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authorities, but then it was already suspiciously late. The only possible explanation for her delay is that the liaison between her daughter and Pailano had already become a scandal by that time and she must have thought she could redeem Anita's honor by initiating the criminal complaint. The delay, however, blunts the charge of rape.

What we see here is an aging Lothario having his last lustful fling and a young girl with a rather weak mind and a ripe body offering him a flaccid return to his youth. We do not mean to romanticize this sordid affair. It is wrong and is not here excused, made light of, or dismissed. It is disdained for what it is — an unseemly seduction where it is not clear who the tempter and the tempted are although neither can really claim to be blameless. But, in our view, it is definitely not rape.

WHEREFORE, the appealed conviction is REVERSED and the accused-appellant is ACQUITTED on reasonable doubt. No costs.

SO ORDERED.

Narvasa, Gancayco, Griño-Aquino, and *Medialdea, JJ.,* concur.

FIRST DIVISION

[G. R. No. L-46807. January 31, 1989]

MAURO OMAÑA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; THEFT; GATHERING AND STRIPPING OF ABACA IN THE FOREST PLANTED BY ANOTHER; CASE

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AT BAR. — Even if the land still remained to be a public forest since the possession thereof by Ubana had not yet ripened into ownership, it could not be disputed that the abaca plants were owned by the Ubanas. There was also no showing that Hidalgo ever contested the claim of ownership over said property by the Ubanas. Clearly, the latter's claim of ownership of the abaca plants remained uncontroverted. The petitioner's claim that there was no intent to gain on his part when he gathered the abaca plants should be brushed aside since the evidence clearly show that he took the abaca belonging to the Ubanas without their consent.

2. **ID.; ID.; INTENT TO GAIN; INFERRED FROM THE TAKING OF ANOTHER'S PROPERTY.** — Intent to gain is presumed from the furtive taking of useful property appertaining to another unless special circumstances reveal a different intent on the perpetrator's part. *Animo lucrandi* may be inferred from the act of taking another's property.

3. **ID.; ID.; PENALTY; CASE AT BAR.** — Under Article 309 of the Revised Penal Code, any person guilty of simple theft shall be punished by *arresto mayor* to its full extent, if the value of the thing stolen is over 5 pesos but does not exceed 50 pesos. There being no mitigating nor aggravating circumstances that attended the commission of the offense in the instant case, the proper penalty to be imposed on the petitioner, considering that the abaca plants stolen are valued at ₱7.80, should be within the range of the medium period of *arresto mayor* which We fix at three (3) months.

APPEARANCES OF COUNSEL

Jose Lozada Lapak for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MEDIALDEA, *J.*:

This is a petition for review on *certiorari* of the decision of the Court of First Instance (now Regional Trial Court) of Camarines Norte which affirmed the decision of the Municipal

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Court of San Vicente, Camarines Norte, finding petitioner Mauro Omaña guilty beyond reasonable doubt of the crime of theft and sentencing him to suffer one (1) month and fifteen (15) days of imprisonment.

The antecedent facts in the instant case are as follows:

On September 2, 1976, the petitioner was charged by the Station Commander of the San Vicente, Camarines Norte Police Station with the crime of theft before the Municipal Court of San Vicente, Camarines Norte, under a complaint which reads:

"That on or about (*sic*) 23rd day of August 1976 at about 12:00 PM at sitio Pangamaman, Barrio Iraya Sur, San Vicente, Camarines Norte, Philippines and within the jurisdiction of this Honorable Court above named accused with intent to gain did then and there willfully, unlawfully and feloniously gathered (*sic*) and steal abaca fiber approximately 3 kilos on the abaca plantation of Mrs. Milagros Ubana without their (*sic*) knowledge and consent in the amount of ₱7.50. The offended party Mrs. Milagros Ubana suffers (*sic*) damages. Damages prejudices (*sic*) in the amount of ₱200.00 in (*sic*) such other damages which is left to this Honorable Court.

"CONTRARY TO ARTICLE 308 OF THE RPC" (p. 30, *Rollo*).

The petitioner, upon arraignment, entered the plea of not guilty to the offense charged. After trial on the merits, the municipal court rendered its decision dated February 11, 1977, the dispositive portion of which reads:

WHEREFORE, from the evidence adduced, the Court finds accused GUILTY of Theft beyond reasonable doubt. The value of the property being over Five Pesos but does not exceed Fifty Pesos, accused is sentenced to suffer One (1) Month and Fifteen (15) days imprisonment, minimum period of arresto mayor and the exhibits consisting of abaca maybe returned to the complaining witness. Accused may withdraw his cash bond deposit under Official Receipt No. 0157234 from the Office of the Municipal Treasurer of this Municipality.

"SO ORDERED." (p. 33, *Rollo*).

On appeal to the Court of First Instance, the decision was affirmed *in toto* (pp. 7-12, *Rollo*).

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The case is now before Us on questions of law (p. 23, *Rollo*), to wit:

I.

"WAS THE CRIME OF THEFT COMMITTED BY THE PETITIONER (ACCUSED) WHEN HE GATHERED AND STRIPPED WILD ABACAS IN THE FOREST WHICH IS ADMITTEDLY NOT OWNED NOR POSSESSED BY THE COMPLAINANT MILAGROS UBANA AT WHOSE INSTANCE THE CRIMINAL COMPLAINT FOR THEFT WAS FILED BY THE STATION COMMANDER?

II.

"WAS THERE INTENT OF GAIN ON THE PART OF THE ACCUSED PETITIONER WHEN HE GATHERED AND STRIPPED ABACA IN BROAD DAYLIGHT AT THE INSTANCE OF HIS FATHER BERNARDINO OMAÑA?

III.

"COULD THE PETITIONER BE CONVICTED OF THE CRIME OF THEFT AS PROVIDED UNDER PRESIDENTIAL DECREE NO. 705 OF WHICH THE ACCUSED HAS NOT BEEN CHARGED AND WITHOUT THERE BEING ANY COMPLAINT BY THE PROPER GOVERNMENT AUTHORITY IN CHARGE OF THE ENFORCEMENT OF THE FORESTRY LAWS?

The evidence of the prosecution and the defense as summarized by the Court of First Instance are as follows:

"The prosecution evidence consisted of the testimonies of Milagros Ubana and Rodolfo Ramirez. Complainant Milagros Ubana declared that on August 23, 1976 at around 12:00 high noon, she went to Iraya Sur, San Vicente, Camarines Norte, in her property and saw Mauro Omaña stripping abaca. That said abaca were taken from her abaca plantation without her knowledge and consent nor of her husband. That her ownership over the property from where the abaca were taken is evidenced by Tax Declaration No. 1125 in the name of her husband Pedro Ubana (Exhibit A) and the value of the abaca taken was ₱7.80. That the abaca were taken to the Police Department.

"Rodolfo Ramirez, the barrio policeman, testified that he caught accused red handed stripping abaca in the plantation allegedly owned by the complaining witness. He reported the matter to the Barrio

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Captain and the latter indorsed the same to the Station Commander of San Vicente for further action. Hence, this complaint was filed.

"For the defense, the following were presented as witnesses: Jacob Gonzales, Bernardino Omaña and Mauro Omaña. Bernardino Omaña subsequently declared that the abaca stripped were sold to him by a certain Gimeno Sacriz, tenant of Luis Hidalgo by virtue of a *pohada* contract. That the paid sixty pesos for all abaca that can be gathered within the property of Hidalgo. That the contract was verbal and no receipt was issued to him by Gimeno Sacriz for the sixty pesos. That the abaca stripped were wild abaca called *alinsanay*.

"Jacob Gonzales testified that he is the Barrio Captain of Iraya Sur, San Vicente, Camarines Norte; that on August 23, 1976, Milagros Ubana came to his house complaining that she apprehended Mauro Omaña stripping abaca in her land; that he endorsed said complaint to the proper authorities at San Vicente; that he does not know of any property belonging to Mrs. Milagros Ubana and that the place where the abaca was taken is a public land.

"Accused, Mauro Omaña declared that the stripping of abaca were made upon the order of Bernardino Omaña, his father. That nobody was in the land when accused stripped abaca. That he had been stripping abaca for quite sometime from said land. He admitted that he was caught red handed stripping abaca by the complaining witness, Milagros Ubana and Ernesto Serrano. That according to him, there was no sign that the wild abaca is owned by anybody. He admitted judicially that he stripped said abaca but his justification was that it was bought from Gimeno Sacriz, tenant of Luis Hidalgo and not from the land of the complaining witness. Furthermore, the abaca stripped were wild abaca. The land owned by the complaining witness is alienable and disposable property.

"The accused, however, did not present the tenant, Gimeno Sacriz to prove that he sold said abaca to the father of the accused nor the owner of the land Luis Hidalgo to show that the abaca were taken from his land. It was not established that the tenant had the authority to sell the abaca and that the abaca is the property of Hidalgo. Furthermore, there is no showing that Luis Hidalgo ever contested the claim of ownership over said property by the herein complaining witness." (pp. 8-10, *Rollo*)

The petition is not impressed with merit.

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The totality of the evidence adduced by the prosecution shows that Pedro Ubana, husband of the complaining witness, took possession and occupied the parcel of land (where the petitioner gathered and stripped abaca on August 23, 1976) in 1967; that in 1974, Ubana declared this parcel of land as his property for taxation purposes; that the real property taxes due on the land for the years 1971 to 1976 were duly paid; and that said land is planted to around 50 coconut trees and 700 abaca plants. It is clear, therefore, that even if the land still remained to be a public forest since the possession thereof by Ubana had not yet ripened into ownership, it could not be disputed that the abaca plants were owned by the Ubanas.

The petitioner, on one hand, claims that the abaca plants in question belonged to a wild variety which he gathered from a public forest. On the other hand, he claims that he took said abaca plants from the land of Luis Hidalgo upon orders of his father, Bernardino, who had a *pohada* contract with Gimeno Sacriz, tenant of Hidalgo, whereby Sacriz sold to his father all the abaca he could gather and strip from said land. These assertions seriously put in doubt petitioner's claim of innocence.

Moreover, petitioner admitted that at one time prior to the incident in question one Ernesto Serrano warned him not to gather and strip abaca from the subject parcel of land as he (Serrano) would instead be the one to gather and strip the abaca on order of Pedro Ubana. Such admission conclusively demonstrates that petitioner knew beforehand the claim of ownership by the Ubana spouses over the parcel of land in question and the abaca plants thereon.

It is also worthy to note that the petitioner failed to substantiate his claim that the abaca he gathered came from the land of Hidalgo and was sold to his (petitioner) father by Sacriz. The defense did not present Hidalgo to prove that he owned the land from where the abaca plants were taken. Neither was Sacriz presented to prove that he sold the abaca to the petitioner's father. There was also no showing that Hidalgo ever contested the claim of ownership over said property by the Ubanas. Clearly,

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the latter's claim of ownership of the abaca plants remained uncontroverted.

The petitioner's claim that there was no intent to gain on his part when he gathered the abaca plants should be brushed aside since the evidence clearly show that he took the abaca belonging to the Ubanas without their consent. Intent to gain is presumed from the furtive taking of useful property appertaining to another unless special circumstances reveal a different intent on the perpetrator's part (*People vs. Mercado,* 65 Phil. 665). *Animo lucrandi* may be inferred from the act of taking another's property (*People vs. Sia Teb Ban*, 54 Phil. 52).

We find it unnecessary to deal with the third question raised by the petitioner. Aside from the fact that the same was not discussed by him in his petition, the record is clear to the effect that the petitioner was charged in the municipal court with the crime of theft as defined and penalized by Article 308 of the Revised Penal Code and that the aforesaid court found him guilty of the crime charged.

Under Article 309 of the Revised Penal Code, any person guilty of simple theft shall be punished by *arresto mayor* to its full extent, if the value of the thing stolen is over 5 pesos but does not exceed 50 pesos. There being no mitigating nor aggravating circumstances that attended the commission of the offense in the instant case, the proper penalty to be imposed on the petitioner, considering that the abaca plants stolen are valued at ₱7.80, should be within the range of the medium period of *arresto mayor* which We fix at three (3) months.

ACCORDINGLY, the petition is hereby DENIED and the decision of the Court of First Instance is AFFIRMED, but with the MODIFICATION that the penalty is increased to three (3) months.

SO ORDERED.

Narvasa, Cruz, Gancayco, and *Griño-Aquino, JJ.,* concur.