

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TEODORO I. LOCSON, DEFENDANT AND APPELLANT.

G. R. No. 35681. October 18, 1932

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal from a decision of Judge A. Horrilleno of the Court of First Instance of Zamboanga finding the defendant guilty of the crime of qualified theft and sentencing him to suffer twelve years, ten months, and twenty days of cadena temporal and the accessory penalties of the law, to return to the Bank of the Philippine Islands the sum of P33,965.45, and to pay the costs.

The defendant and appellant makes the following assignment of errors:

"1. The trial court erred in accepting as more worthy of belief and consideration the contradictory and improbable testimony of the witnesses for the prosecution, absolutely ignoring the trustworthy evidence submitted by the unbiased witnesses that testified for the defense.

"2. The trial court also erred in making conclusions and findings of facts absolutely unsupported by the evidence presented during the trial, and in convicting the accused on the strength of mere circumstantial evidence, which did not exclude each and every reasonable hypothesis consistent with the innocence of the defendant.

"3. The trial court finally erred in holding that the sum of P33,965.45 in question was not placed in the box and sack, when it was brought to the vault on June 7, 1930, and that the accused took the said money; and in finding the said accused guilty of the crime of qualified theft, imposing upon him the penalty of twelve (12) years, ten (10) months and twenty (20) days of cadena temporal, to suffer the accessory penalties provided by law, arid to return to the Bank of the Philippine Islands the sdd sum of P33,965.45, and to pay the costs, notwithstanding the insufficiency of the evidence."

The defendant was tried on a plea of not guilty to the following information:

"The undersigned accuses Teodoro I. Locson of the crime of qualified theft, committed as follows:

"That on or about the 8th day of June, 1930, and within the jurisdiction of this court, viz., in the municipality of Zamboanga, Province of Zamboanga, P. I., the above named defendant, being an employee of the Bank of the Philippine Islands, Zamboanga branch, as receiving teller, did then and there wilfully, unlawfully and feloniously, taking advantage of his said position as such receiving teller and with serious breach of confidence, take and carry away with intent to gain and without the consent of said bank, money in the total amount of P33,965.45, equivalent to 169,827.25 pesetas belonging to the said bank. Contrary to law.

"Zamboanga, Zamboanga, October 7, 1930.

"JOSE EVANGELISTA

"Provincial Fiscal"

The defendant was the receiving teller of the Zamboanga branch of the Bank of the Philippine Islands. (At the close of business on Saturday, June 7, 1930, he had in his possession the total sum of P48,461.58, consisting of currency, pending checks, and foreign coins as follows:

In notes of P100.....

P300.00

In notes of 50.....

250.00

In notes of 20.....

10,440.00

In notes of 10.....

9,010.00

In notes of 5.....

11,025.00

In notes of 2.....

5,276.00

In notes of 1.....

3,456.00

U. S. A. notes.....

1,634.00

Foreign currencies.....

47.00

Misc. checks pending

4,501.00

Mutilated bills

1,897.00

Phil. National Bank bills.....

165.45

Bank of the P. I. bills.....

460.00

48,461.58

This sum is referred to in the record as the "pieo". It appears from the evidence that it was checked by the cashier about 4.30 in the afternoon of June 7th and found to be correct. The cashier, Donato de la Liana, then told the defendant to put the money in a money box and a sack and take it to the third compartment of the vault known as the "grill". From the defendant's cage, the cashier returned to his desk and then went to the cage of the paying teller, Mateo Paulino, which adjoins that of the receiving teller, to check the silver in the possession of the paying teller. The cashier stepped out of the paying teller's cage to take part in a conversation between the defendant and Vicente Guanzon, a clerk in the foreign department of the bank, about the defendant's coming back to the office to work the next morning. The defendant had gone outside of his cage to talk to Guanzon. When the cashier was returning to the paying teller's cage, he saw the janitor, Alfonso Basilio, followed by the defendant, carrying the money box and sack to the vault. After completing the check of the silver, the cashier went back to his desk to enter in a book the figures showing the amount of the different items of the "pico". A messenger, Eugenio Canseco, followed by the paying teller, deposited the six trays of silver in the vault. Canseco then closed the door to the compartment where the "pico" was kept. Alfonso Basilio, accompanied by the cashier, carried a box of documents to the vault. The cashier then locked the "grill" and the second door of the vault, and closed the principal door of the vault, which has a combination lock. The cashier put the key to the "grill" in a safe with a combination lock in the office, closed it, and accompanied by Basilio left the office at 5.05 in the afternoon. The defendant, who was waiting near the employees' entrance to the bank, left on his bicycle, after telling the janitor, Alfonso Basilio, to come to the bank early the next morning.

In the conversation between, the defendant and Guanzon, to which we have referred, Guanzon told the defendant that he would not come back the next day because it was the fiesta of his barrio; that it was unnecessary for the defendant to come back, because he could get from the cashier a book containing the data he required for preparing certain statistics and take it home with him, but the defendant insisted on coming to the office Sunday morning to use the adding machine. The cashier then gave the defendant the book, and told him to send Basilio to

get the key to the office the next morning.

The janitor, Alfonso Basilio, got the key to the office from the cashier next morning and opened the bank about 8 o'clock. He entered defendant's cage to dust it. When Basilio was stooping in the act of placing the cover of the adding machine under the counter, the defendant arrived and asked him what he was doing. The defendant was carrying a package wrapped in a newspaper. Three minutes after the defendant arrived, he sent Basilio out to buy ice. Basilio was gone for ten or twelve minutes, and during this time the defendant was left alone in the bank. Soon after the janitor came back, the defendant called him, and on entering defendant's cage Basilio saw the defendant wrap a folded flour sack two inches thick in a rice sack. Defendant told Basilio to tie this bundle to defendant's bicycle, and watched him while he was fixing the bundle on the bicycle. Defendant gave Basilio some figures to add on the adding machine, and told him that he was going to the market to buy some mangoes. He left the bank on his bicycle. He came back in about ten minutes without the sacks, and said he did not buy any mangoes because they were too dear. He then gave Basilio some other work to do. They left the bank about 11 o'clock. Basilio locked the door and returned the key to the cashier.

From the bank the defendant went to the market. Near the market he engaged a calesa driven by Vicente Natividad, whom the defendant had employed. on various previous occasions to take fish and vegetables to his house. They stopped at a store near the market, and there the defendant put into the calesa a basket with a rolled sack on the cover. The defendant then told the cochero to take the basket to defendant's house. The defendant followed the calesa on his bicycle. When they reached defendant's house, the defendant himself took the basket out of the calesa and paid the cochero 20 centavos.

Early that morning, about 7.15, before going to the bank, the defendant had stopped at the office of Marquez, a stevedoring firm, located across the street from the bank. He stood inside the door looking out, as if watching for somebody. The stevedores were expecting a boat to be unloaded. About noon on the same day, Sunday, the 8th of June, the defendant entered the Indian Bazar as it was about to close and bought a valise for P5. A little later the defendant paid all that he owed to Gan San Lien, amounting to P65, giving him three twenty-peso bank notes and one five-peso bank note. The defendant had been owing this balance since February, 1930.

The next morning, Monday, June 9, 1930, the defendant, contrary to his usual practice, was one of the last to arrive at the office. There was already a customer in the bank, who desired to withdraw some money, but the paying teller was unable to wait on her, because the defendant had not come to deliver to the paying teller the money for the disbursements for the day, and the paying teller referred her to the cashier, who was waiting her when the defendant arrived. The defendant entered his cage, sat down and began to read a newspaper. When the cashier saw him, the cashier got the key to the "grill", went to the vault accompanied by the messenger Canseco, and got the money box and sack containing the "pico" of June 7th. Canseco delivered the money box to the defendant and the sack to the paying teller. The paying teller poured out the contents of the sack on his counter. He noticed at once that the loose bank notes, which were the first to be counted by him each morning, were missing. He notified the defendant immediately. The defendant then opened the money box, which was on his counter, as if to look for the loose bank notes, and exclaimed: "They are not here, or the bank notes of large denominations which I put here on the afternoon of June 7th." As the defendant pretended to be looking for the bank notes in his office and did not notify the cashier, the paying teller notified the cashier, who in turn notified the manager, Victor J. Jimenez. The manager immediately asked the defendant where the money was. The defendant said he had put it in the box and the bag, adding that he had put P15,000 in the box in ten-peso and twenty-peso bills and the rest in the bag. When asked what had become of it the defendant said he did not know, that he did not have the keys to the vault. The manager then checked the "reserve" in the vault, amounting to P124,000, and found it intact. He then checked the money in the box -and- the sack, and found the shortage to be

P33,965.45, made up as follows:

In notes of P100.....

P300.00

In notes of 50.....

250.00

In notes of 20.....

10,440.00

In notes of 10.....

9,010.00

In notes of 5.....

11,025.00

In notes of 2.....

76.00

In notes of 1.....

56.00

U. S. A. notes.....

1,634.00

Mutilated bills.....

502.00

Phil. National Bank bills.....

165.00

Bank of the P. I. bills.....

460.00

Foreign currencies.....

47.45

33,965.45

The Constabulary and the police were immediately notified of this loss. The chief of police of Zamboanga learned from Alfonso Basilio about the two sacks the defendant had taken from the bank. He went to defendant's house in the afternoon of June 9th and found two sacks in a laundry bag behind the door in defendant's bedroom which Basilio declared to be like those he had seen in defendant's possession. The money was never recovered.

It appears from the evidence that about the latter part of April, 1930 the defendant, contrary to the practice of the bank, began to retain a part of the "pico", consisting of bank notes of big denominations, and he persisted in this course to such a degree that the paying teller had to call his attention to the matter several times.

The evidence also shows that on Saturday, June 7th the manager said the "pico" was too large, and that on Monday he would pay P30,000 to the Chartered Bank or else send it to the head office of the Bank of the Philippine Islands in Manila. The defendant was present when the manager made this statement. The defendant was receiving a salary of only P90 a month. He had debts amounting to over a thousand pesos. Two or three months prior to June 7th, 1930, in connection with the newspaper reports of the Wilson case, the defendant asked the accountant of the bank, Santa Elena, how long bank notes would last if buried in the ground, and when the accountant replied that it would depend on the container, the defendant inquired how long they would last if kept in a tightly 'sealed earthen jar.

On June 13, 1930, Santiago Freixas, auditor of the Bank of the Philippine Islands, examined the reserve fund of the Zamboanga branch. He found it intact, but on examining the books of the bank he found a shortage of more than P33,000 in the "pico" of June 7, 1930.

When the bank was opened on Monday morning, June 9, 1930, all the doors of the bank and the vault were in good condition. The doors of the vault were found duly closed. There were no signs of robbery.

Various possibilities have been suggested to explain how the money might have been taken from the vault, but they are so improbable that we do not deem it worth while to consider more than one of them. Of course, if it be assumed that the defendant was honest and all the other officers of the bank corrupt and in collusion to loot the bank, it is easy enough to conclude that the defendant is innocent. Defendant's attorneys assume that the cashier had been embezzling the money of the bank, and that on the afternoon of June 7th he took the amount in question from the "pico" and put it in the "reserve" to cover his peculations. The origin of this assumption appears to have been the announcement of the president of the bank in April that from July, 1930 the "reserve" should be under the executive control of the manager. There is not a particle of evidence to support this assumption of defendant's

attorneys in the slightest degree. There is no evidence even remotely tending to show that there was a shortage in the "reserve". Furthermore, it appears that it would have been practically impossible for the cashier to substitute P33,000 from the "pico" for a like amount from the "reserve". In the first place the "reserve" is ordinarily made up of new bills of the Government of the Philippine Islands, while the "pico" consists of the ordinary bills in circulation. On the wrapper of each bundle of bills in the "reserve" appear the initials of the person who has examined it, while the bundles in the "pico" are held together only with rubber bonds. It was impossible for the cashier to make the substitution during the few minutes that he was in the vault Saturday afternoon and Monday morning. He could not have entered the vault in the interim without the collusion of the accountant and the manager, as the combination of the lock on the main door to the vault was known only to the accountant, and the key to the grill was in a safe, the combination of which only the manager knew.

After carefully considering the evidence and the decision of the trial court and the arguments of counsel, we are satisfied that the true explanation of the disappearance of the money is that the defendant never sent it to the vault, but concealed it in his cage instead of putting it in the box and bag, and removed it the next day. The facts inevitably lead the mind to that conclusion. If the defendant had put the full amount of the "pico" in the vault Saturday afternoon, it would have been found there Monday morning. It is a reasonable inference from the facts that the defendant went to the bank Sunday morning to dispose of the money, and for that purpose sent the janitor out, to buy ice. The money was taken away from the bank, and that was the only time when it could have been disposed of. The defendant may have put it in the flour sack, or he may have put part of it in the sack and concealed the rest of it on his person, or he may have passed it out to a confederate. In any event the defendant removed the money from the bank. Defendant's subsequent conduct strongly tends to confirm that conclusion. When he left the bank that morning about 11 o'clock, he went to the market and engaged a public carromata to take to his house a basket that he got from a store near the market. A flour sack and a rice sack similar to those the defendant took away from the bank were found next day in a laundry bag in defendant's house. About noon that same day, Sunday, June 8th, the defendant paid a Chinese merchant P65 in settlement of an old account, and bought a valise for P5. Defendant did not attempt to explain where this money came from but denied having any such transactions on June 8th.

Although the question is not specifically raised in the assignments of error, the court has carefully considered the classification of the crime committed by the defendant and found it to be correctly classified by the trial court as qualified theft. The money was in the possession of the defendant as receiving teller of the bank, and the possession of the defendant was the possession of the bank. When the defendant, with a grave abuse of confidence, removed the money and appropriated it to his own use without the consent of the bank, there was the taking or apoderamiento contemplated in the definition of the crime of theft. In the case of the United States vs. De Vera (43 Phil., 1000, 1003), Justice Viilamor speaking for the court said:

"The argument advanced in support of the contention of the defense is that the goods misappropriated were not taken by the accused without the consent of the owner who had delivered them to her voluntarily, and this element being lacking, it cannot be the crime of theft.

"It is well to remember the essential elements of the crime of theft, as expounded in the textbooks, which are as follows: First, the taking¹ of personal property; second, that the property belongs to another; third, that the taking away be done with intent of gain; fourth, that the taking away be done without the consent of the owner; and fifth, that the taking away be accomplished without violence or intimidation against persons or force upon things.

"The commentators on the Spanish Penal Code, from which ours was adopted, lay great stress on the first element, which is the taking away, that is, getting possession, laying hold of the thing, so that, as Viada says, if the thing is not taken away, but received and then appropriated or converted without the consent of the owner,

it may be any other crime, that of estafa for instance, but in no way that of theft, which consists in the taking away of the thing, that is, in removing it from the place where it is kept by the legal owner, without the latter's consent, that is, without obtaining for the purpose the consent of the legitimate owner."

The doctrine of the case as stated in the syllabus is as follows:

"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."

The Supreme Court of Spain in a decision of, June 23, 1886 held that a shepherd, who takes away and converts to his own use several head of the sheep under his care, is guilty of qualified theft. (Viada: Vol. 3, p. 433, 4th ed.)

In a decision of December 30, 1903, the same court said:

"Considerando que el grave abuso de confianza se determina por el quebrantamiento de especiales vinculos de lealtad impuestos, ya por las relaciones que median entre ofensor y ofendido, o ya por la naturaleza del encargo que se desempeña; y, en tal concepto, el abuso que comete un mozo de estacion sustrayendo objetos encomendados a la Empresa de que depende no puede menos de reputarse grave,, segun en caso identico lo ha declarado con anterioridad esta Sala, puesto que el culpable defrauda la natural confianza que al publico debe inspirar y per judica, no solo al credito de dicha Empresa, sino tambien sus intereses, puesto que esta es responsable de los efectos que se la confian, revistiendo asi el hecho condiciones de notoria gravedad, etc." (Viada: Vol. 6, p. 308, 5th ed.) See also the following cases cited on page 314:

"El cobrador y comisionado de apremio, nombrado y remunerado por el respectivo recaudador de contribuciones, que sustrae varios de los recibos que para el pago de 6stas existian en la Oficina de recaudacion, y cobrandolos el mismo de los contribuyentes, se apropia su importe sin entregarlo en la Oficina, sera responsable del delito de estafa, o del de hurto con grave abuso de confianza? El Tribunal Supremo ha declarado que esta ultima y mas grave calificacion es la que le corresponde

"El Concejal de un Ayuntamiento que encargado de la inspeccion y direccion de una rifa benefica, es sorprendido en el acto de sustraer el dinero que se recaudaba producto de los billetes, sera responsable del delito de hurto con grave abuso de confianza, o bien del de malversacion de caudales, y en su defecto, del de estafa? El Tribunal Supremo ha declarado lo primero."

For the foregoing reasons, the decision appealed from is affirmed, with the costs against the appellant.

Avancena, C. J., Malcolm, Villamor, Ostmnd, Villa-Real, Abad Santos, Hull, and Imperial, JJ., concur.

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