

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
EPIPFANIO ENOJO Y ELMINO, ACCUSED AND APPELLANT.***G.R. No. L-177. August 16, 1946*

Ponente: PARAS, J.

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Epifanio Enojo y Elmino and Amando Canalang were found guilty by the Court of First Instance of Manila of theft and sentenced to undergo imprisonment for an indeterminate period ranging from (4) months and (1) day to (1) year, (8) months and twenty-one (21) days, with the accessories prescribed by law, and to pay the costs. Both have interposed an appeal, but Amando Canalang later withdrew his.

The articles alleged to have been stolen consisted of (9) woolen battle jackets, (2) woolen field jackets, (14) O. D. woolen shirts, (10) pairs of cotton socks, (20) pairs of woolen socks, (1) T shirt, and (1) barrack bag, and were part of a stock of G. I. clothes and supplies requisitioned by the Psychological Warfare Department of the United States Army (in which the two accused had been employed respectively as driver and assistant) from the Quartermaster in the morning of August 16, 1945. The offense was discovered by Sergeant Dan Silverman when, upon making an inspection of the truck used in getting the supplies from the Army Depot in the North Harbor, upon returning to the office of the Psychological Warfare Department at the Roces Building, Manila, he found the aforesaid articles hidden under the driver's seat. Though that inspection was routine, Sergeant Silverman perhaps already had a hunch, it appearing that, after previously catching Amando Canalang in possession of a can of fruits allegedly given by some one in the depot, he had kept close watch of the particular truck. Epifanio Enojo, then the driver of the truck, and Amando Canalang, his assistant, thereupon approached the sergeant to whom they expressed their regret for the incident and their promise to avoid any repetition. Confronted and correspondingly accused by Lt. Paul J. Trunkies, the sergeant's superior, the two reiterated their pledge not to commit the offense and requested the officer to pardon them, after which they were turned over to a military police who in turn delivered them to the Meisic Police Station.

Appellant's defense is that the discovery of the articles in question under the driver's seat of his truck is not conclusive of his guilt, in the absence of direct proof that he and Amando Canalang were the authors of the concealment and in view of the facts that said truck had also been previously used or driven by others who might have hidden the articles; that from the time said articles were taken from the warehouse and loaded in the truck until its return to Roces Building, Corporal Jury of the Psychological Warfare Department was with them; and that while the truck was parked near the warehouse at the depot, there were military policemen. These allegations are not persuasive.

It appears that the supplies requisitioned by the entity in which the appellant worked as driver was taken from three warehouses, and the procedure was for Corporal Jury, Amando Canalang and a checker to enter a warehouse where the needed articles were chosen and counted by Corporal Jury and the checker, after which Amando Canalang carried the supplies to the truck in which the appellant remained in the meantime. This procedure was followed with respect to the supplies taken from the second and third warehouses. Thus, there were intervals

during which the appellant and Amando Canalang had been left alone in the truck with the goods already taken from the first and second warehouses; and such intervals certainly gave the appellant and his companion more than an opportunity for placing the coveted articles under the driver's seat. The act cannot be imputed to others who drove the vehicle prior to appellant's turn, because the articles in question pertained to the requisition of August 16, 1945.

The appellant also insists that he never made any admission of culpability before Sergeant Silverman or Lt. Turnkies, and the testimony of said officers on the point was evidently due to a misunderstanding of his plea (in very poor English) not to be delivered to the military police in order that his work might not be delayed. If appellant's theory were correct, he should have manifested an insistent and spontaneous denial of guilt, rather than a mere concern regarding his work. Appellant's alleged disavowal of the offense at the Meisic Police Station does not necessarily prove that he did not make the admission attributed to him by Lt. Turnkies and Sergeant Silverman. It may be that the appellant, surprised by the unexpected discovery of his offense, so lost his poise as to ever think of disowning it. Upon the other hand, when investigated at the police station, he already had sufficient time for reflection. Moreover, the aforesaid officers had no special reason for falsely accusing the appellant.

The appellant further scores the refusal of the trial court to recall Lieutenant Turnkies and Sergeant Silverman to the witness stand, thereby allegedly depriving his attorney of the right to cross-examine them, it being contended at this juncture that said witnesses were not listed in the information — a fact that surprised said attorney. In answer, we can state that the latter did not object to their presentation; that he duly cross-examined Lt. Turnkies, but waived his right to cross-examine the sergeant; that the attempt to recall was made after the prosecution had rested its case; and that the complaining attorney has not shown the facts intended to be elicited from the desired cross-examination, with a view to indicating the prejudice resulting from the refusal of the trial court.

There being no error, factual or otherwise, in the appealed decision, the same is hereby affirmed, with costs against the appellant. So ordered.

Pablo, Perfecto, Hilado, and Padilla, JJ., concur.

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