

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PERPETUA TRINIDAD, DEFENDANT AND APPELLANT.*G.R. No. 26013. March 05, 1927*

Ponente: OSTRAND, J.

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The defendant was accused of the crime of theft, it being alleged in the information that "on or about the 19th day of November, 1925, in the municipality of Lapog, Province of Ilocos Sur, Philippine Islands, the said accused, Perpetua Trinidad, without violence or intimidation of persons nor force in the things, voluntarily, maliciously, illegally and criminally, took and carried away, with intent to gain and against the will of the owner, a gold ring with diamonds, the property of Victorino Dominguez, which ring is of the value of P90, the equivalent of 450 pesetas."

Upon trial the Court of First Instance found the defendant guilty of theft as charged in the information and sentenced her to suffer two months and one day of arresto mayor and to pay the costs. From this sentence she appeals.

It appears from the evidence that one Elizabeth Spencer, with the consent of Victorino Dominguez, the owner of the ring in question, handed it to the defendant for the purpose of pledging it as security for a loan of P5, which the defendant undertook to obtain for Elizabeth. The defendant immediately carried the ring to one of her neighbors, Julia Guzman, to whom she sold it for P30 instead of pledging it for a loan of P5 and appropriated the money to her own use. The defendant failing to return, Elizabeth Spencer became suspicious and went to her house for the purpose of ascertaining what had become of the ring, but did not find her at home. Two days later, she finally found her and learned that the ring had been sold and that it was in the possession of Julia Guzman, who, notwithstanding insistent demand, refused to return the ring to the owner unless the P30 she paid for the ring was returned to her.

The defendant denies that the ring was delivered to her for the purpose of using it as a pledge for a loan and insists that she was authorized to sell it and that she delivered the P30 for which it was sold to Elizabeth Spencer.

The court below gave no credence to the evidence for the defense and in our opinion its appreciation of the evidence was correct. The defendant is undoubtedly guilty of having sold the ring without authority and the only question which presents some difficulty is to determine whether the crime committed was theft or whether it should be classified as estafa. The question is discussed at length in the case of *United States vs. De Vera* (43 Phil., 1000) in which the court, citing various authorities, held that "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." This view seems to be supported both by Spanish and American authorities. Quoting from 17 R. C. L. pp. 15 and 16, the court says in the same case:

"A felonious taking is necessary in the crime of larceny, and generally speaking, a taking which is done with

the consent or acquiescence of the owner of the property is not felonious. But if the owner parts with the possession thereof for a particular purpose, and the person who receives the possession avowedly for that purpose has the fraudulent intention to make use of it as the means of converting it to his own use, and does so convert it, this is larceny, for in such case, the fraud supplies the place of the trespass in the taking, or, as otherwise stated, the subsequent felonious conversion of the property by the alleged thief will relate back and make the taking and conversion larceny. And it has been said that the act goes farther than the consent, and may be fairly said to be against it. If money is given to a person to be applied to a particular purpose, it is larceny for the receiver to appropriate it to his own use which was not the purpose contemplated by the owner. Obtaining money under the false pretense that it is to be bet on a horse race, and with the intent at the time to convert it to the bailee's own use, the race being a mere sham to aid this purpose, is larceny. The rule has been applied also to cases in which a person takes a piece of money from another to change, and keeps it with the unlawful intent to convert it and refuses to deliver the money given him or the change therefor, on demand; and the fact that the taking was open and from the owner is of no consequence, if the intent to steal existed. This is so for the reason that the delivery of money to another for the sole purpose of getting it changed is a parting with the custody only and not the title. The fact that the offender returns a part of the amount does not relieve him from liability for the larceny of the entire amount given him."

Though the facts in the present case differs somewhat from those in the *De Vera* case, the underlying principle is the same in both cases: the juridical possession of the thing appropriated did not pass to the perpetrators of the crime, but remained in the owners; they were agents or servants of the owners and not bailees of the property. (See 17 R. C. L., 43, par. 49.) But it has been suggested that one of the essential elements of the crime of theft is that the intent to misappropriate the property taken must exist at the time of the asportation and that while this element clearly existed in the *De Vera* case, it is not as apparent in the case at bar.

We may agree that in cases such as the present the crime committed should not be regarded as theft unless the circumstances are such that it must be presumed that the intent to convert or misappropriate the property existed at the time it was received by the perpetrator of the crime. But the existence of such intent is, in our opinion, fully as apparent in this case as it was in the *De Vera* case; the defendant, according to her own statement, offered the ring for sale immediately after its delivery to her, and we are forced to conclude that she did not receive it with honest intentions, but had the disposal of it in mind at the time.

The judgment appealed from is therefore affirmed with the costs against the appellant. So ordered.

Johnson, Malcolm, Villamor, and Villa-Real, JJ., concur.

STREET, J., with whom concurs ROMUALDEZ, J., dissenting:

It is a well-known rule of law that the furtive misappropriation of the master's property by a servant constitutes theft; and if the court had seen fit to affirm the conviction on the ground that the accused in this case was acting *pro hac vice* in the character of a mere servant, or that her position was here so far analogous to that of a servant as to make the same rule of law applicable, I should not perhaps have sounded a dissentient note, though entertaining some misgivings. However, when the decision is placed, on the authority of *United States vs. De Vera* (43 Phil. 1000), I am constrained to record the belief that the doctrine of that case is being misapplied.

The facts in this case, properly interpreted, do not, in my opinion, at all permit of the inference that the intention to misappropriate was present in the mind of the accused when she received the ring from Elizabeth Spencer. The proof shows that the request for the accused to take the ring and pledge it with Julia Guzman for a loan of P5 came from Elizabeth Spencer, without any previous intervention whatever on the part of the accused in the matter; and there is no act of hers from which the inference can be drawn that she intended to convert the property prior to

the actual act of misappropriation. All the probabilities would seem to be that the fraudulent design came into her head as the opportunity presented itself. In order to make the doctrine of *United States vs. De Vera* (43 Phil., 1000), applicable, it is necessary that the custody of the thing afterwards converted should be obtained by some fraudulent trick or device showing the existence, at that time, of an intent to misappropriate. (17 R. C. L., p. 13; 36 C. J., p. 771.) There is no just basis for such inference in this case.

This decision upsets the fundamental distinction between theft and estafa, leaving the courts at liberty in a large class of cases to convict of whatever offense may be charged in the information, regardless of the propriety of the qualification of the offense.

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