

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. RUFINO MANALO Y SANTIAGO AND VALENTIN ATIENZA Y CUYCO, DEFENDANTS. VALENTIN ATIENZA Y CUYCO, APPELLANT.

G.R. No. 22223. December 02, 1924

Ponente: STATEMENT In the Court of First Instance of Manila, the following information was filed against the defendant: "That on or about January 18, 1922, in the City of Manila, Philippine Islands, the aforesaid accused, being employees of the registry section of the Bureau of Posts of the Government of the Philippine Islands, and having had in their possession and under their custody by reason of their respective positions, a package sent by registered mail from Shanghai, China, addressed to the Hongkong & Shanghai Banking Corporation of Manila, conspired and confederated together and assisted each other to take away, as they did in fact take away, said registered package which contained diamonds worth P86,000, Philippine currency, which they did willfully, unlawfully and criminally, and with intent of gain and with grave abuse of confidence, carry away without the consent of the owner thereof, the Hongkong & Shanghai Banking Corporation of Manila, which is a corporation duly organized and doing business in the Philippine Islands, to the great damage of said banking corporation in the aforesaid sum of P86,000, equivalent to 430,000 pesetas" The case was called August 22, 1922, at which time the defendant Valentin Atienza asked for a separate trial, which was granted, and the defendant Manalo was tried first. At the trial of the defendant Atienza, it was stipulated that all the evidence against Manalo should be admitted in evidence, except as to the confession of Manalo, to which he objected. As a result of the trial, both defendants were found equally guilty, and Atienza was sentenced to eleven years of prision mayor, with the accessory penalties and to pay the costs. From this decision he appeals, assigning six different errors, in which he contends that the court erred in admitting the confession of the defendant Manalo, known as Exhibit H, and in the consideration of such exhibit as evidence, and in finding that the defendant's actions and conduct were peculiar and suspicious and in considering the evidence, in finding the defendant guilty of the crime charged, and in not acquitting him, and as to the penalty which was imposed. JOHNS, J.

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JOHNS, J.:

January 18 and 19, 1922, the defendant Manalo was a clerk in the registry section of the Bureau of Posts at Manila for the afternoon and night shift of employees, with the duties, among others, to receive from the clerk in the same section charged with the duty of opening sacks containing registered packages and letters of value coming into the section, and to deliver them to the clerk in charge of that section. On the same dates the defendant Atienza was the clerk in charge of the same section of the same shift of employees, with the duties to exercise general supervision over them, to see that all registered packages addressed to the Postmaster of Manila, the Insular Treasurer and the Philippine National Bank and other articles of value coming into that section were properly receipted for and to report immediately any irregularity regarding mail in that section to the chief of that section, and to see to it that such registered packages, while in his custody, are properly deposited, for safekeeping, in the safe provided for said purpose.

January 18, 1922, at about 5 p. m., there were received in the registry section of the Bureau of Posts several registered packages and letters from Shanghai. Some twenty-nine of them were received from the opening clerk Gonzales by the defendant Manalo, who signed a receipt for them. All of these packages were in turn delivered by Manalo to clerk Manuel Buenaventura, in the same section, with the exception of one registered package addressed to the Hongkong & Shanghai Banking Corporation of Manila. This package carries registry No. 6281, and was received in good condition and contained diamonds valued at P86,962.33, which were insured in the Yangtze Fire Insurance Company for which Warner Barnes & Company was agent. In the afternoon of January nineteenth this particular package, opened in one end, was found and picked up in a corner of the section by Victoriano Arriola, another clerk, who immediately delivered it to Atienza. At the latter's request, the former looked for the list, or Exhibit B, in which the said package, or Exhibit 1-1, was entered. Upon noticing that the words "received in bad order" did not appear in Exhibit B, Atienza instructed Manalo to put Exhibit 1-1 in another envelope. Arriola then examined the package in the presence of Atienza, Manalo and others and found therein ten small envelopes in good condition. He opened three of them and their contents were found to be diamonds. After that Manalo requested the opening clerk Juan Gonzales to write down on Exhibit B the words "received in bad order." An examination of Exhibit I-1 disclosed that a portion of its contents to the value of P27,548.75 was missing and was never found.

As pointed out by the Attorney-General, Exhibit H, known in the record as the confession of the defendant Manalo, was inadmissible against the defendant Atienza, without which there is no direct proof to show that Atienza actually participated in the taking of a portion of the contents of the registered package No. 6281, consisting of diamonds to the value of P27,548.75. The proof is conclusive that at about 5 p. m. on January 18, the package in question was received in good condition by the clerk Juan Gonzales, and that within an hour it was turned over by him to the defendant Manalo, who receipted therefor by writing his initials opposite the figures 6281 on Exhibit B. It was the duty of the defendant, who had charge of the particular section, to exercise general

supervision over the employees of that section, and it was his personal business to see that registered bills, like Exhibit B, were duly checked, initialed or signed by the entry clerk Manalo, and in the absence of other evidence, it must be assumed that he performed his official duty, and that the package in question came under his personal control and supervision. While it was in his official custody and control, diamonds to the value of P27,548.75 were taken from and out of it which were never found. It is contended that Manalo alone committed the crime. The defendant Atienza at the time of its receipt in the office knew that the package in question was in his official custody and control. He also knew that it was receipted for by Manalo, whose duty it was to deliver the package to him. If Manalo neglected or failed to make the delivery, it was the defendant's duty to take the package and place it in the safe for safekeeping provided for that purpose before leaving the office, but the package was never placed in the safe that night. As clerk in charge of the registry section, it was the defendant's duty to immediately investigate the package, which had been tampered with and opened at one end, and to report that fact to his superior, which he failed to do. After Manalo was arrested and before Atienza was arrested, Manalo went to the Bureau of Posts where Atienza was working, and in Pampango asked him to put up a bail bond for his release. In response to which Atienza in the same language said: "As I have already told you before, I have no money yet." In answer to which Manalo said: "You have told me that you would sell those diamonds and you would give me part of the money." To this Atienza said nothing and made a gesture or sign, biting his lips, and started to run away towards the street-car. Both defendants deny that they ever had such conversation. The trial court who saw and heard the witnesses testify found as a fact that they did.

Under all the authorities flight is considered -as more or less evidence of guilt, and under the facts here, it should be considered as strong evidence of Atienza's guilt. There is no dispute as to the theft, and it is hard to believe that it could have been committed without the connivance, aid, and assistance of the defendant. He held an important and responsible position, and it was his official duty to look after packages of such value and to put them in the safe.

During the trial of this case Manalo was called as a witness and gave testimony tending to exonerate the defendant. It is true that Manalo's confession was not competent evidence against this defendant, but it is also true that after Manalo was called as a witness for the defendant, his confession would then be competent for the purpose of contradicting his testimony.

After a careful consideration of this case, we agree with the Attorney-General that the defendant is guilty of the crime charged, but that the penalty for qualified theft should be imposed under article 520, paragraph 2, of the Penal Code.

The judgment of the lower court on the merits is affirmed, but the sentence is modified. The defendant is found guilty of the crime of qualified theft under article 520, paragraph 2, of the Penal Code, and sentenced to suffer the penalty of prision mayor, in its medium degree, to seven years, four months, and one day, with the corresponding accessory penalties, and to indemnify the Yangtze Fire Insurance Company in the sum of P27,548.75, and to pay the costs. So ordered.

Johnson, Malcolm, Villamor, and Ostrand, JJ., concur.

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