

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GREGORIO ALCANTARA, DEFENDANT AND APPELLANT.

G.R. No, 4950. February 15, 1910

Ponente: MAPA, J.

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MAPA, J.:

In this case there is no direct proof that the accused is the person who took the money and the jewels that he is charged in the complaint with having stolen; but it has been fully proven that, subsequent to the date on which the theft was committed, he sold to two persons certain of the said jewels which were recognized at the trial by the injured party. The accused gave no explanation as to whence he obtained the said jewels.

For the aforesaid reason the trial court sentenced him, as accessory after the fact, to pay a fine of 250 pesetas and the costs of the proceedings. The possession of the whole or of a part of the stolen property not being accounted for in any manner by the accused, constitutes sufficient evidence that he is the person who stole the same from the owner, which can only be overcome by full and sufficient proof to the contrary; therefore he must be held to be the principal, and not a mere accessory. (U. S. vs. Soriano, 9 Phil. Rep., 445.)

Owing to the value of the stolen property, which amounts to 1,048 pesetas, the case falls within the provisions of paragraph 3 of article 518 of the Penal Code, and the aggravating circumstance that the crime was committed in the dwelling of the injured party must be taken into consideration.

The judgment appealed from is hereby reversed and the accused sentenced, as principal in the commission of the crime herein prosecuted, to the penalty of two years of presidio correctional, to indemnify Dalmacio Ladiana and Pablo Escareces, to whom he sold the recovered jewels, in the sum of P12 and P2, respectively, and the injured party in the sum of P151.60, as being the value of the unrecovered property, or to suffer subsidiary imprisonment in case of insolvency at the rate of one day's imprisonment for every 12 1/2 pesetas unpaid, and to pay the costs of both instances. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Moreland, JJ., concur.

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