

ALFONSO D. GAVIOLA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 163927. January 27, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 24413 affirming the ruling[2] of the Regional Trial Court (RTC) of Nava, Biliran, Branch 16, in Criminal Case No. N-1901, where petitioner Alfonso Gaviola was convicted of qualified theft.

The antecedents are as follows:

On May 25, 1954, Elias Gaviola filed a complaint against Eusebio Mejarito in the then Court of First Instance of Carigara, Leyte, for quieting of title with a plea for injunctive relief. The suit involved a 40,500-square-meter parcel of coconut land located in Barrio Calbani, Maripipi, Leyte, identified as Cadastral Lot 1301 and covered by Tax Declaration (TD) No. 743.[3] The case was docketed as Civil Case No. 111. Eusebio, for his part, claimed ownership over the property.

On July 29, 1955, the trial court ordered the dismissal of the complaint and declared Eusebio the lawful owner of the property. The dispositive portion of the decision reads:

WHEREFORE, for the foregoing, the Court renders judgment dismissing the plaintiffs' complaint and declaring the defendants the absolute owners and entitled to the possession of the disputed land. The preliminary injunction which was granted by this Court through Judge Lorenzo Carlitos is ordered dissolved, with costs against the plaintiffs.

SO ORDERED.[4]

The decision became final and executory. On September 3, 1955, the trial court ordered the sheriff to place Eusebio in possession of the property.[5] The sheriff complied with the order on December 19, 1958.[6]

In the meantime, Eusebio died intestate and was survived by his son, Cleto. Elias Gaviola also died intestate and was survived by his son, Alfonso.

Almost 30 years thereafter, on October 1985, Cleto filed a complaint against Alfonso and four others for recovery of possession of a parcel of land and execution of judgment in Civil Case No. 111. The property involved was located on the north of Lot 1301 and covered by TD No. 1546. The case was docketed as Civil Case No. B-0600.

The plaintiff therein alleged that the houses of the defendants were located in the property that had been adjudicated to his father, Eusebio Mejarito, in Civil Case No. 111. He prayed that the court issue judgment as follows:

a) Ordering [the] immediate execution of judgment in Civil Case No. 111, against defendants Segundo Gaviola and Alfonso Gaviola;

- b) Ordering all defendants evicted from any portion of the land they presently occupy as residential;
- c) Ordering all defendants to pay rent in favor of the plaintiff with legal interests imposed reckoned from June 1984 until full payment of what is due and/or until their complete and absolute eviction from their respective residences which rent liabilities when computed annually for each of them is in the sum of PESOS: THREE THOUSAND SIX HUNDRED (P3,600.00), Philippine Currency;
- d) Ordering defendants to pay plaintiff jointly and severally the sum of PESOS: THIRTY THOUSAND (P30,000.00), Philippine Currency, representing moral damages;
- e) Ordering defendants to pay plaintiff jointly and severally the sum of PESOS: TWENTY-FIVE THOUSAND (P25,000.00), Philippine Currency, representing attorney's fee and litigation expenses.

Plaintiff prays for such relief and other remedies as may be just and equitable in the premises.[7]

In their answer to the complaint, the defendants averred that the property in which their houses were located is different from that which was adjudicated by the court in Civil Case No. 111 to Eusebio Mejarito.

The parties could not agree on the identification and metes and bounds of the parcel of land claimed and owned by the plaintiff and those claimed and owned by the defendants. This impelled the court to appoint Bienvenido Ricafort, the Officer-in-Charge of the sub-office of the Provincial Assessor, as Commissioner, to resurvey the property subject of the complaint. A sketch of the property was prepared, indicating the location of the plaintiff's lot (Lot 1301) and the parcel of land where the house of Gaviola stood (Lot 1311). The Commissioner also prepared a report[8] stating that the property adjudicated to Eusebio Mejarito in Civil Case No. 111 was Cadastral Lot No. 1301, while that which belonged to Elias Gaviola was Cadastral Lot No. 1311; and the old one-storey house of defendant Alfonso Gaviola was located in the latter lot. The defendant did not object to the report.[9]

On May 4, 1990, the court rendered judgment in favor of the defendants in Civil Case No. B-0600 and ordered the complaint dismissed. The court ruled that the parcels of land occupied by the defendants, inclusive of Lot 1311, were different from the property adjudicated to Eusebio Mejarito in Civil Case No. 111, which is actually Lot 1301. The court also ruled that the plaintiff had no cause of action for the execution of the court's decision in Civil Case No. 111 because such decision had long been enforced, per report of the sheriff.[10]

Eusebio appealed the decision to the CA which rendered judgment on September 18, 1992, affirming the decision of the RTC.[11] The appellate court declared that the house of Alfonso Gaviola was located in Lot 1311 covered by TD 1611 under the name of Elias Gaviola. Cleto filed a petition for review on certiorari with this Court, which was denied due course in a Resolution[12] dated March 24, 1993. Thus, the CA decision became final and executory. The trial court issued a writ of execution, a copy of which Sheriff Ludenilo S. Ador served on the defendants on August 5, 1993.[13]

In the meantime, Cleto Mejarito left the Philippines and stayed in the United States of America. He entrusted the land to the care of his nephew, Rafael Lozano.

At 7:00 a.m. on September 6, 1997, Jovencio Mejarito, a nephew of Cleto Mejarito, and a barangay councilman, saw Gavino Gaviola, Rodrigo Gaviola and Domingo Caingcoy climbing the coconut trees in Lot 1301. Under the supervision of the spouses Alfonso and Leticia Gaviola, they gathered 1,500 coconuts worth P3,000.00 from the coconut trees.[14] The Officer-in-Charge of the Maripipi Police Station then filed a criminal complaint for qualified theft against the spouses Gaviola and those who gathered the coconuts in the municipal trial court.[15] In the meantime, the coconuts were entrusted to the care of the barangay captain.

On February 6, 1998, an Information was filed with the RTC of Naval, Biliran, against the spouses Alfonso and Leticia Gaviola for qualified theft. The accusatory portion of the decision reads:

That on or about the 6th day of September 1997, at around 9 o'clock in the morning at Brgy. Calbani, Municipality of Maripipi, Province of Biliran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, and with intent to gain, did then and there unlawfully, feloniously, deliberately took, harvested and gathered one thousand five hundred (1,500) coconut fruits from the plantation of Cleto Mejarito without the consent and authority of the latter, to the damage and prejudice of the owner amounting to P3,000.00.

Contrary to Law.[16]

Alfonso admitted that the coconuts were taken upon his instructions, but insisted that the trees from which they were taken were planted on Lot 1311, the property he had inherited from his father, Elias Gaviola; the property of private complainant Cleto Mejarito, Lot 1301, was adjacent to his lot. Alfonso testified that the property was placed in his possession by the sheriff since August 5, 1993, and that since then he had been gathering coconuts every three months without being confronted or prosecuted by anybody.[17] He insisted that his claim was based on the decision of the RTC in Civil Case No. B-0600, which was affirmed by the CA.[18]

On April 13, 2000, the RTC rendered judgment convicting Alfonso of qualified theft. The fallo of the decision reads:

WHEREFORE, this Court finds the accused Alfonso Gaviola y Dimakiling guilty beyond reasonable doubt of the crime of qualified theft; hereby imposing upon him the indeterminate penalty of imprisonment from Five (5) Years, Five (5) Months and Ten (10) days of prision correccional, maximum period, as the minimum, to Eight (8) Years and One (1) day of prision mayor, minimum, as the maximum.

The accused shall pay the private complainant Cleto Mejarito, through his duly authorized representative, exemplary damages in the amount of P20,000.00 and liquidated damages in the amount of P3,000.00.

SO ORDERED.[19]

The trial court ruled that the accused took the coconuts from the coconut trees planted on Cadastral Lot 1301 which was owned by Cleto Mejarito, and not on his own property, Lot 1311, as he claimed.

Alfonso Gaviola appealed the decision to the CA which rendered judgment, on October 1, 2003, affirming the decision of the RTC. He then filed a motion for reconsideration of the decision, which the appellate court denied.

Alfonso, now the petitioner, raises the following issues in the instant petition: (1) whether the prosecution proved beyond reasonable doubt that he had intent to gain when the coconuts were taken upon his instruction; and (2) whether he is liable for exemplary and liquidated damages.

On the first issue, petitioner avers that the prosecution failed to prove *animus lucrandi* (intent to gain) on his part. He asserts that he had been taking coconuts from the property in broad daylight three times a year since August 5, 1993 on his honest belief that he was the owner of the land where the coconut trees were planted. He points out that it was only after he took coconuts on September 6, 1997 that he was charged of qualified theft.

Moreover, his honest belief that he owned the land negates intent to steal, an essential element of the felony of theft. He argues that the RTC in Civil Case No. B-0600 declared him to be the owner of the property where the coconut trees were planted; the property was placed in his possession by the sheriff and, since then, he had planted bananas and gathered coconuts from the coconut trees.

In its comment on the petition, the Office of the Solicitor General avers that the decision of the RTC, which was affirmed by the CA, is in accord with the evidence on record. The OSG maintains that under the decision of the then CFI in Civil Case No. 111, the RTC in Civil Case No. B-0600 and that of the CA affirming on appeal the

RTC ruling, the owner of Lot 1301, the property from which the coconuts were taken, was Eusebio Mejarito, the private complainant's father.

We rule against the petitioner.

Article 308 of the Revised Penal Code defines theft as follows:

Art. 308. Who are liable for theft.— Theft is committed by any person who, with intent to gain but without violence, against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

- Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
- Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and
- Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.[20]

Thus, the elements of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.[21]

The provision was taken from Article 530 of the Spanish Penal Code which reads:

- Los que con ánimo de lucrarse, y sin violencia o intimidación en las personas ni fuerza en las cosas, toman las cosas muebles ajenas sin la voluntad, de su dueño.
- Los que encontrándose una cosa perdida y sabiendo quién es su dueño se la apropiaren con intencion de lucro.
- Los dañadores que sustrajeren o utilizaren los frutos u objeto del daño causado, salvo los casos previstos en los articulos 606, num. 1., 2. y 3; 608, num. 1; 610, num. 1.; 611;613; segundo párrafo del 617 y 618. (Art. 437 del Cod. Penal de 1850. – Art. 379, Cdo. Franc. – Art. 331,Codigo Brasil. – Art. 151, Cod. Austr. – Arts. 461 y 508, Cod. Belg. – Art. 242, Cod. Alem. – Arts. 422 y 423, Cod. Port. – Art. 402, Cod. Ital.)[22]

According to Article 310 of the Revised Penal Code, theft is qualified if coconuts are taken from the premises of a plantation:

Art. 310. Qualified theft. – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

For one to be guilty of theft, the accused must have an intent to steal (*animus furandi*) personal property, meaning the intent to deprive another of his ownership/lawful possession of personal property which intent is apart from, but concurrent with the general criminal intent which is an essential element of a felony of *dolo* (*dolos malus*). The *animo* being a state of the mind may be proved by direct or circumstantial evidence, inclusive of the manner

and conduct of the accused before, during and after the taking of the personal property. General criminal intent is presumed or inferred from the very fact that the wrongful act is done since one is presumed to have willed the natural consequences of his own acts. Likewise, animus furandi is presumed from the taking of personal property without the consent of the owner or lawful possessor thereof. The same may be rebutted by the accused by evidence that he took the personal property under a bona fide belief that he owns the property.[23]

In *Black v. State*,[24] the State Supreme Court of Alabama ruled that the open and notorious taking, without any attempt at concealment or denial, but an avowal of the taking, raises a strong presumption that there is no animus furandi. But, if the claim is dishonest, a mere pretense, taking the property of another will not protect the taker:

xxx "In all cases where one in good faith takes another's property under claim of title in himself, he is exempt from the charge of larceny, however puerile or mistaken the claim may in fact be. And the same is true where the taking is on behalf of another, believed to be the true owner. Still, if the claim is dishonest, a mere pretense, it will not protect the taker."

The gist of the offense is the intent to deprive another of his property in a chattel, either for gain or out of wantonness or malice to deprive another of his right in the thing taken. This cannot be where the taker honestly believes the property is his own or that of another, and that he has a right to take possession of it for himself or for another, for the protection of the latter.[25]

In *Charles v. State*,[26] the State Supreme Court of Florida ruled that the belief of the accused of his ownership over the property must be honest and in good faith and not a mere sham or pretense.

In the present case, the trial court found the petitioner's claim of having acted in the honest belief that he owned Lot 1301 when he ordered the harvesting of the coconuts barren of probative weight. The trial court ruled that the petitioner even admitted in Civil Case No. B-0600 that the private complainant's property was separate from his:

The accused have put up a defense of ownership although from the records of Civil Case No. B-0600, Alfonso Gaviola, et al., thru their counsel admitted that from the evidence of Cleto Mejarito especially Exh. "E," Writ of Execution, it appears that the decision was already executed on December 22, 1958.

Further admitted that:

"The southern boundary of the land of Elias Gaviola (Alfonso) is stated as Melecio Gaviola. Actually the land of Melecio Gaviola is now owned by plaintiff (Cleto Mejarito), the land having been adjudicated to his predecessor-in-interest Eusebio Mejarito by virtue of Civil Case No. 111 (Exh. "A") (See also Exh. "6," Tax Declaration No. 3437, reverse side).

Alfonso Gaviola could not have made a mistake to extricate themselves from the ejectment, Cleto Mejarito wanted to pursue in Civil Case No. B-0600.

They submitted a well entrenched analyses as they concluded further; to quote:

"Finally, that these three parcels of lands are separate and distinct from each other is confirmed by the cadastral survey were the lands of plaintiff (Cleto Mejarito), of Elias Gaviola (Alfonso) and of Segunda Gaviola, are denominated as Cadastral Lot Nos. 1301, 1311 and 1303, respectively. Not only that, their definite locations and boundaries are even delineated in the sketch prepared by the court-appointed commissioner, which sketch is now marked as Exhibits "H" and series' (Memorandum of defendants Gaviolas dated April 13, 1989, in Civil Case No. B-0600).

The general rule is that a judicial admission is conclusive upon the party making it and does not require proof; except when it is shown that the admission was made through palpable mistake and (2) when shown that no such admission was in fact made. (*Atillo III vs. C.A. 266 SCRA 596*).[27]

The findings of the RTC were affirmed by the appellate court. The well-entrenched rule is that the findings of facts of the trial court, affirmed by the appellate court, are conclusive on this Court, absent any evidence that the trial court and the appellate court ignored, misconstrued, or misinterpreted cogent facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case. We have reviewed the records and find no justification to modify, much less reverse, the findings of the trial and appellate courts.

The petitioner cannot feign ignorance or even unfamiliarity with the location, identity and the metes and bounds of the private complainant's property, Lot 1301, vis-à-vis that of his own, Lot 1311. Indeed, in his Memorandum in Civil Case No. B-0600, petitioner as one of the defendants below, categorically stated:

From the above enumeration or statement of boundaries, it is clear that these three parcels of land are distinct and separate from each other, as the following observations can be made:

- land of plaintiff and Elias (Alfonso) Gaviola:

- Both have the same northern boundary: Isabela Mejarito. But the same can be explained by the fact that sometime in 1934 Isabela Mejarito, through Pastor Armoela, sold the land now owned by Elias (Alfonso) Gaviola to him. See Ex. "15." In fact, the first time that the land bought by Elias Gaviola was declared in his name was in 1935 in Tax Dec. No. 2839 (Exh. "14") which cancelled in part Tax Dec. No. 1942 (Exh. "16") in the name of Isabela Mejarito.

What caused the confusion (identical northern boundary of the lands of plaintiff and Elias Gaviola) was that the northern boundary (Isabela Mejarito) of the land of plaintiff was not adjusted accordingly despite the sale. It should have been changed to Elias Gaviola to reflect the sale.

- The southern boundary of the land of Elias Gaviola (Alfonso) is stated as Melecio Gaviola. Actually the land of Melecio Gaviola is now owned by plaintiff the land having been adjudicated to his predecessor-in-interest Eusebio Mejarito by virtue of Civil Case No. 111 (Exhibit "A") (See also Exh. "6," Tax Dec. No. 3437, reverse side)

- land of plaintiff and Hermenegildo (Segundo) Gaviola:

- The eastern boundary of the land of plaintiff is stated as "Hermenegildo Gaviola," father and predecessor-in-interest of defendant Segundo Gaviola;

- The western boundary of the land of Hermenegildo Gaviola (Exh. "31-A") was previously declared as Melecio Gaviola. But after the case (Civil Case No. 111, Exh. "A"), it was changed to "Eusebio Mejarito," predecessor-in-interest of plaintiff by virtue of said case. (Exh. "31-A" and "30-A.")

So it is now clear that the land of plaintiff is west of the land of Hermenegildo Gaviola (now Segundo Gaviola), and that they are two distinct and separate lands.

Indeed, that the lands of plaintiff, of Elias Gaviola (father of defendant Alfonso), and of defendant Segundo Gaviola (now, but Hermenegildo Gaviola before) are separate and distinct from each other is shown by the fact that they have been covered by different sets of tax declarations since as early as 1906. It should be noted that the tax declarations that cover each land do not merge with, overlap, or cancel, each other. There appear apparent minor discrepancies but they can easily be explained by two events: the sale of a portion of the land of Isabela Mejarito to Elias Gaviola and the decision in Civil Case No. 111. If these two events are considered, these apparent discrepancies vanish into thin air.

Finally, that these three parcels of lands are separate and distinct from each other is confirmed by the cadastral survey where the lands of plaintiff, of Elias Gaviola and of Segundo Gaviola, are denominated as Cadastral Lot Nos. 1301, 1311 and 1303, respectively. Not only that, their definite locations and boundaries are even

delineated in the sketch prepared by the court-appointed commissioner, which sketch is now marked as Exhs. "H" and series, of plaintiff. Also, the report to which the sketch is attached even states that the house of defendant Alfonso Gaviola is located on the land of Elias Gaviola; and while said report enumerates the houses located on the land of plaintiff, neither the house of defendant Alfonso Gaviola nor of defendant Segundo Gaviola nor of the other defendants are among those mentioned therein.[28]

Moreover, petitioner's land is residential, while that of the private complainant is coconut land. There are no coconut trees in the lot owned by petitioner, nor is there evidence that he planted coconut trees on private complainant's property at any time, believing that it was his own land. Petitioner could thus not have mistaken the property of the private complainant for that of his own.

We further note that petitioner failed to adduce evidence to corroborate his claim that, prior to September 6, 1997, he had gathered coconuts from the coconut trees on the private complainant's property three times a year, and that the latter or his caretaker was aware thereof but failed to remonstrate.

In *United States v. Villacorta*, [29] the Court debunked the claim of the appellant therein that he should not be held criminally liable for theft (larceny) for honestly believing that he owned the land from which he took the paddy. That case is on all fours with the present case, in that there was also a court ruling declaring the private complainant therein as the owner of the land on which the paddy grew. The Court therein ratiocinated as follows:

The attorney for the appellant in this court attempts to show that the defendant could not be guilty of larceny, even though it be admitted that he took and carried away the paddy in question, for the reason that he claimed to be the owner of the land. That question had been decided against him by a court of competent jurisdiction and he made no objection to said decision. After that decision he could no longer claim that he was the owner of the land from which he took and carried away the paddy, and moreover, it was shown during the trial of the cause that Domingo Corpus, by his laborers, had actually planted the paddy upon the land in question. It is difficult to understand upon what theory the defendant could justify his claim that he was the owner of the paddy, after a final decision had been rendered against him to the contrary, and when it was clearly proven that he had not even planted it. The paddy had been planted by Domingo Corpus upon land which a court of competent jurisdiction decided belonged to him and had been harvested by him and piled upon the land at the time the defendant entered the land and took and carried it away. The defendant neither planted the paddy nor reaped it. The court decided, before he took and carried away the paddy, that the land belonged to Domingo Corpus. The defendant must have known that the paddy did not belong to him. In view of the litigation, he must have known to whom it did belong.[30]

In fine, we find and so hold that the petitioner's claim of good faith in taking the coconuts from the private complainant's land is a mere pretense to escape criminal liability.

We rule that there is factual and legal bases for the award of P20,000.00 by way of exemplary damages. Under Article 2230 [31] of the New Civil Code, exemplary damages may be awarded when the crime was committed with one or more aggravating circumstances. In this case, the petitioner is guilty not only of simple theft but of qualified theft.

"Eusebio Mejarito," predecessor-in-interest of plaintiff by virtue of said case. (Exh. "31- A" and "30-A.")

So it is now clear that the land of plaintiff is west of the land of Hermenegildo Gaviola (now Segundo Gaviola), and that they are two distinct and separate lands.

Indeed, that the lands of plaintiff, of Elias Gaviola (father of defendant Alfonso), and of defendant Segundo Gaviola (now, but Hermenegildo Gaviola before) are separate and distinct from each other is shown by the fact that they have been covered by different sets of tax declarations since as early as 1906. It should be noted that the tax declarations that cover each land do not merge with, overlap, or cancel, each other. There appear

apparent minor discrepancies but they can easily be explained by two events: the sale of a portion of the land of Isabela Mejarito Elias Gaviola and the decision in Civil Case No. 111. If these two events are considered, these apparent discrepancies vanish into thin air.

Finally, that these three parcels of lands are separate and distinct from each other is confirmed by the cadastral survey where the lands of plaintiff, of Elias Gaviola and of Segundo Gaviola, are denominated as Cadasral Lot Nos. 1301, 1311 and 1303, respectively. Not only that, their definite locations and boundaries are even delineated in the sketch prepared by the court-appointed commissioner, which sketch is now marked as Exhs. "H" and series, of plaintiff. Also, the report to which the sketch is attached even states that the house of defendant Alfonso Gaviola is located on the land of Elias Gaviola; and while said report enumerates the houses located on the land of plaintiff, neither the house of defendant Alfonso Gaviola nor of defendant Segundo Gaviola nor of the defendants are among those mentioned therein.[28]

Moreover, petitioner's land is residential, while that of the private complaint is coconut land. There are no coconut trees in the lot owned by petitioner, nor is there evidence that he planted coconut trees on private complaint's property at any time, believing that it was his own land. Petitioner could thus not have mistaken the property of the private complainant for that of his own.

We further note that petitioner failed to adduce evidence to corroborate his claim that, prior to September 6, 1997, he had gathered coconuts from the coconut trees on the private complaint's property three times a year, and that the latter or his caretaker was aware thereof but failed to remonstrate.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Delilah Vidallon-Magtolis (retired) and Hakim S. Abdulwahid, concurring; rollo, pp. 20-26.

[2] Penned by Judge Enrique C. Asis; id. at 35-43.

[3] Records, pp. 167-171.

[4] Id. at 11.

[5] Id. at 55.

[6] Id. at 145.

[7] Id. at 123.

[8] Id. at 164-166.

[9] Id. at 133.

[10] Id. at 92-96.

[11] Id. at 77-88.

[12] Id. at 89.

[13] Id. at 152.

[14] TSN, 8 April 1999, pp. 3-4.

[15] Records, p. 1.

[16] Id. at 224.

[17] TSN, 18 August 1999, pp. 14-15.

[18] Exhibits "4" and "5," id. at 258 and 273.

[19] Id. at 332-333.

[20] Emphasis supplied.

[21] L.B. Reyes, the revised penal code, book II (1981), 668.

[22] Viada, código penal reformado de 1870, concordado y comentado, 219.

The felony has the following elements:

(1) Apoderamiento de una cosa mueble; (2) Que la cosa mueble sea ajena; (3) Que el apoderamiento se verifique con intención de lucro; (4) Que se tome la cosa sin la voluntad de su dueño; (5) Que se realice el apoderamiento de la cosa sin violencia intimidación en las personas ni fuerza en las cosas (Viada, 220-221).

[23] Bullard v. State, 53 S.W. 637 (1899); Dean v. State, 26 So. 638 (1899).

[24] 3 So. 814 (1888).

[25] Baker v. State, 17 Fla. 406 (1879).

[26] 18 So. 369 (1895).

[27] Records, pp. 329-330.

[28] Records, pp. 160-161.

[29] 30 Phil. 108 (1915).

[30] Id. at 110-111.

[31] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

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