

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SAMUEL TANCHOCO Y MARCELO, DEFENDANT AND APPELLANT.

GR No. L-38. April 06, 1946

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DE JOYA, J.:

Defendant and appellant Samuel Tanchoco y Marcelo was accused, in the Court of First Instance of the City of Manila, of having stolen, in conspiracy with an American negro soldier, on or about April 7, 1945, United States Army goods, consisting of twenty-four (24) bales of Army fatigue suits, woolen blankets, towels, and caps, among others, of the approximate value of P5,346.

The American negro soldier could not be arrested, as his whereabouts could not be located, and the case was tried only with reference to the defendant and appellant in this case, at the end of which trial, he was found guilty as accessory before the fact (accomplice) and sentenced to three (3) months of arresto mayor and to pay the costs. Said defendant was not sentenced to pay any amount, as indemnity, as the said Army goods were totally recovered.

The defendant has appealed from the judgment of the lower court, finding him guilty of the crime charged, as accessory before the fact, and assigns several errors, all of which may be reduced to the general proposition that the evidence adduced by the prosecution at the trial of the case in the lower court, was altogether insufficient to establish his guilt of the said offense, as such accessory before the fact, beyond reasonable doubt, and that he is, therefore, entitled to a judgment of acquittal.

At the trial, the following facts were satisfactorily and sufficiently established:

That on April 6, 1945, herein defendant and appellant contacted witness Deogracias Gutierrez, at the latter's house in the district of Caloocan, City of Manila, and made arrangements with him to deposit in his house certain goods and merchandise for compensation; that the following day, April 7, 1945, at about 7.30 in the evening, defendant and appellant came with a child in a United States Army truck, driven by an American negro soldier, which was loaded with the twenty-four (24) bales of United States Army goods, consisting of Army fatigue suits and woolen blankets, among others, of the approximate value of P5,346, and started to unload them, with the help of laborers called by herein defendant and appellant, in front of the house of said witness Deogracias Gutierrez; that while said American negro soldier and herein defendant and appellant were supervising the unloading of the twenty-four (24) bales of United States Army goods, an American soldier arrived riding on a motorcycle, near the place where the said United States Army goods were being unloaded, and the negro soldier and herein defendant and appellant with the child, started to run and left the place; that as the American soldier, riding on a motorcycle, came to that place apparently for the purpose of visiting some friends, the American negro soldier returned alone and continued the unloading of said United States Army goods and left them on the ground floor of said house of witness Deogracias Gutierrez; that Deogracias Gutierrez notified a neighbor named Kosca, a guerrilla captain, suspecting that said Army goods were stolen property, and Captain Kosca, in turn, reported the matter to the police in Caloocan, and at about 10.30 that same night, Lieutenant Santos of the Caloocan police, came and seized the said Army goods and turned them over to the Provost Marshal; that patrolman Nibungco went to the house of

the accused to place him under arrest, but not finding him at home, said policeman took a sister of herein defendant and appellant to the police station, for investigation, and herein appellant presented himself afterwards.

The American negro soldier could not be arrested as he had left the place, when the police arrived.

Herein defendant and appellant, when questioned about the said Army goods, stated that he happened to be in said truck, driven by the American negro soldier, and loaded with certain Army goods, as he had been asked by said negro soldier to look for a place where said goods could be deposited, promising to pay him some compensation; that he did not know that the said goods were stolen property; that the house of Gutierrez was only about 400 meters from the Caloocan Police Station; that it was near the house of patrolman Bustamente of the Manila Police; that he had not run away; and that he suspected the illegitimate source of the Army goods in question only after they had been seized by the police. This explanation of herein defendant and appellant is too flimsy to constitute a valid or legal defense.

All of the said Army goods were ordered returned to the United States Army, in the decision rendered by the trial court.

Unexplained possession of recently stolen property is prima facie evidence of guilt of the crime of theft (United States vs. Catimbang, 35 Phil., 367; United States vs. Mohamad Ungal, 37 Phil., 835) ; and this would be the case of the American negro soldier, if he had been arrested; as he had access to the goods in question. Herein defendant and appellant had no such access; and there is no evidence that he had induced anyone to steal said Army goods.

A person who receives any property from another, knowing that the same had been stolen, is guilty of the crime of theft, as an accessory after the fact (encubridor). (Sentencia del Tribunal Supremo de Espana, de fecha 27 de junio de 1882, 2 Viada, 5. aed. [19261, pag. 466; sentencia del Tribunal Supremo de Espana, de fecha 27 de diciembre de 1887, idem., pdg. 467; sentencia del Tribunal Supremo de Espana, de fecha 14 de noviembre de 1888; idem., pags. 468, 469; United States vs. Montañ o, 3 Phil., 110.)

A person who receives any property from another, which he knows to have been stolen, for the purpose of selling the same and to share in the proceeds of the sale, is guilty of the crime of theft, as an accessory after the fact. (United States vs. Galanco, 11 Phil., 575.) In the same manner that a person who receives stolen property, for the purpose of concealing the same, is likewise guilty of the crime of theft, as an accessory after the fact. (United States vs. Villaluz, 32 Phil., 376.)

No direct evidence has been presented in this case to show that the Army goods mentioned above had been stolen by herein defendant and appellant and by said American negro soldier, or by the latter alone.

With reference to herein defendant and appellant, the evidence presented by the prosecution, is purely circumstantial evidence.

In order to convict a person accused of a crime, on the strength of circumstantial evidence alone, it is incumbent upon the prosecution to present such circumstantial evidence, which will and must necessarily lead to the conclusion that the accused is guilty of the crime charged, beyond reasonable doubt, excluding all and each and every hypothesis consistent with his innocence. (United States vs. Cajayon, 2 Phil., 570; United States vs. Tan Chian, 17 Phil., 209; United States vs. Levente, 18 Phil., 439.)

Tested by the rule stated above, considering the large amount of the Army goods in question and the conduct of said American negro soldier and herein defendant and appellant, when the American soldier, riding on a motorcycle, arrived at the place where said goods were being unloaded, the two having started to run and left the place, abandoning said Army goods as well as the truck, and their failure to claim the goods afterwards, it is

evident that the goods in question were stolen property, and that said American negro soldier and herein defendant and appellant knew that said goods were really stolen property.

It has been truly said, since long ago that "the wicked fleeth, even when no man pursueth, whereas the righteous are as brave as the lion." (United States vs. Sarikala, 37 Phil., 486.) And it has been held that flight is evidence of guilt and of a guilty conscience. (United States vs. Alegado, 25 Phil., 510.)

The contention of the prosecution that herein defendant and appellant should be found guilty of the crime of theft, as accessory before the fact (accomplice) is untenable.

Considering that the evidence adduced at the trial of this case in the court below has fully established the guilt of herein defendant and appellant Samuel Tanchoco y Marcelo of the crime of theft, as accessory after the fact, beyond reasonable doubt; the judgment appealed from is modified, and, in accordance with the provisions of article 309, paragraph 3, of the Revised Penal Code, in connection with article 53 thereof, defendant and appellant is hereby sentenced to one (1) month and one (1) day of arrest a mayor, to the accessory penalties prescribed by law, and to pay the costs. Defendant and appellant shall be given the Benefit of one-half (1/2) of the preventive imprisonment, if any, suffered by him. With this modification, the decision appealed from is hereby affirmed with costs. So ordered.

Ozaeta, Hilado, and Bengzon, JJ., concur.

PERFECTO, J., dissenting:

Deogracias Gutierrez testified that on Friday, either the 6th or 7th of April, 1945, Angel Galvez, after introducing him to the accused, asked him (the witness) if he would allow the accused to use the lower part of his house to deposit something for a gratification. Gutierrez agreed, and on Saturday, that is, the day following, the accused and a boy arrived in a truck of the United States Army which was driven by a colored man. Several bales of goods in the truck were unloaded and put inside Gutierrez's house by the accused and many other persons he called to help him carry the goods. After unloading one-half, an American arrived on a motorcycle and the negro driver and the accused disappeared. The American stopped for a while in a place where he was courting a girl and then left. The negro appeared again and continued the unloading of the remaining bales. Witness did not see again the accused until the investigation of this case in the municipal court. In another part of his testimony, Gutierrez said that the negro was the one who unloaded all the goods, after which he left. Witness reported the matter to Manuel Kosca, a guerrilla captain, in view of the bad impression he had due to the disappearance of the accused and the negro when the American arrived on a motorcycle. Witness had no idea as to the contents of the bundles because they were closed.

"Fiscal: That we can not show, because we do not know where they were taken.

"But it is a fact that because of the quantity, a truckload, and because the goods were very new we presume from that fact that the negro must have stolen them from somewhere.

"Court: I think that the corpus delicti can not be presumed, Mr. Fiscal. That is, that the fact must be proven, that the goods were stolen and that the possession is a prima facie evidence that he stole them.

"Fiscal: That is the only evidence the prosecution has, if Your Honor please, and there is no use reinvestigating the case." (*Italics supplied.*) (T. s. n., pp. 2-4.)

The accused testified that: "While' I was standing near the mango tree, near a barber shop, a negro parked his truck in front of me and he came to me and said 'Hello,' and asked me whether I can find a place where there were

business women and I said I did not know. Then after the conversation, he gave his name to me as Milly, and I also gave my name to him. After that he told me that he would be going there tomorrow at the same time." The next day at the same time "he told me whether I can find a space where he could put his goods * * * and I said, 'yes' because I lived in Caloocan since February and I said in the house of Gloria Caballero, and then he told me that he would go back the following day." The following day the negro came back with bags of cloth and was accompanied by the accused to the house of Deogracias Gutierrez. "He told me to call persons to unload the truck and the people began to approach us and I told them to unload the goods and the negro would give something for the unloading." The accused did not help in the unloading. His only part was to tell the negro where to deposit the goods. During the unloading "I was standing by the mango tree * * *. When the truck was about half loaded, I went home to eat my supper; it was about 7 o'clock." (T. s. n., pp. 45 to 48.) The negro promised to give something to the accused for the trouble of finding a house in which to deposit the goods. (T. s. n., pp. 54, 55.) But the accused did not receive anything nor did he profit by the goods deposited in the house of Gutierrez. (T. s. n., p. 57.) The accused denies the statement of Gutierrez to the effect that he disappeared. "He can not tell that because he was outside the house when I went home." (T. s. n., p. 57.)

The evidence in this case does not disclose that the goods in question were stolen. There is no evidence of their origin and of their ownership. Darfrente Nebungco declared that the goods were United States Army clothes because "that is what our precinct commander told me", and Lieutenant Mamerto Santos described the goods simply as "G. I. goods." Outside of the testimony of these two witnesses for the prosecution, there is absolutely no evidence as to where the goods came from and who is their owner. Nebungco's testimony, besides being merely descriptive, is hearsay. So was the declaration of Santos equally merely descriptive. That the goods were United States Army clothes, or G. I. goods, cannot give rise to the presumption that they were stolen. In the first place, they were brought in an army truck driven by a negro who, under the circumstances, although not specifically proved, was a soldier of the United States Army, it appearing that he was in uniform. If the goods were army goods and were in the possession of an army man, they cannot be supposed to have been stolen in the absence of any evidence to show it as, in the nature of things, army goods should be in the possession of army men. There is absolutely no evidence that they had ever been in the possession of the accused, although there is contradicting testimony as to whether the accused was among the many persons who helped the negro in unloading the bales from the truck to the house of Gutierrez. In the second place, it is a common experience in the liberated areas of the Philippines, specially during the first months of the liberation, to see many United States Army goods being freely given away by officers and men of said army in their generous effort to help relieve the Filipino civilian population from want and destitution as a result of the enemy occupation.

That there is absolutely no evidence to show that the goods in question were stolen, is expressly admitted by the then Fiscal, now Judge of First Instance, Gregorio Narvasa himself when, urged by the lower court to establish the fact that the goods were stolen, in all honesty and fairness, he answered categorically: "That we can not show, because we do not know where they were taken" (t. s. n., p. 3), adding that if the prosecution maintains that they were stolen goods, it does so only as a mere "presumption." The negro who brought the goods in an army truck from we do not know where, and who sought the house of Gutierrez to deposit them, appears not to have been investigated, arrested, accused or, otherwise, molested for said goods, and such fact is incompatible with the illegal asportation gratuitously presumed by the prosecution.

The least that can be said is that the prosecution did not prove beyond all reasonable doubt that the goods in question were stolen, one of the substantial elements of the offense charged in the information.

At any rate, the most that can be taken against the accused is his attitude, if we have to believe Gutierrez's contradicted testimony, regarding his alleged disappearance with the negro driver at the time the American on a

motorcycle appeared in the scene. By such attitude, if we acknowledge it as an established fact, it might be shown that it was only then that he came to know that something was wrong when he saw the negro absconding; and that, impelled by the urge of self-protection, he also left the place so as to avoid shouldering the responsibility which properly belonged to the negro driver. And to show that he did not want to be involved in a transaction which, by the negro's attitude, appeared wrong or at least dubious, he did not show up again in the place, Gutierrez himself declaring that the next time he saw the accused was when this case was being investigated in the municipal court. In the normal course of human affairs, as shown by experience, such attitude is the one which an innocent man would naturally adopt under the circumstances.

In view of the foregoing, we vote that the appealed decision be revoked and the accused absolved from the offense charged in the information, with costs de oficio.

Judgment modified.

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