further support its stand, the Court cited the American case of *Allen v. State* (*Allen*)[12] and held:

> In [Allen], some children found a pocketbook containing money and certain papers sufficient to identify the owner. Upon arriving home, the children delivered the purse to their father, who converted it to his own use. It was held that the accused was properly convicted and that his guilt was to be determined by the same principles that would have governed if he had been the actual finder. In the course of the opinion the following language was used:
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> > * * * Finding it, and its delivery to the defendant by the finder, did not deprive the money, as to the owner, of the character or *status* of lost property; the ownership remained in him, drawing to it, constructively, the right of possession. When defendant took the money from his children, he knew it had been lost, and took it as such. **It is manifest the children had no felonious intent**, and properly delivered the money to their father for his disposition. By receiving it from his children, knowing it was lost, defendant assumed, in legal contemplation, by voluntary substitution, as to the money and the owner, the relation occupied by the finders, placing himself in their stead. Otherwise a person knowingly receiving lost property from the finder, **who had no intent to steal**, with the felonious intent to appropriate it to his own use, escapes punishment. In such case, whether or not the person taking the money is guilty of larceny must be determined on the same principles which govern in the case of the actual finder.

Based on the foregoing pronouncements and under the circumstances in which *Avila* was decided by the Court, and at the expense of being repetitive, I am of the opinion that for one to be considered a "finder in law" and be held guilty for the crime of theft, he must have received the lost property from the actual finder who has no intention to appropriate the same. I find this compelling to point out due to my humble opinion that if the

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[9] Id.
[10] Id.
[11] Id.
[12] 91 Ala., 19.

actual finder already has the deliberate intention not to return the lost property, then he is the one who should be held liable as a principal in the crime for theft and that the persons who receive or profit from the stolen property should only be considered as a fence, which under our present laws may be punished as an accessory under paragraph 3 of Article 19 of the RPC[13] to the crime of theft, or as a principal in the crime of fencing under Presidential Decree No. 1612,[14] otherwise known as the "Anti-Fencing Law of 1979."[15] Having said that, let me explain why Pante is properly convicted as a principal in the crime of theft and not merely considered as a fence.

It may be recalled that when Pante's minor co-accused found the lost bundle of dollar bills, he went to his cousin, the other minor co-accused, and Pante.[16] At this point in time, there was no deliberate intent yet on the part of said minor co-accused not to return the lost property to its owner or to the proper authorities as the said minor actual finder did not know yet what to do with the money.[17] Then came Pante, who, being the only adult among the accused, got hold of the lost money, took 17 pieces of US$100.00 dollar bills for himself and instructed the two minor co-accused not to return the money.[18] At that moment, by taking a portion of the lost money, Pante became a "finder in law" with respect to the amount he took from the actual finder-minor accused. He assumed, in legal contemplation, the relation occupied by the actual finder with respect to the property and the owner. This obliged him to return the lost and found property to the owner or to the proper authorities. Instead, Pante appropriated the aforesaid amount for himself which makes him liable as principal in the crime of theft. It may not be amiss to point out that it was only after Pante took possession of a portion of the lost property and only after giving instruction to the two minor co-accused to keep the money for themselves that the actual finder-minor accused's intention not to return the money became manifest and deliberate

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[13] Article 19. *Accessories.* - Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime.

2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.

3. By harboring, concealing, or assisting in the escape of the principals of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.

[14] Section 2 of PD 1612 defines Fencing as "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." The same Section also states that a Fence "includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing." (*Cahulogan v. People*, G.R. No. 225695, March 21, 2018)

[15] In *Dizon-Pamintuan v. People* (G.R. No. 111426, July 11, 1994, 234 SCRA 63), the Court held that while a Fence may be prosecuted either as an accessory of Robbery/Theft or a principal for Fencing, there is a preference for the prosecution of the latter as it provides for harsher penalties.

[16] *Ponencia*, pp. 3-4.

[17] Id. at 6-7.

[18] Id. at 3-4, 6-7, 9.

when he acceded to Pante's instruction and began appropriating the money he found.

Based on the foregoing disquisitions, I vote to **DENY** the petition and **AFFIRM** the Decision of the Court of Appeals with **MODIFICATION** as to the penalty imposed against petitioner Fernando Pante *y* Rangasa, as discussed in the *ponencia*.

EDGARDO L. DELOS SANTOS
Associate Justice