

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PABLO ALEGADA, DEFENDANT AND APPELLANT.

G.R. No. 22786. January 30, 1925

Ponente: STATEMENT A complaint was filed in the justice of the peace court of Cabiao, Province of Nueva Ecija, charging the defendant with the taking of a ring valued at P180 with the intent of gain. When the case was called the defendant appeared and waived his right to an investigation. It was remanded to the Court of First Instance for further proceedings where the following complaint was filed: "That on or about the 13th day of May, 1923, in the municipality of Cabiao, Province of Nueva Ecija, Philippine Islands, and within the jurisdiction of this court, the aforesaid accused, Pablo Alegada, did willfully, unlawfully and feloniously, with the intent of gain, and without the consent of the owner, steal and take away a ring made of gold with diamonds valued at P180 equivalent to 900 pesetas belonging to Barbara Salamat. "Contrary to law." The defendant entered a plea of not guilty. The court found him guilty of the crime and sentenced him to imprisonment for five months of *arresto mayor*, with the accessory penalties, to return the ring, or P180, its value, with subsidiary imprisonment in case of insolvency, and to pay the costs. The defendant appeals, contending that the court erred in finding him guilty and in failing to acquit. JOHNS, J.

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JOHNS, J.:

Based upon affidavits, the defendant filed a motion for a new trial. August 28, 1924, this court ordered that the motion should be considered when the case was heard on its merits. Suffice it to say that there is no merit in the motion. All the matters claimed or stated in the affidavits were known or should have been known to the defendant at the time of the trial. The defendant contends that the ring in question was voluntarily delivered to him, and that the fact that he failed to return it does not constitute the crime of theft, and that the crime, if any,

was estafa.

The evidence is conclusive that the complainant never had any intention of parting with the ring or of allowing the defendant to have it for any length of time, and that upon its delivery, she expected an immediate return.

On legal principle, the facts are very similar to those in the case of *United States vs. De Vera* (43 Phil., 1000), where it is held:

"2. Id.; DELIVERY OF THE THING.—When the delivery of a chattel or cattle has not the effect of transferring the juridical possession thereof, or title thereto, it is presumed that the possession of, and title to, the thing so delivered remains in the owner; and the act of disposing thereof with intent of gain and without the consent of the owner constitutes the crime of theft."

In the instant case, the defense is an alibi, which is not worthy of belief. The proof is conclusive that the defendant obtained possession of the ring for temporary purposes only, and that in a very short time he left and could not be found, and that he was not seen again by the owner of the ring until the day of the trial. If the defendant had explained how and in what manner he obtained the possession of the ring and why he failed to return it, there might have been some merit in his contention that the crime was estafa. Upon the evidence in the record and in the absence of any other testimony, the crime committed is that of theft.

The judgment of the lower court is affirmed, with costs. So ordered.

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

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