

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAN TIAP CO ET AL., DEFENDANTS. TAN TIAP CO, CLARO GUILLERMO, CARLOS LOPEÑA, MARCIANO BAUTISTA AND PEDRO ABEABE, APPELLANTS.

G.R. No. 11643, December 02, 1916

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila, finding Pedro Estacio, Anacleto Lichauco, Claro Guillermo, Carlos Lopena, Marciano Bautista, Pedro Abeabe, and Tan Tiap Co guilty of the crime of theft, with abuse of confidence.

The complaint alleges:

"That on or about the 20th and 21st of May, 1915, in the city of Manila, Philippine Islands, the said Tan Tiap Co, Pedro Estacio, Anacleto Lichauco, Claro Guillermo, Carlos Lopena, Marciano Bautista, Pedro Abeabe and Claudio Miranda, willfully, unlawfully and criminally, with grave abuse of confidence on the part of the accused Pedro Abeabe, Marciano Bautista, Claro Guillermo and Carlos Lopena, and with intent of unlawful gain and without the consent of the owners, conspiring among themselves and mutually aiding each other, did remove, steal and carry away from the customhouse wharves and warehouses, in the said city of Manila, the following property, to wit: Twenty-two cases containing cotton fabrics, of the total value of P5,828.92, belonging to Forbes, Munn & Co., a company duly organized and doing business in the city of Manila; to the damage and prejudice of the aforementioned Forbes, Munn & Co., in the said amount of P5,828.92, Philippine currency, equivalent to 29,144.60 pesetas; with violation of law."

The defendant Tan Tiap Co was granted a separate trial. The defendant Pedro Estacio entered a plea of guilty and afterwards appeared as a witness against his codefendants. The defendant Claudio Miranda was used as a witness for the prosecution, the case against him having been dismissed in order that he might be called as a witness by the prosecution. The defendants Marciano Bautista and Pedro Abeabe were employed as gatekeepers, and the defendants Carlos Lopena and Claro Guillermo were employed as checkers in the customs service, and were on duty at pier 5 in the city of Manila at the time alleged in the complaint. Anacleto Lichauco was employed by the firm of Keller & Co.; Pedro Estacio was employed by the firm of Forbes, Munn & Co.; and Claudio Miranda was employed by the defendant Tan Tiap Co.

The following finding of facts by the trial court is fully sustained by the evidence of record:

"The defendants herein are charged with the theft of merchandise valued at P5,828.92, the property of the firm of Forbes, Munn & Co., of the city of Manila. The merchandise in question consisting of 22 cases of dry goods was imported, together with other goods of the same general character, by the said firm of Forbes, Munn & Co., from Europe on the British steamship Middleham Castle which arrived at the port of Manila on the 18th of May, 1915. The merchandise consigned to Forbes, Munn & Co. was regularly manifested on the papers of the aforementioned steamship and was discharged from the ship to the customs wharf, known as pier 5. Customs checkers, regular employees of the Insular Customs, were in charge of the checking of the various

cases and packages as they were transferred from the ship to the pier, and the official check Exhibit D shows that all the merchandise consigned by the ship's papers to the house of Forbes, Munn & Co. and invoiced by the shippers to the said firm was landed on the customs wharf, pier 5, with the exception of three cases which were afterwards shown to have been delivered to Forbes, Munn & Co., although for some reason they did not appear on the official check as having been landed on the wharf. The 22 cases, the theft of which is charged against the defendants, were in transit through the customhouse and in the custody of the Insular Customs at the time the theft charged in the information took place. When the merchandise consigned to Forbes, Munn & Co. was delivered to the last named firm it was found to be short 22 cases, as per the invoice and the ship's manifest. Immediately upon discovery of the shortage Forbes, Munn & Co. made a claim upon the Insular Customs for the amount of the shortage. The shortage, with full description of the merchandise, together with the distinguishing marks and numbers, appear in Exhibit G.

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"The defendants Carlos Lopena and Claro Guillermo were employed as checkers and the defendants Marciano Bautista and Pedro Abeabe as gatekeepers in the Insular Customs Service, and designated for duty at customs pier 5 in the city of Manila, at the time alleged in the information. The defendant Anacleto Lichauco was an employee of the firm of Keller & Company. The defendant Pedro Estacio was an employee of the firm of Forbes, Munn & Co., and the defendant Claudio Miranda was employed by the defendant Tan Tiap Co at the time mentioned in the information. The defendant Claudio Miranda appears to have had no connection with the crime charged in the information until the 22 cases in question had been stolen from pier 6, and delivered, in accordance with a previous agreement and conspiracy among the other defendants, at the business place of the defendant Tan Tiap Co on Calle San Jacinto in the city of Manila on the 20th and 21st of May, 1915.

"On or about the 18th of May, 1915, the defendant Pedro Estacio, who attended to customhouse matters for the firm of Forbes, Munn & Co., was approached by Claro Guillermo, who asked him if he was expecting some merchandise to arrive on the steamship Middleham Castle consigned to Forbes, Munn & Co., and the defendant Estacio answered yes, that he was in fact expecting the arrival of some merchandise for his firm; Guillermo then told Estacio that they—meaning Guillermo and Estacio—could 'get some of these cases/ referring to the merchandise for Forbes, Munn & Co. due to arrive on the steamship Middleham Castle, and Guillermo further said, 'I wont sign any permit whatever,' evidently referring to the usual permit which is issued by the permit clerk on the customs pier for withdrawal of merchandise from the customhouse, and, he added, 'we will have some of the customs gatekeepers as our companions in this deal so that the cases can go out immediately.' The defendant Carlos Lopena was present when this conversation took place between Guillermo and Estacio and overheard what passed between them. Guillermo then invited Estacio to come to the house of the defendant Pedro Abeabe, who, as we have seen, was a gatekeeper in the customs service at the time set forth in the information.

"The invitation to go to the house of Abeabe appears to have been extended to Estacio by Guillermo for the purpose of having the latter present at the meeting which took place later at Abeabe's house in order that Estacio might be acquainted with the details of the conspiracy, then in its inception, for the theft of the merchandise in question. Estacio went to the house of Abeabe, in accordance with the invitation of Guillermo, accompanied by the latter and by Carlos Lopena. When Estacio, Lopena and Guillermo arrived at the house of Abeabe, they found the latter there, and afterwards Anacleto Lichauco and Mariano Bautista joined them. There was therefore two customs checkers present, viz., Lopena and Guillermo, and two gatekeepers, Abeabe and Bautista, together with Estacio, an employee of Forbes, Munn & Co., and Lichauco, an employee of the house of Keller & Company.

"Guillermo appears to have done most of the talking at this meeting, and assured the other members of the conspiracy in effect that the goods could be taken from the pier without the slightest risk to the conspirators. While the meeting was in progress, Guillermo told Estacio not to worry as there was nothing to fear and called upon Lichauco to witness that they had had a previous deal of the same kind in which four cases were taken

from the last steamer, and, he added, 'you may rest assured that the cases will go out of the pier without a hitch/ Lichauco was present at this conversation and assented to what Guillermo said. Guillermo then went on to explain the details of the plan for the stealing of the goods from the pier, and it was agreed between the conspirators that the defendant Lichauco should take charge of the delivery of the stolen property to the Chinaman, the defendant Tan Tiap Co, and that Guillermo would collect the money for the merchandise from the said Tan Tiap Co after the delivery of the same. It was also agreed between the conspirators that the 22 cases of the Forbes, Munn & Co's merchandise should be stolen from the pier and delivered to Tan Tiap Co in accordance with the terms of the conspiracy.

"Guillermo had taken Estacio to the store of Tan Tiap Co on the way to the house of Abeabe, and had introduced him to Tan Tiap Co, telling: the latter he was an employee of Forbes, Munn & Co., and it was agreed between the conspirators at the meeting in Abeabe's house that the goods were to be sold to Tan Tiap Co for three thousand pesos (P3,000) and this amount was to be divided between the six conspirators, Lopena, Guillermo, Estacio, Lichauco, Bautista and Abeabe, and it was further agreed that, when the merchandise was discharged from the ship to the pier, Guillermo would notify Estacio, and Guillermo agreed to this and did so notify Estacio as soon as the merchandise was discharged and was on pier 5. Estacio, in accordance with the agreement, secured the permits (Exhibits E and F of the prosecution) for the withdrawal of the goods. When Estacio secured the permits he turned them over to Carlos Lopena who was waiting for them apparently by prearrangement, and Lopena after taking possession of them directed Estacio to go out to get bull carts for the transportation of the merchandise. This seems to have taken place on the 20th of May, and on this day Estacio secured two bull carts and loaded six cases of the Forbes, Munn & Co.'s merchandise on each cart. The defendant Lopena delivered the merchandise to Estacio, and the defendant Bautista was the gatekeeper in charge when the goods were passed out. This was about 12 o'clock on the day of the 20th, and when the twelve cases were loaded on the two carts they were turned over by Estacio to the defendant Lichauco, who, it will be remembered, was designated by the conspirators to deliver the stolen merchandise to the defendant Tan Tiap Co—the fence who had agreed to receive them and to pay for them. Ten cases were taken the next day, the 21st of May. Two bull carts were provided by Estacio and five cases were loaded on each bull cart and the two carts were then turned over to Lichauco for delivery to Tan Tiap Co. Carlos Lopena delivered the ten cases to Estacio under permit as on the previous day, and the defendant Marciano Bautista was acting as gatekeeper when the ten cases in question were passed out.

"Exhibits H and H-1, fragments of the cases in which the goods in question were packed when they were discharged from the ship on pier 5, were identified by the defendant Estacio on the witness stand, as bearing the marks and numbers of the 22 stolen cases.

"Claudio Miranda, an employee of the defendant Tan Tiap Co, who, as we have seen, was discharged on motion of the Prosecuting Attorney to appear as a State's witness, testifies that the defendant Anacleto Lichauco called at Tan Tiap Co's store, 106 Calle Rosario, in the city of Manila, on the 21st day of May, 1915, and told him to receive certain goods, cotton goods, that were to arrive at the store by bull carts. These goods, the witness stated, arrived at the store, 106 Rosario. There were four bull cart loads in all. Two loads on the 20th of May and two loads the next day, the 21st of May. The first load on the 20th of May was accompanied by Pedro Estacio. The goods consisted of percales and were packed in boxes. The witness identified fragments of boards, Exhibits H, H-1 and H-2, as being parts of the boxes in which the goods in question were delivered at the store of Tan Tiap Co. He also identified the marks and the numbers on the boxes, which are the same as the boxes containing the Forbes, Munn & Co.'s merchandise. This witness stated that after the boxes were broken open he had taken the broken cases to his house. Witness states that two bull carts arrived on the first day and two on the second. Tan Tiap Co himself had advised the defendant to open the boxes. He identified Exhibits G-1, G-2, G-3 and G-4, found in the store of Tan Tiap Co, as being piece goods similar in every respect to those delivered at the store of Tan Tiap Co in the four bull carts in question. The witness Miranda states that when he opened the boxes at 106 Calle Rosario he put the goods in the bodega of Tan Tiap Co at that place.

"It was shown by the testimony of Detective Toomey that part of the goods for which Forbes, Munn & Co. made a claim upon the Customs authorities were found in the bodega of Tan Tiap Co at 106 Calle Rosario, and part in another bodega rented by Tan Tiap Co at 429 Calle Pinpin. These same goods were identified not only by Miranda, the 'personero' of Tan Tiap Co, who, as we have seen, opened the cases at 106 Calle Rosario by order of Tan Tiap Co, and who afterwards took the broken cases to his house 'to use for kindling wood,' but also by Mr. Hettrick of the firm of Forbes, Munn & Co., who testified that the goods were similar in every particular to other goods of the same shipment which were regularly delivered to Forbes, Munn & Co. from the customs wharfs. He also identified the marks on the fragments of the cases Exhibits H, H-1, and H-2, which are similar to the marks set out in Exhibit 6, which is the official list of the stolen property furnished to the secret service by the aforementioned firm Forbes, Munn & Co.

"Four bull cart drivers also testified that Pedro Estacio had hired them to haul cases of merchandise from pier 5 to the bodega of Tan Tiap Co at 106 Calle Rosario on or about the time alleged in the information. Two were hired on one day and two on another. Twelve cases were hauled on one day and ten on another, thus making 22 cases in all.

"We have now traced the 22 cases, which Forbes, Munn & Co. found their shipment was short, from the steamer Middleham Castle to customs pier 5. We have shown the conspiracy for the theft of this exact number of cases, which was hatched between the defendants Guillermo, Estacio, and Lopena, and which was perfected as to details later at the house of the defendant Abeabe, when the latter, together with Guillermo, Estacio, Lopena, Bautista and Lichauco, all agreed to the theft of 22 cases of the Forbes, Munn consignment while it was in transit through the Customs, and to sell it to the Chinaman Tan Tiap Co for three thousand pesos (P3,000) and to divide the proceeds between the six conspirators.

"The testimony of Estacio covers the entire conspiracy, and this testimony is confirmed as we have seen by the disinterested testimony of the bull cart drivers as to the actual abstraction of the merchandise from the pier and the delivery of the same at Tan Tiap Co's bodega, 106 Calle Rosario. It is corroborated also by the testimony of Miranda, who received the stolen property and put it in Tan Tiap Co's bodega—by order of the latter—where it was afterwards discovered by secret service agent Toomey and his companions. We have also the full confessions of Lopena and Guillermo, Abeabe and Bautista, which are corroborative of Estacio and support in every detail the theory of the prosecution.

"There is therefore no doubt whatever as to the culpability of these defendants. The crime proven is that of theft and the value of the property stolen brings the case within paragraph 1, of article 518 of the Penal Code. The penalty higher by one degree than that prescribed by law must be imposed on the defendants Lopena, Guillermo, Abeabe, and Bautista, since the evidence shows that they were guilty of a gross breach of confidence as employees of the Insular Customs Service.

* * * * *

"From a memorandum furnished by Forbes, Munn & Co. and filed in this case by the prosecuting attorney, it appears that the entire value of the goods recovered by the secret service amounted to P721.33."

The guilt of all the defendants and appellants, other than Tan Tiap Co, who was tried separately, of the crime charged in the information is conclusively established by the evidence of record which fully sustains the foregoing finding of facts.

These accused, except Anacleto Lichauco, testifying in their own behalf, swore that they had been induced to sign the various confessions introduced by the prosecution, by the threats and maltreatment of the police officers. The police officers positively denied the truth of their testimony and swore that their confessions were made voluntarily. The trial judge who saw and heard the witnesses testify refused to believe the story told by the accused, and there is nothing in the record which would justify us in disturbing his findings in this regard. But

even were we to disregard these confessions altogether, the other evidence of record is sufficient to sustain the judgment of conviction entered in the court below.

The defendant and appellant Tan Tiap Co was tried separately, and his counsel makes the following assignments of error in his brief on the appeal in this case:

"1. The trial court erred in imposing upon appellant the penalty for the crime of theft under the finding of facts set forth in its decision.

"2. The trial court erred in finding as established by the proofs, various facts about the subject matter of which no evidence or proof was offered upon the trial.

"3. The trial court erred in finding the existence of a conspiracy between the accused other than the appellant.

"4. The trial court erred in finding the appellant guilty of the crime of theft under the proofs in the case."

The evidence on the separate trial of this defendant was in large part the same as that submitted at the trial of his codefendants, though not in all respects identical. And it is undoubtedly true, as contended by counsel for this appellant, that the trial judge included in his findings of fact some matters which are not supported by the evidence of record submitted at the separate trial of Tan Tiap Co, and which he must have based on the evidence submitted at the trial of the other defendants. But, as pointed out by the Attorney-General in his brief, the erroneous inclusion of these findings of fact was at most non-prejudicial error, since the evidence submitted at the trial of Tan Tiap Co, and the findings of fact which are properly based thereon conclusively established his guilty participation in the commission of the crime.

To our minds the evidence of record in this case conclusively establishes the commission of the theft, and leaves no room for reasonable doubt that the defendant Tan Tiap Co entered into a conspiracy with his codefendants in pursuance of which the goods were carried away and delivered to his warehouse, with the understanding that he would receive them and pay his fellow conspirators a considerable sum for all the goods delivered to him. In the language used by the conspirators, Tan Tiap Co was "to buy the goods" for a price, but an examination of the whole record satisfies us that the real meaning and effect of the understanding entered into by the conspirators was that he was to receive the goods and pay his fellow-conspirators the sum agreed upon on delivery.

It is contended that the trial judge erred in holding Tan Tiap Co guilty as a principal, and the Attorney-General suggests that the participation of Tan Tiap Co was merely that of an accessory as defined in article 15 of the Penal Code.

Article 13 of the Penal Code is as follows:

"The following are considered as principals:

"1. Those who take a direct part in the commission of the act;

"2. Those who directly force or induce others to commit it;

"3. Those who cooperate in the commission of the act by another act without which it would not have been accomplished."

Article 15 of the Penal Code provides that:

"Accessories are 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 in any of the following manners:

"1. By profiting themselves or assisting the offenders to profit by the effects of the crime."

* * * * *

We are of opinion that in view of the peculiar circumstances under which the theft was committed, the trial judge properly convicted Tan Tiap Co as a principal.

The theft was one which could not be successfully carried through without the cooperation of a number of persons, working toward a common end. The character and bulk of the goods, and the circumstances under which they were taken were such that the successful perpetration of the theft necessitated a preliminary arrangement for their delivery, without delay, at some place where they could be disposed of without arousing suspicion. This accused undertook to furnish and did furnish a suitable place for that purpose. He was not a mere receiver of stolen goods, who purchases or conceals them after they have been stolen. He furnished assistance in the very act of the commission of the crime without which it would not have been successfully perpetrated. He was as much a principal as is the man who holds a bag outside the window of a house into which his companions drop stolen silver, money, or jewelry from within. In the language of the Code he cooperated in the commission of the act by another act without which it would not have been accomplished.

Furthermore, we are inclined to think that his agreement entered into prior to the commission of the crime to pay to his coconspirators for the delivery of the goods taken under the conspiracy was the direct inducement which led them to commit the crime. True, they might have committed the crime without the previous agreement with the accused, in the hope that they might realize on the goods from some one else after they had been stolen. But we think that the direct inducement which actually led them to commit this particular theft was the undertaking of the accused to pay them a sum of money upon the delivery of the goods taken from the customhouse. The witnesses describe the relations of this accused as those of a buyer or purchaser of the stolen goods; but the language used by the witnesses does not alter the true nature of those relations, which appears from a review of all the evidence to have been that of a coconspirator in the commission of the theft, who induced his fellows to do their part by promising them a sum of money when they had completed their part of the undertaking and delivered the goods at his godown.

Much has been made in the briefs of the various counsel for the appellants of the fact that two of the principal witnesses for the prosecution are self-confessed accomplices in the commission of the theft. But, aside from the fact that the testimony of these witnesses is fully corroborated in many important details, it is sufficient answer to these criticisms of the proceedings in the court below to say that we have frequently decided that such testimony even when uncorroborated is competent and admissible, and if it appears to be worthy of belief, will sustain a conviction, though it should always be received doubtingly and scrutinized with the utmost care, having in mind the polluted source from which it comes. The trial judge accepted and believed the testimony of these witnesses and there is nothing in the record which would justify us in disturbing his conclusions in this regard.

After a careful examination of the whole record we find no error in the proceedings prejudicial to the substantial rights of the appellants. We conclude, therefore, that the separate judgments convicting and sentencing them should be affirmed, with the costs of this instance against the appellants. So ordered.

Torres, Moreland, Trent, and Araullo, JJ., concur.

Johnson, J., did not take part.

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