

JOSE CRISTOBAL, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. L-1542. August 30, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

Accused as accessory to the crime of theft, together with one Jose Martinez as principal, as to whom the case was subsequently dismissed upon petition of the fiscal for lack of sufficient evidence, Jose Cristobal was convicted by the Court of First Instance of Manila and sentenced to suffer three years, six months, and twenty-one days of destierro, to indemnify Carmen M. de Caro in the sum of P3,000, with the corresponding subsidiary destierro in case of insolvency, and to pay the costs. The Court of Appeals affirmed that sentence with the only modification that the indemnity was reduced to P2,000. The case is now before us on certiorari to review that sentence of the Court of Appeals.

The facts as found by the Court of Appeals are as follows:

"The evidence shows that sometime in the early part of April, 1945 Mrs. Carmen M. de Caro discovered that her diamond ring which she had kept in a handbag under her mattress had been stolen. Suspicion fell upon her 20-year old son, Rolando Caro, who had disappeared from the house and, according to some friends, had tried to sell a diamond ring to a certain family. Questioned about the matter, Rolando confessed to the theft and further revealed that he had sold the ring to the appellant Jose Cristobal, a silversmith in the City of Manila, for P800, a part of which he spent and the rest he lost. Seen at his shop by Mrs. Caro and her lawyer, appellant admitted having bought the ring from Rolando for the sum above named and, upon Mrs. Caro's supplication, agreed to let her redeem it for the same amount without any profit. But Mrs. Caro was for some time unable to raise the necessary sum, and when at last she found someone who was willing to advance the money, appellant could not let her have the ring because, according to him, the same had already been sold by his agent for P1,200. But neither he nor the agent could name the person to whom the ring was said to have been sold. And it is significant that when Mrs. Caro asked for the agent's address, appellant did not give her the right one.

"As the ring was never recovered, its owner complained to the authorities with the result that appellant was prosecuted for the crime of theft as an accessory after the fact.

"* * * * *

"Appellant would have the court believe that he disposed of the ring without knowledge that the same had been stolen, alleging that the owner did not inform him of that fact. But the evidence is against him on this point, for the lawyer who accompanied Mrs. Caro to appellant's shop testified that after she had identified the ring which was shown her as her own she immediately told appellant 'that the ring was of much value to her because it was a souvenir from her mother and that it was stolen from her by her son.' That this information was really imparted to appellant thus making him aware of the illegal source of the ring which he had bought, is confirmed by the fact that he immediately expressed his willingness to let Mrs. Caro get back the property for the same amount that he had paid for it without any profit.

"Appellant also testified in effect that while he had agreed to allow Mrs. Caro to redeem the ring, it was with the understanding that she would have only one week in which to do it, after which the ring would be sold. But not only is this testimony denied by Mrs. Caro and her lawyer, but it is also unlikely that those two would enter into such an understanding, for appellant would have no right to sell the ring once he was informed that it had been stolen. This part of appellant's testimony is therefore not to be believed.

"* * * * *

"There is something, however, to appellant's contention that the trial court has not correctly valued the stolen ring, whose appraisal at P3,000 has nothing to support it except the owner's testimony to the effect that she had turned down an offer for that amount before the war. According to appellant's uncontradicted declaration, the diamond ring had only 1 1/2 carats and before the war a carat cost only about 120.00. The value of diamonds, however, must have gone up after the war because appellant actually paid P800 for the ring and he himself said that it was resold for P1,200. Obviously the value of the stolen ring should not be set at less than the last named sum for the purposes of this case. And reducing the valuation to that sum would not result in the reduction of the duration of the destierro imposed upon the appellant in view of article 309, paragraph 3, of the Revised Penal Code. On the other hand, in fixing the indemnity to be paid, the sentimental value of the ring to the injured party should be taken into account in addition to its price (article 106, Revised Penal Code). Everything considered, we think P2,000 would be a fair valuation for the ring in question. This would not necessitate any change in the duration of the penalty; but the indemnity must be reduced to that amount."

- Appellant vehemently assails as erroneous the finding of the Court of Appeals that he disposed of the ring knowing that it had been stolen. That finding of fact, however, is final and conclusive upon this court. We are not empowered to review and reverse it. (Hodges vs. People, 40 Off. Gaz. (1st Supp.), 227; section, Commonwealth Act No. 3; and Republic Act No. 52.)

- Appellant's contention that he has been erroneously found guilty as accessory is predicated upon the assumption that he did not know the ring had been stolen when he disposed of it. Thus he cites in his favor a case cited by Viada (Volume 1, pages 386-387) wherein a son stole various pieces of jewelry from his mother and sold part of them to a silversmith who was later prosecuted and convicted by the trial court as accessory to the theft but who on appeal was acquitted by the Supreme Court of Spain on the ground that at the time he bought and paid for the jewels he did not know that the son had stolen them from his mother. It should be noted that in that case the accused did not dispose of the jewels after he had learned that they had been stolen. In the present case the appellant disposed or claimed to have disposed of the ring after he had been informed by the offended party that her son had stolen it from her. United States vs. Montaña, 3 Phil., 110, 111, cited by the Court of Appeals is the case in point. There it was held:

"In order to convict the defendant of the crime of being accessory to the crime of robbery committed as shown by the evidence in this case, it was not necessary to show that he had participated therein. It was sufficient to show that he had knowledge of it, and the proof shows that he acquired such knowledge when he was told by the owners that these carabaos had been taken away from the owners by robbery. After having obtained this knowledge he disposed of the property or concealed the same so that the owners were deprived of their property—the body and effects of the crime. (See Article 15, Penal Code.)"

Article 15 of the old Penal Code, cited in that case, has been reproduced as article 19 of the Revised Penal Code. Said article defines accessories as 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 by profiting themselves or assisting the offenders to profit by the effects of the crime. There can be no question that the appellant profited by disposing of the stolen property at P1,200, after he had agreed to return it to the owner upon the latter's reimbursing to him the P800 he had paid for it.

- Appellant insists on his plea of double jeopardy. It appears that he had previously been prosecuted for the same offense in the municipal court of Manila, which after trial dismissed the case for lack of jurisdiction inasmuch as the amount involved in the theft was in excess of P200. (Section 2468, Revised Administrative Code, as amended by Commonwealth Act No. 361.) Since the dismissal was based on lack of jurisdiction, it did not constitute a bar to the prosecution of the offense in the proper court. (U.S. vs. Bernardo, 19 Phil. 265.)

- The dismissal of the case against Jose Martinez and the noninclusion in the information of one Francisco Cueva are complained of by the appellant as prejudicial to him. Suffice it to say that these are matters for the fiscal to determine, with which the court should not interfere in the absence of a showing of clear and grave abuse.

- The only error we notice in the appealed judgment is with regard to the penalty and the amount of the indemnity. The penalty provided by article 309, paragraph 3, of the Revised Penal Code where the value of the property stolen is more than P200 but does not exceed P6,000, is prision correccional in its minimum and medium periods. The penalty lower by two degrees than this should be imposed upon the accused as accessory to the commission of a consummated felony. (Article 53.) Two degrees lower than prision correccional in its minimum and medium periods is destierro in its maximum period to arresto mayor in its minimum period. (See article 61, paragraph in relation to article 71) Revised Penal Code, as amended by Com. Act No. 217.) The medium degree of this penalty should be imposed, there being neither aggravating nor mitigating circumstances. Destierro in its maximum period is from four years, two months, and one day to six years of banishment; while arresto mayor in its minimum period is one month and one day to two months of imprisonment. There is no medium or middle ground between these two penalties. So we must impose either one or the other. We think one month and one day of arresto mayor is preferable or more favorable to the accused.

The value of the stolen ring is another question raised by the appellant, who contends that it was worth only P200. To the price of P1,200 at which the appellant claimed to have sold the ring, the Court of Appeals added P800 to cover its sentimental value to the owner, considering that it was a souvenir from her mother, thus raising the value to P2,000. Article 106 of the Revised Penal Code provides that "the court shall determine the amount of damage, taking into consideration the price of the thing, whenever possible, and its special sentimental value to the injured party, and reparation shall be made accordingly." Appellant's contention that the ring should be appraised at only P200 is manifestly untenable, he himself having paid P800 for it and having sold it later for P1,200. In any event, the question raised is one of fact as to which the finding of the Court of Appeals is final. However, we think the Court of Appeals erred in not deducting from the sum of P2,000 as the value of the ring the sum of P800 which the appellant had paid to Rolando Caro, the son of the offended party; otherwise, the latter and his mother would enrich themselves by that amount at the expense of the appellant.

In view of the foregoing considerations, the appealed judgment is modified and the appellant is hereby sentenced to suffer one month and one day of arresto mayor, to indemnify the offended party in the sum of P1,200, with subsidiary imprisonment in case of insolvency which shall not exceed one third of the principal penalty, and to pay the costs of both instances.

Moran, C.J., Feria, Bengzon, Padilla, Tuason, and Montemayor, JJ., concur.

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