

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MELANIO REYES Y GAYAKAN, DEFENDANT AND APPELLANT.***G.R. No. L-53. March 27, 1946*

Ponente: OZAETA, J.

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On July 12, 1945, a sow belonging to Virginia Mendoza, of 17 Geronimo Street, Sampaloc, Manila, disappeared from her back yard where she had tied it. Two days later the animal reappeared.

On the same day that Virginia missed her pig, her neighbor Marina Lopez saw Melanio Reyes, of 19 Geronimo Street, leading a pig. Melanio Reyes denied having taken Virginia's pig; so she went to the police station and denounced him. On the same day Policeman Felix Carlos investigated Melanio Reyes, but the latter denied having stolen Virginia's hog, which the policeman told him was valued at P100. In the course of the investigation Melanio Reyes remarked that the price of P100 was exorbitant and that even if he had intended to pay for the hog he could not do so because he did not have enough money. The policeman did not find any hog in the premises of Melanio Reyes at that time.

Melanio Reyes was arrested on July 12 and detained until August 3, 1945, when he was able to furnish bail. Accused and convicted of theft in the municipal court, he appealed to the court of first instance, which likewise found him guilty and sentenced him to four months of arresto mayor.

After a careful study of the evidence adduced during the trial, we find that the guilt of the accused has not been proved beyond reasonable doubt. The testimony of the only eyewitness, Marina Lopez, that she saw the accused leading a hog on the day in question was admitted by the accused, but the latter explained that the hog he was leading and which Marina Lopez saw, was his own. That he owned said hog was corroborated by Domingo Velo, who at that time was boarding in the house of the accused and who said he was the one who had reported to the accused on that day that his hog had broken loose and had gone astray. Marina Lopez was careful to say in her testimony that she did not know whose hog Melanio Reyes was leading on July 12, 1945. The complainant herself admitted that the accused owned a pig—smaller, she said, than hers.

The testimony of Virginia Mendoza to the effect that on the same day her pig reappeared the wife of the accused told her that it was her husband who had taken the pig, aside from being hearsay, is incompetent and inadmissible; even before the court the wife could not have testified for or against her husband without his consent (section 26 [d], Rule 123). The trial court should have granted counsel's motion to strike it out.

The alleged remark of the accused to the policeman that the value of P100 given by the complainant for the pig in question was exorbitant and was beyond his means, did not necessarily mean an admission of guilt. That may have been due to a suggestion of the policeman that he pay for the lost animal. As a matter of fact, the policeman testified that the accused never admitted, but on the contrary persistently denied, that he had ever taken the hog of the complainant.

The short piece of rope allegedly found by the complainant in the premises of the accused has not been identified as the very same rope with which her hog was tied before it disappeared.

It is not improbable that the sow in question broke loose and disappeared for some time in search of feed.

Not being convinced of the guilt of the accused beyond reasonable doubt, we reverse the sentence appealed from and acquit the appellant, with costs de oficio.

De Joya, Perfecto, Hilado, and Bengzon, JJ., concur.

Judgment reversed; defendant acquitted.

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