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THIRD DIVISION

[G.R. No. 76539. October 11, 1990]

ERKEY PIT-OG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and the HON. JUDGE NICASIO A. BAGUILAT in his capacity as Presiding Judge of the Regional Trial Court of Mt. Province, Branch XXXV**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTION; PRESENT IN CASE AT BAR.** — This Court does not re-examine the facts of a case in a petition for review on *certiorari* under Rule 45 except for unusual reasons which would justify otherwise. One of these reasons is when certain material facts and circumstances had been overlooked by the trial court which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt which would entitle the accused to acquittal. We hold that this case falls under said exception to the rule on the binding effect on this Court of the lower courts' factual findings.

2. **CRIMINAL LAW; THEFT; ELEMENTS.** — Under the first paragraph of Article 308 of the Revised Penal Code, the essential elements of the crime of theft which must be proven beyond reasonable doubt are as follows: (a) the taking of personal property; (b) the property belongs to another; (c) the taking away was done with intent of gain; (d) the taking away was done without the consent of the owner; and (e) the taking away is accomplished without violence or intimidation against person or force upon things.

3. **ID.; ID.; TO PROVE THE CRIME, IT IS INDISPENSABLE TO IDENTIFY THE PERSON WHO, AS A RESULT OF A CRIMINAL ACT, WITHOUT HIS KNOWLEDGE AND CONSENT, WAS WRONGFULLY DEPRIVED OF A THING BELONGING TO HIM.** — It should be emphasized that to prove the crime of theft, it is necessary and indispensable to

Supreme Court E-Library

clearly identify the person who, as a result of a criminal act, without his knowledge and consent, was wrongfully deprived of a thing belonging to him.

APPEARANCES OF COUNSEL

Valentine F. Daoas for petitioner.
The Solicitor General for respondents.

D E C I S I O N

FERNAN, *C.J.*:

Erkey Pit-og, otherwise known as Mary Pit-og, appeals from the decision of the Court of Appeals[1] affirming the decision of the Regional Trial Court of Mountain Province, Branch XXXV at Bontoc which, in turn, affirmed *in toto* the decision of the Municipal Trial Court of Bontoc finding her guilty beyond reasonable doubt of the crime of theft and imposing on her the penalty of four (4) months and twenty (20) days of *arresto mayor* as minimum, to two (2) years, eleven (11) months and ten (10) days of *prision correccional* as maximum, and the payment of the total amount of four thousand pesos as actual and moral damages.

The prosecution's version of the offense charged is as follows:

In Loag, Mainit, Mt. Province, there was a communal land called the *tayan*. It was owned by the *tomayan* group whose members were descendants of the original owners thereof named Jakot and Pang-o.[2] Septuagenarian Pel-ey Cullalad was one of their descendants. On September 24, 1976, he was requested by the *tomayan* to act in their behalf in selling a 400-square-meter residential portion of the *tayan*, in order that the *tomayan* would have something to butcher and eat during a celebration

[1] The Court of Appeals has not been named as a nominal party in the instant petition.

[2] TSN, June 8, 1984, p. 14; September 28, 1984, p. 31.

Supreme Court E-Library

called *ato*.[3] The sale was made in favor of Edward Pasiteng, whose house had been built thereon.

The deed of sale states that that sale was made in consideration of the sum of One Thousand Five Hundred Pesos (₱1,500) representing the value of one big cow that was butchered for the benefit of the *tomayan*.[4] It is also agreed therein that the unregistered property would be registered under Section 194 of the Revised Administrative Code as amended by Act No. 3344. Besides Pel-ey Cullalad, several members of the *tomayan* affixed their signatures or thumbmarks on the deed of sale which was notarized by the mayor of Bontoc.

Thereafter, Edward Pasiteng declared the property as his own for taxation purposes[5] and paid taxes thereon.[6]

Sometime before Christmas day in 1983, 12-year-old Leonard Marcos and 9-year-old Jessie Comicho, were left by their grandparents, Edward Pasiteng and Gablay Pasiteng, in their house in the *tayan*. According to Leonard, at around 9:00 o'clock in the morning, he saw Erkey Pit-og and more than three other persons cutting down sugarcane and banana trunks. They did the cutting for more than thirty (30) minutes. Erkey did not ask his permission and Leonard was afraid that they might whip him if he prevented them from cutting the plants. Erkey and her companions then took away the sugarcane and the banana plants.[7]

According to Jessie, he was with his cousin Leonard munching sugarcane inside the granary while their grandfather Edward was out hunting and their grandmother was in Colayo. Then he saw his aunt, Erkey Pit-og, and her companions destroy the fence and cut down the sugarcane and the banana plants. Later on, they took away the sugarcane and the banana fruits.[8]

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[3] TSN, September 28, 1984, p. 31.

[4] Exh. A.

[5] Exhs. B & C.

[6] Exh. D.

[7] TSN, October 26, 1984, pp. 39-42.

[8] TSN, December 7, 1984, pp. 47-49.

Supreme Court E-Library

Edward Pasiteng arrived home at around 5:00 o'clock on a Friday afternoon after two (2) days of hunting. As he was about to take a bath, he noticed that his fence made of sticks and wood and erected around three (3) meters away from his house, had been destroyed and that his sugarcane and banana plants had been cut down. He learned from his grandchildren, Leonard and Jessie, that his niece, Erkey Pit-og, and her companions had taken away around 300 pieces of sugarcane worth ₱1,000 and one bunch of banana plants (sic) valued at ₱100. The destroyed fence was worth ₱900.[9]

He had planted the sugarcane in the third week of March, 1983. He had also planted the bananas and erected the fence. Although the land on which the sugarcane and the bananas were planted was communal, he had been in possession thereof for more than 25 years before it was sold to him by the *tomayan*.

Edward reported the matter to the police. On December 12, 1983, Edward and his grandsons, Leonard and Jessie, executed sworn statements before a police investigator.[10] Three days later, the police filed a complaint for theft against Erkey Pit-og in the Municipal Trial Court of Bontoc. It states:

"That on or about December 1983, at Barangay Mainit, Bontoc, Mountain Province, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent of gain did then and there wilfully, unlawfully and feloniously take, steal and carry away about Three Hundred (300) pieces of sugarcane and one bunch of banana fruit belonging to one EDWARD PASITENG without his knowledge and consent and to the damage and prejudice of said offended party in the total amount of Two Thousand Pesos (₱2,000.00) Philippine Currency.

"CONTRARY TO LAW."[11]

Erkey Pit-og pleaded not guilty to the offense charged. At the trial, the defense came up with the following:

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[9] TSN, June 8, 1984, p. 5.

[10] Exhs. E, F & G.

[11] p. 1, Original Records.

Supreme Court E-Library

The *tayan* belonged to the descendants of Jakot. Accused was one of them but she did not declare the land for taxation purposes because no one in the *tomayan* was allowed to declare the land as his own. However, any member of the *tomayan* could make improvements on the land and claim them as his own. Anyone who abandoned the land would be succeeded only by other members. No person outside the *tomayan* could succeed to the cultivation of the *tayan*.

Her father being a descendant of Jakot, Erkey Pit-og belonged to the *tomayan*. Some of the members were prosecution witnesses Pel-ey Cullalad and Theodore Sagudang. Erkey was born in the *tayan* but her family later transferred to Arupey. Erkey's father, Lobchoken, planted sugarcane in the *tayan* in Loag after their transfer to Arupey. When Lobchoken died, his widow Pidchoy and their children continued cultivating the land. They also built a granary thereon.[12] The land was later given to Erkey by Pidchoy for cultivation. Thereafter, the family allowed Edward Pasiteng to build a house behind the place where Erkey and her family used to have a house because Edward was Erkey's uncle being the brother of her father.[13]

Erkey planted the bananas and avocado trees in the area. There used to be ten avocado trees but only six remained because Edward cut the rest. She harvested the sugarcane which they made into wine, through the *og-ogbo*, a sort of *bayanihan* effort wherein barriomates helped each other in farm work. No one had ever prevented them from cutting the sugarcane and the other plants except in one instance when Donato Pasiteng, the son of Edward, cut some of her banana plants. Erkey sued him as a result of this incident.[14]

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[12] Exh. 4.

[13] According to Edward, he was born of the second marriage of Lomaksao, while the father of Erkey was Lomaksao's son by his first marriage (TSN, October 11, 1985, pp. 110-111). Hence, Edward and Erkey's father were half-brothers.

[14] Erkey filed Crim. Cases Nos. 1051 & 1052 for malicious mischief and grave threats against Donato Pasiteng in the municipal trial court of Bontoc but the cases were provisionally dismissed after the parties agreed to resume their former good relationship (*Rollo*, p. 82).

Supreme Court E-Library

Galingan Wanawan and Benedict Fangki corroborated the testimonies of Erkey and her mother. Wanawan swore that he used to pass by the *tayan* and see Erkey cleaning it. He knew that the sugarcane was planted by Erkey's father but the bananas were planted by Erkey and her husband. Fangki was one of Erkey's barriomates who helped her cut the allegedly stolen sugarcane.

The municipal trial court discredited Erkey's story emphasizing that her claim of continuous occupation and possession of the land was baseless as she had "no papers to show" or prove such claim.[15] It found that all the elements of theft under Article 308 of the Revised Penal Code were present and accordingly rendered the aforementioned judgment of conviction.

On appeal, the Regional Trial Court of Mountain Province affirmed the municipal trial court and held:

"From the above facts gathered by this court, the following conclusions had been made x x x. That the claim of complainant over the land where the plants (sugarcane and bananas) were supposedly located, is more credible considering that complainant's claim of ownership over the land and naturally the plants thereon is documented. Exh. "A" is a public document, a Deed of Conveyance, showing the transfer of the lot where the plants in question are located to complainant Edward Pasiteng by one Pel-ey Cullalad, allegedly the eldest of the '*tomayan*' group who are the owners of the land in dispute, and witnessed by most if not all the members of the '*tomayan.*' Even accused herself admits that those involved in the sale are indeed heirs and members of the '*tomayan*'; and as testified to by Pel-ey Cullalad, the sale of the area in question was made in favor of complainant, following the decision of the '*tomayan*' group due to the long occupation of the area and the improvements such as the house, the fence and the plants introduced by complainant. Furthermore, complainant's possession over the property is also constructively supported by his tax declarations marked Exh. "B" and "C" and his realty tax payment marked Exh. "D". Speaking of tax payments, our Honorable Supreme Court ruled that tax receipts are strong evidence of possession as no one in his right mind would

[15] Record, p. 156.

Supreme Court E-Library

pay realty taxes year after year for property not in his actual possession.[16]

"On the other hand, accused does not have a single document to show her alleged possession of the area in question. In spite of the claim of accused that she occupied the area in dispute for over twenty (20) years she never declared the property in her name. In this aspect our Supreme Court in the case of *Cruzado vs. Bustus and Escaler*, 34 Phil. 17, said: 'The failure to declare land for taxation shows claimant did not believe himself to be owner.' If the claim of accused has any basis at all, why did she not file ejection proceedings against complainant, or an action to annul Exh. "A" considering that complainant is not a member of the '*tomayan*' and that complainant allegedly built his house without permission. On top of this, why did accused allow Edward Pasiteng, the complainant, to fence the area including the sugarcane, the bananas and the avocado trees if indeed she and her parents were the ones who planted them?"

Alleging that the lower courts erred in ruling that Pasiteng's claim over the land was more credible, that the elements of theft are lacking in this case, and that, inasmuch as there was no criminal intent on the part of the accused, the instant case is purely civil in nature, Erkey Pit-og filed a petition for review on *certiorari* in the Court of Appeals. In its decision[17] of October 16, 1986, said appellate court affirmed *in toto* the decision of the lower courts with the following findings and observations:

"A review of the records clearly shows that private complainant is a possessor in good faith in concept of an owner over the lot where the crops in question were planted. As found by the court *a quo*, his claim of ownership is documented by a Deed of Conveyance (Exh. "A"), a public document which was executed between him and the members of the *tomayan* group of Arnab, Mainit, Bontoc, Mt. Province on 24 September 1979. The validity of this public document has never been question(ed) by any one of the previous owners belonging to the *tomayan* group. Furthermore, the tax declarations in the name of (Exhs. "B" and "C") and the realty tax payments by,

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[16] *Ramos vs. Court of Appeals*, 112 SCRA 543.

[17] Luis A. Javellana, *J.*, *ponente* with Crisolito S. Pascual and Ricardo L. Pronove, *JJ.*, concurring.

Supreme Court E-Library

Edward Pasiteng, (Exh. "D"), although not conclusive proofs of ownership, are, nevertheless, *prima facie* evidence of his possession of the land in question, as against petitioner, for, he would not be paying taxes on the land unless he was in possession thereof and deriving some benefit therefrom. In contrast to these documentary evidence, petitioner offers nothing better than her bare claim.

"Accused-petitioner next contends that not all the essential elements of the crime of theft are present in the instant case. Specifically, it is claimed that criminal intent on her part has not been established. We disagree. The personal property taken by accused-petitioner not being hers but those of Edward Pasiteng, and she gained from the taking thereof without the consent of the owner, accused-petitioner is guilty of the crime of theft. Her defense that she owned the property taken has been shown to be without basis and must have been concocted by her as it was the only possible defense available to her to avoid criminal liability for theft."

Her motion for reconsideration having been denied, Erkey Pit-og filed the instant petition for review on *certiorari* raising the following issues: (a) whether or not there was criminal intent on the part of the petitioner-accused; (b) whether or not the taking of the sugarcane was done with intent to gain, and (c) whether or not the present case is civil or criminal in nature.

This Court does not re-examine the facts of a case in a petition for review on *certiorari* under Rule 45 except for unusual reasons which would justify otherwise.[18] One of these reasons is when certain material facts and circumstances had been overlooked by the trial court which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt which would entitle the accused to acquittal.[19] We hold that this case falls under said exception to the rule on the binding effect on this Court of the lower courts' factual findings.

Under the first paragraph of Article 308 of the Revised Penal Code, the essential elements of the crime of theft which must

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[18] *Hernandez vs. Court of Appeals*, L-39767, March 31, 1987, 149 SCRA 67.

[19] *People vs. Ligon*, G.R. No. 74041, July 29, 1987, 152 SCRA 419, 426.

Supreme Court E-Library

be proven beyond reasonable doubt are as follows: (a) the taking of personal property; (b) the property belongs to another; (c) the taking away was done with intent of gain; (d) the taking away was done without the consent of the owner; and (e) the taking away is accomplished without violence or intimidation against person or force upon things.[20] Inasmuch as appellant admits having taken the sugarcane and bananas without violence or intimidation against person or force upon things, we have to determine whether it has been proven beyond reasonable doubt that the property belonged to the complainant and that appellant had intent to gain.

To prove ownership over the sugarcane and bananas, Edward Pasiteng relied heavily on his documentary evidence consisting of the deed of sale, the tax declarations and the receipt evidencing tax payment for 1983. A careful study of these documents, in conjunction with the testimonial evidence extant in the record, however, discloses matters which put a cloud of doubt upon appellant's culpability.

The deed of sale describes the property as containing an area of *400* square meters and as bounded on the north by Kedawen, on the south by Kilangan and a foot trail, on the west by a foot trail and the residential houses of Faryao and Odchanggar, and on the east by Ayochok and Finggay. On the other hand, tax declarations Nos. 22694 and 23007 show that the property contains an area of *512* square meters with the following boundaries: north, Lagmay Ayochok; east, Sagumay Balani; south, public land (trail); and west, public land (trail). No where in the record does an explanation on these disparities appear.

These disparities, however, gain significance under the peculiar circumstances of this case. The case involved was communal before the sale to Edward Pasiteng,[21] being co-owned by the

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[20] *People vs. Rodrigo*, 123 Phil. 310 citing *U.S. vs. De Vera,* 43 Phil. 1000.

[21] TSN, May 14, 1984, p. 6.

Supreme Court E-Library

members of the *tomayan*.[22] Anyone, including non members of the *tomayan*, could build a house thereon.[23]

Insofar as the exact location of the area where the allegedly stolen plants were taken from is concerned, the prosecution presented evidence that the sugarcane and bananas were planted within Edward Pasiteng's yard around three meters from his house;[24] that Edward had a granary in his yard "above the place where the sugarcane" was planted and that Erkey also had a granary above the place where the bananas and sugarcane were planted.[25] On the other hand, Erkey admitted that Edward built the fence enclosing his house which was "below" her granary[26] and right behind the site of the house of Erkey's family before they transferred to Arupey.[27]

These testimonies show that the areas cultivated by Edward and Erkey were adjacent and so close to each other that the possibility of confusion as to who planted which plants is not remote. In fact, before the filing of this case, Erkey had sued Edward's son, Donato, who allegedly cut down bananas she had planted in the area.[28] The fact that Edward had built a fence around the area he claimed as his does not necessarily prove that he enclosed only the 400 square meters he had purchased from the *tomayan*. After all, he had declared as his own for taxation purposes 112 square meters more than the area he bought.

Hence, the definitive identification of the area allegedly possessed and planted to sugarcane and bananas by Edward Pasiteng is imperative. There is on record a survey plan of the 512 square-meter area claimed by Edward[29] but there are no

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[23] TSN, June 8, 1984, p. 13.

[24] TSN, May 4, 1984, p. 4.

[25] TSN, June 8, 1984, p. 22.

[26] TSN, January 11, 1985, pp. 74-75.

[27] TSN, March 16, 1985, p. 93.

[28] TSN, January 11, 1985, p. 69.

[29] Record, p. 16.

Supreme Court E-Library

indications therein of the exact area involved in this case. This omission of the prosecution to definitively delineate the exact location of the place where Erkey allegedly harvested Edward's plants has punctured what appeared to be its neat presentation of the case. Proof on the matter, however, is important for it means the identification of the rightful owner of the stolen properties. It should be emphasized that to prove the crime of theft, it is necessary and indispensable to clearly identify the person who, as a result of a criminal act, without his knowledge and consent, was wrongfully deprived of a thing belonging to him.[30]

We see this case as exemplifying a clash between a claim of ownership founded on customs and tradition and another such claim supported by written evidence but nonetheless based on the same customs and tradition. When a court is beset with this kind of case, it can never be too careful. More so in this case, where the accused, an illiterate tribeswoman who cannot be expected to resort to written evidence of ownership, stands to lose her liberty on account of an oversight in the court's appreciation of the evidence.

We find, that Erkey Pit-og took the sugarcane and bananas believing them to be her own.[31] That being the case, she could not have had a criminal intent.[32]

It is therefore not surprising why her counsel believes that this case is civil and not criminal in nature. There are indeed legal issues that must be ironed out with regard to claims of ownership over the *tayan*. But those are matters which should be threshed out in an appropriate civil action.

WHEREFORE, appellant Erkey Pit-og is hereby ACQUITTED for lack of proof beyond reasonable doubt that she committed the crime of theft. No costs.

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[30] *U.S. vs. Cajucom*, 34 Phil. 892.

[31] TSN, January 11, 1985, pp. 65, 70.

[32] *See: U.S. vs. Viera*, 1 Phil. 584; *U.S. vs. Caneta*, 6 Phil. 343.

Supreme Court E-Library

SO ORDERED.

Gutierrez, Jr., Bidin, and *Cortés, JJ.*, concur.

Feliciano, J., on leave.

FIRST DIVISION

[G.R. No. 88889. October 11, 1990]

MARIETTA SALDANA, *petitioner, vs.* **COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION IS REQUIRED BEFORE A PETITION FOR *CERTIORARI* MAY BE FILED; EXCEPTIONS.** — The prosecution's failure to file a motion for reconsideration in the trial court before commencing *certiorari* proceedings in the Court of Appeals, was not fatal to the petition for this rule does not apply "where the proceeding in which the error occurred is a patent nullity," or "where the deprivation of petitioner's fundamental right to due process taints the proceedings against him in the court below not only with irregularity but nullity," or "when special circumstances warrant immediate and more direct action." Since the prosecution was deprived of due process, the case is an exception to the rule requiring a previous motion for reconsideration before a petition for *certiorari* may be filed.

2. **ID.; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; DOUBLE JEOPARDY; NOT ESTABLISHED IN CASE AT BAR.** — The order of the Court of Appeals reinstating the criminal case for further hearing by the trial court does not violate the rule on double jeopardy. One of the elements of