

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELISA VILLALUZ AND MARTINA PALERMO, DEFENDANTS. FELISA VILLALUZ, APPELLANT.

G.R. No. 10726. December 01, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of hurto domestico (theft by a domestic servant). The complaint alleged: "That on or about the 18th day of March, 1914, in the municipality of Valladolid, Province of Occidental Negros, Philippine Islands, the herein accused did, willfully, unlawfully, and criminally, with intent of unlawful gain and without employing violence or intimidation upon persons or force upon things, remove, seize and appropriate to themselves one gold-plated watch together with its chain and gold fob, all valued in the sum of one hundred and two pesos (P102) Philippine currency, belonging to Jose Espinosa, said accused acting without the tatter's knowledge or consent.

"That the accused Martina Palermo was, at the time of the commission of the crime, a domestic or servant in the service of the offended party and in his own house. "The said accused Martina Palermo took a direct part in the commission of the crime herein charged, and the other accused Felisa Villaluz acted by inducing said Martina Palermo to commit it."

Upon said complaint the defendants were duly arrested, arraigned, pleaded not guilty, tried, and the said Felisa Villaluz was found guilty, without the concurrence of any aggravating or mitigating circumstances, "in the commission of the crime of encubrimiento" and sentenced to be imprisoned for a period of one month and eleven days of prision, to pay the costs, and to return to Jose Espinosa each and all of the different objects described in the complaint, or the value thereof, and in case of insolvency to suffer subsidiary imprisonment.

Martina Palermo, by reason of her tender age and the fact that she "did not act with discernment or understanding in taking the watch, chain and fob," the property of her master, Jose Espinosa, and other circumstances mentioned in the decision, was relieved from the sentence of imprisonment, with costs de oficio, but was put under the control and vigilance of Jose Espinosa, under terms which are mentioned in the decision of the lower court.

From that sentence Felisa Villaluz appealed to this court and attempts to show that the evidence adduced during the trial of the cause was insufficient to show that she was guilty of the crime of which she was convicted and sentenced by the lower court. The appellant alleges that the proof was insufficient to show that she was guilty as an "accessary by concealment to the effects of the crime." The appellant alleges that in order to be convicted as an "encubridor" (accessary) three facts must be established: (1) That there be concealment; (2) That the person concealing have knowledge of the perpetration of the crime; and (3) That this concealment hinders the discovery of the crime.

The appellant alleges that these elements which constitute "accessary by concealment" are not proven.

From an examination of the evidence brought to this Court, it appears that on the morning of the 18th day of March, 1914, Jose Espinosa was the owner of a gold watch, a watch chain, and a gold watch fob; that on said morning he left his house between 6 and 7 o'clock; that the defendant, Martina Palermo, was a servant in his house; that when he left his house he left the watch, chain, and fob in his clothing, in his room; that upon his return from his walk he discovered that the watch, etc. had disappeared; that he called his servant, Martina Palermo, and made inquiries concerning his loss; that she plead ignorance, stating that she knew nothing concerning the loss of the watch, etc.; that on the same morning (18th of March, 1914) at about 7 o'clock, one Estacio Biaoco saw the defendant, Martina Palermo, going to the house of Felisa Villaluz, carrying a watch and chain which he identified as the watch and chain of Jose Espinosa; that she entered the house of Felisa Villaluz; that she very soon returned from the house of Felisa Villaluz to the house of Jose Espinosa; that when she returned she was not carrying the watch and chain; that the house of Felisa Villaluz was located about one hundred twenty or one hundred thirty brazas from the house of Jose Espinosa; that at the time Martina Palermo entered the house of Felisa Villaluz, on the morning of the 18th of March, there was present one Antonio Quitani; that he saw Martina Palermo deliver to Felisa Villaluz a watch.

Later, on the night of the 18th or 19th of March, Estacio Biaoco, together with two policemen called Marcelo Alumanon and Eleno Youngque, went to the house of Felisa Villaluz after 8'clock for the purpose of making an investigation; that two of them went under the house of Felisa and there awaited developments; that while they were under the house Martina Palermo entered the house and at once requested Felisa Villaluz to return to her the watch; that Felisa Villaluz, without admitting that she had the watch in her possession, replied: "How foolish you are! What watch did you give me?" To which Martina replied: "Don't I know you?" To which Felisa again said: "If anything happens to me, I'll drown you."

The foregoing fact, to wit, that Martina Palermo went to the house of Felisa Villaluz and requested the return of the watch on the night of the 18th or 19th of March, 1914/ is in effect confirmed by the testimony of Laurencia Matinong, one of the witnesses for the defense. She testified that she was in the house of Felisa Villaluz on the night of the 19th of March; that Martina came there; that after she came she asked Felisa the question: "Aunt Felisa, where is the watch I gave you yesterday?" That Felisa arose and said to Martina: "Why are you going to charge me with the watch? You are a nasty beast" And then ordered Martina to leave her house.

The watch and chain and fob were never found even though, by means of a search warrant, the house of Felisa Villaluz was searched in the presence of two or three policemen.

Jose Espinosa testified that Martina admitted to him finally that she had taken the watch and chain and fob and had delivered them to Felisa, for the reason, as Martina said. "Felisa told me to come to you to see if I could pay my debt to you."

Martina Palermo is a child of 12 or 13 years of age. She had been the servant of Jose Espinosa for several months; she admitted that she had taken the watch and other articles in question; that she had taken the same because of the suggestion made by Felisa Villaluz; that before she was the servant of Jose Espinosa, she had been under the control of the husband of Felisa Villaluz. She had been living in the house of Felisa Villaluz. She was indebted, at the time the crime was committed, to Jose Espinosa. That fact appears to have been known to Felisa Villaluz.

Referring to the argument of the appellant the record shows, beyond a reasonable doubt, that Martina Palermo took the watch, etc., out of the clothing of Jose Espinosa and carried the same to the house of Felisa Villaluz and delivered it to her. Felisa Villaluz never returned the articles to Martina. They were never found. The fact that they were delivered to her on the morning of the 18th of March, 1914, and the fact that she denied that she had received the same, taken in relation with the fact that said articles could not be found, is sufficient proof, in our

judgment, to show that she had quite successfully concealed them. Such facts also show that her concealment of said articles was for the purpose of preventing and defeating the discovery of the crime. Did she have knowledge of the commission of the crime? Did she take part, subsequent to the commission of the crime, in attempting to conceal the fruits of the same? She knew that Martina Palermo was a child of not more than 12 or 13 years of age; she knew that the child was poor; she must have known that she was working as a servant. These facts being true, she must have known that Martina Palermo had not come into the possession of merchandise of the value of P100 or more, legitimately or lawfully. She came into possession of the watch and other articles early in the morning of the 18th of March. Inquiries were made of her on that same day concerning the loss of the watch. She knew that Jose Espinosa had lost his watch, etc. She knew, or at least must have known, that the watch, etc., had been stolen. Knowing Martina Palermo as she did, and knowing her situation in life, she must have known that Martina did not come into the possession of said articles legally and in good faith. Notwithstanding all of these facts, the defendant and appellant not only refused to return the stolen articles to Martina, in order that the latter might return them to her master, but continued to keep them in her possession and under her control, and so successfully did she conceal them that the articles could not be found, even by the policemen who were armed with a searched warrant.

We are of the opinion, after a careful examination of the record brought to this court, that the defendant, Felisa Villaluz, is guilty, as an accessory of the crime of larceny, and that she took part, subsequent to the commission of the crime, in the concealment of the fruits thereof, with full knowledge of its commission.

Therefore the sentence of the lower court is hereby affirmed, with costs. So ordered.

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

Judgment affirmed.

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