

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ROSENDO VIZCONDE Y SANTOS, DEFENDANT AND APPELLANT.***G.R. No. L-18. December 06, 1945*

Ponente: PERFECTO, J.

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Appellant was charged with the crime of qualified theft of personal property valued at P15.20. The information was filed in the Municipal Court of Manila on April 30, 1945. On May 25 appellant was convicted and sentenced to suffer six months and one day of imprisonment and to pay the costs. On appeal, the Court of First Instance of Manila also convicted the accused, but reduced the penalty to two months and one day of arresto mayor.

At the trial Alipio Orias and Lucero Nardo testified for the prosecution. For the defense, the accused testified.

Alipio Orias testified that he is a private of the U. S. Army, Company A, 4th M. P. Bn., Tondo Camp, assigned at Post No. 6, located on Sande Street, Manila, on April 28, 1945. He remembered having seen the accused on said date but on the date of the trial, June 21, he could not identify him any more, "because of the long time that had passed since then." He arrested the accused between 3 and 4 p. m. on April 28 "because he was carrying at that time one shirt and two undershirts, which belong to the government, besides a pair of shoes that he was wearing," valued at P15.20. He turned him over to the man in charge Sgt. Lucero Nardo. He did not ask Vizconde where he got the things, because the order he received was to make arrest and turn over the arrested person to the man in charge. Asked to explain why he remembered the case, but could not remember the face of the accused, Orias answered "because we have records in our office of this case." When the accused was arrested he was walking with several companions and carrying the goods wrapped in a piece of paper. The witnesses arrested him before searching him. Although the articles were wrapped in a piece of paper, the accused was carrying the bundle without hiding it. The witness did not ask any question from the accused, and the accused did not say anything at that time. The two undershirts were new, the khaki shirt was slightly used, and the pair of shoes were used. If the articles listed in Exhibit 1 are shown to him, the witness can not recognize them. The witness did not know from what place the accused took the articles. (Pages 1-4, transcript of stenographic notes.)

Lucero Nardo testified that he was in charge of the M. P. guarding the camp at Post No. 6. On April 28 Orias turned over the accused to the Company Officer Ismundo. The witness asked the accused where he got the articles, "and he told me that he had picked them up," but the witness¹ did not make any further investigation. He does not remember exactly the accused, because "I am not familiar with his face" and "I have not seen him since then." The witness further explain that he can not remember the face of the accused "because I have seen him only for about fifteen minutes, and it is very hard to remember his face." Since April 28 many people have been arrested and investigated. The witness cannot remember how many were arrested either one or two days before he testified. The witness only asked where he got the articles, and "he told me that he picked them up, and I did not make any further investigation." (Page 5-7, transcript of stenographic notes.)

After the testimony of the two witnesses for the prosecution, the fiscal made, among other things, the following

statement:

"It is true, Your Honor, that in the direct examination, the two witnesses for the prosecution, whether purposely or involuntarily, failed to identify the accused in this case, although in the cross-examination by the defendant's counsel, the last witness made reference to the defendant." (Page 7, transcript of stenographic notes.)

Appellant testified that on April 28 he was arrested. On that afternoon "before leaving my place of work, I passed near the toilet and I saw a bag. Inside the bag, I saw one shirt and two undershirts of the Army." The bag was located in a corner of the toilet room, exposed to the public view. When he was arrested, the accused was telling the man who arrested him, "that I had picked it up and I was going to turn it over to him, but he did not give me a chance to tell further, and he took me to his tent." As to the pair of shoes, he stated to the Lieutenant who ordered him to remove them from his feet that "I told him it was given to me when I was a guerrillero." The accused took the things from the toilet room "because it was my intention to take it to the M. P." (Pages 7-9, transcript of stenographic notes.)

From the evidence presented by the prosecution, we are constrained to conclude that the prosecution failed to prove that the accused is guilty of the offense of qualified theft imputed to him.

The bundle of one khaki shirt and two undershirts wrapped in paper was picked up by him in a corner of the toilet room with the intention of turning them over to the M. P. The prosecution did not offer any evidence to show the ownership or source of said articles. There is absolutely no evidence that they were stolen goods. The accused, in picking them up, did not have the *animus fruendi*, the *animus lucrandi*, nor the *animus furandi*, of a thief, but for the legitimate purpose of turning them over to the M. P., so that the articles may be returned to their owner. That intention was proved by the accused, and not impugned or contradicted by any evidence in the record.

With respect to the pair of shoes, there is absolutely no evidence to show that they belong to any person other than the accused himself. The accused testified, without any contradiction, that said pair of shoes were given to him when he was a guerrilla. The fact that the accused was wearing them at the time of his arrest and that they were used shoes, confirmed the testimony of the accused. If they were stolen from the Army camp, they should be new or, if used, must be slightly used, as the khaki shirt in the bundle wrapped in paper, because the accused had only been working in Post No. 6 for four days, a period within which he could have taken the new shoes and begun using them. Furthermore, there is not an iota of evidence that the alleged offended party, the U. S. Army, had found missing said pair of shoes or any one of the articles wrapped in paper and found by the accused in a corner of the toilet room.

We conclude that the accused is not guilty of the offense of qualified theft imputed to him and, with the revocation of the appealed decision, he must be acquitted.

Before leaving this case, we deem it necessary to direct attention to the third assignment of error in appellants' brief, wherein it is pointed out that the municipal court transmitted the papers of the case to the Court of First Instance on the eleventh day after the appeal was perfected, instead of within five days, as provided in section 7, Rule 119, of the Rules of Court, which reads:

"SEC. 7. Transmission of papers to the Court of First Instance, and fiscal.—Upon such notice being so filed or given, as provided for in the preceding section, the justice of the peace or judge of a municipal court shall within five days forward to the Court of First Instance all original papers and a transcript of all docket entries in the case. He shall also forward to the fiscal a brief statement of the substance of the testimony of witnesses testifying in the case. The provincial fiscal shall thereupon take charge of the cause in behalf of the prosecution."

Appellant complains that by the violation of said section, his constitutional right to a speedy trial has been

infringed.

We do not believe that by the mere delay of four days the constitutional right of appellant for a speedy trial has been substantially affected, but we can not let it pass as a matter of principle, without any comment on the violation of a mandatory provision of the Rules of Court.

A period of five days is more than enough for the municipal court to transmit all the papers of an appealed case to the Court of First Instance. We do not see any reason to justify the violation of the rule. The municipal court must be among the first ones which should give example of strict compliance with the Rules of Court, if it must keep public confidence. If the municipal court is allowed to violate a rule for four days, there is no reason why it could not violate it for four months, or even four years.

The violation of the rule, which is a violation of the law of the land, must not be allowed to pass without our disapproval and censure, in order to avoid its recurrence. If in the present case the delay in transmitting the papers to the Court of First Instance did not impair the substantial rights of appellant, we can close our eyes to other cases where the delay caused real injustice and affected substantial rights of litigants. It is our hope that in the future municipal and justice of the peace courts will comply with their official duties with more jealousy and abide by the Rules of Court, by avoiding all violations such as the one committed in the case at bar. Nobody can impugn the wisdom of the rule requiring the municipal judge and justice of the peace to transmit the papers of an appealed case within a few days. In the first place, it serves the purpose of making effective the constitutional guaranty of speedy trial. In the second place, it is a deterrent against any abuse that an arbitrary judge may commit, by allowing a prompt revision of his actuation by a Court of First Instance. A municipal judge or a justice of the peace, who is not in duty bound to transmit promptly the papers of an appealed case, may defeat the right of a party to a speedy trial and the right of litigants to obtain the proper redress against any error or extra-limitation by which he may feel aggrieved. Undoubtedly, the authors of the rules intended to avoid such undesirable situation.

Judgment reversed and appellant acquitted with costs de oficio.

Ozaeta, De Joya, and Hilado, JJ., concur.

Bengzon, J., concurs in the result.

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