

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMILIANO ARONCE, DEFENDANT AND APPELLANT.*G.R. No. 4782. December 19, 1908*

Ponente: TORRES, J.

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Between 3 and 4 in the afternoon of May 29, 1907, Leonda Olivares was sleeping on the lower floor of the house No. 151, Calle Santa Rosa, district of Quiapo, Manila; her husband was absent at the time, and their servant girl was also asleep. The accused, Emiliano Aronce, entered the apartment, opened and abstracted from a locked wardrobe a lady's gold watch, valued at P15, and a gilt necklace and charm valued at P4; both articles were the property of the said Olivares, who woke up as the thief was leaving; she only saw him from behind as he, passed through the street door, to which she followed him; she was unable to pursue him out in the street however, because she was in dishabille, but immediately after she dressed and tried to find the thief, but he was no longer to be seen. Olivares made inquiries of Vicente Testa, who was working in a hat store on the opposite side of the street, and the latter told her that there was yet time for her to go after the individual, as he had only just left the said entresuelo. The aggrieved woman then noticed that her wardrobe was open and that the watch and chain were missing; she reported it at once to her husband who in turn informed the police of what had taken place. Detective George Hartpence recovered the stolen watch and chain from the pawn shop in charge of Leocadio Clemente; the initials D. A. R were engraved on the inside of the watch case, and the watch, as well as the chain, was recognized by Leoncia Olivares as her property.

For said reason a complaint was filed by the prosecuting attorney for the city of Manila, charging Emiliano Aronce with the crime of robbery committed in an inhabited house, and the corresponding proceedings were begun. On the 16th of May, 1908, the trial judge sentenced the accused to the penalty of three years, six months, and twenty-one days imprisonment and costs, and from the said judgment the accused has appealed.

The above-stated facts, which have been fully proven, constitute the crime of theft, and not robbery, as stated in the complaint, inasmuch as the accused managed to enter the dwelling of the injured parties and steal the watch and chain without the employment of any of the means enumerated in article 508 of the Penal Code; he did not enter the habitation of Leoncia Olivares and her husband, Pablo Partosa, on the afternoon of May 29, 1907, forcibly, or by breaking through a wall, roof, floor, door, or window, but entered it by doors that were open, or that were not locked or secured with a bolt; neither did he enter the house under a false name, or feigning to be a person in authority or an agent of one; he did not break open doors, wardrobes, coffers, or other furniture or locked or sealed objects, nor did he make use of false keys, picklocks, or other similar instruments in order to open the wardrobe where the said watch and chain were kept. The injured parties did not find that the doors or the lock of their wardrobe had been forced or broken, but simply that the door was open, with the bolt of the lock sticking out, and, according to the woman, in order to open the wardrobe it was sufficient to have pushed or pulled the door. For this reason the accused can not be punished in accordance with article 508, paragraph 4, of the Penal Code. Article 517 of the said code provides that—

"The following are guilty of theft:

"1. Those who, with intent of gain and without violence or intimidation against the person or force against things, shall take another's personal property without the owner's consent."

* * * * *

The abstraction of the said watch and chain, effected by the opening of the door of the wardrobe containing them by means of the slight movement necessary to pull it open, shows that the said wardrobe was not well secured by its lock, so that he did not make noise enough to awake the woman; such an operation does not constitute the force that characterizes robbery, inasmuch as it does not appear that the door of the wardrobe or its lock was fractured, or opened by the use of a false key or picklock; therefore, the theft does not fall within the provisions of the code on the subject of the crime of robbery, but within the provisions of article 517 hereinbefore inserted defining the crime of theft, because the thief obtained the stolen property without employing force or violence with respect to the said wardrobe.

The guilt of the accused has been clearly demonstrated in the proceedings, because, notwithstanding the fact that he pleaded not guilty, and his exculpatory allegation that at the time the crime was committed he was at San Miguel de Mayumo, Bulacan, an alibi which has not been proven in the case, the proofs submitted by the prosecution produce in the mind the fullest conviction of the guilt of the culprit as being the author of the theft herein prosecuted; and as a matter of fact, not only was he recognized by Vicente Testa, a neighbor of the aggrieved woman who saw the accused enter the house and also a few minutes later when he went out running and laughing pursued by the woman who, on reaching the street door through which the thief had passed told the said witness that the individual who had just left had stolen her watch. The woman was unable to continue the pursuit of the defendant because she was not properly dressed; the said neighbor, Testa, recognized the accused as the person who entered and a few minutes later left the said house, because the witness noticed, that the defendant, prior to entering the house, was looking at him, and he in turn kept his eye on the accused; for this reason it must be believed that, when Testa designated him at the trial of the case, it was due to the fact that he had clearly recognized him on the afternoon of the affair.

It has likewise been proven in the case that, immediately after perpetrating the theft, the accused went to Calle Azcarraga, to the pawn shop of Filomena Concepcion where he gave the name of Antonio Reyes and as residing in Calle Ilaya, Tondo, and obtained P7 by pledging the watch and chain. Owing to the address given, the police were able to arrest the accused, Emiliano Aronce, who was already known to them; he really lived in Calle Ilaya, and after his arrest he was recognized by the witness Vicenta Testa and picked out from among nine other individuals placed in line. Detective George Hartpence testified that, according to particulars kept in his office, the accused had been several times in Bilibid Prison and in proof of his statement produced the document marked Exhibit C, in which it appears that the accused has been nine times in jail, once for gambling, another for vagrancy, the third time for disturbing public order, and six other times for petty larceny, theft, or robbery.

In the commission of the crime, the presence of the aggravating circumstances of its perpetration in the dwelling of the aggrieved parties, and the fact that the accused has been more than twice convicted for other crimes comprised within title 23 [13] of the Penal Code, which deals with attempts against property, without any mitigating circumstance to counteract the effects of the said aggravating ones; for this reason, and taking into account the value of the watch and chain, which exceeds 25 pesetas but is less than 250, the crime is included in article 518, paragraph 4, of the Penal Code; but, on account of the circumstance above alluded to, that the accused has been sentenced several times for crimes committed against property, and the fact that he has been more than twice convicted, the penalty incurred by him is the one immediately higher in grade to that of *arresto mayor* imposed by No. 4 of the said article 518, in accordance with the provisions of article 520 of the Penal Code. The

penalty immediately higher in grade to that of *arresto mayor*, according to the gradual scale of penalties enumerated in articles 88 and 91 of the said code, is *presidio correccional*, and by reason of the presence of aggravating circumstance 20 of article 10, without any mitigating circumstance, the penalty that should be imposed on him is that of *presidio correccional* in its maximum degree.

In view of the foregoing it is our opinion that the judgment appealed from should be reversed, and Emiliano Aronce should be and is hereby sentenced, as principal of the crime of theft, to the penalty of four years, two months, and one day of *presidio correccional*, to the accessory penalties of article 58 of the code, and to pay the costs of both instances. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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