

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VALERIANA DEUDA AND BASILIA DECANO, DEFENDANTS AND APPELLANTS.*G.R. No. 5344. December 14, 1909*

Ponente: TORRES, J.

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Perfecto Toribio, and his wife, Andrea Arao Nepomuceno, were for a long time in possession of a pair of gold earrings, set with 16 diamonds; the said earrings were delivered to the latter as a pledge for a certain debt of P345, contracted by the wife of Eusebio Mendiola who, in turn, received them as a pledge from Petronia Azopardo, the wife of Meliton Austero.

On the 12th of May, 1908, Basilia Decano and her daughter Valeriana Deuda were living in the house of the said Andrea Arao, with whom they had friendly relations, in the town of Sorsogon, in the province of the same name. A goldsmith calling on Andrea Arao to obtain a piece of gold that he was in need of for that afternoon, she took out of her wardrobe a box containing her jewels in order to search for it, and took the jewels out of the said box; among these were the earrings, in a green case with a damaged lid or cover, and the mother and her daughter Deuda, upon seeing the earrings, asked the owner what was the value of the same. By this time, Andrea had found the gold that she was looking for and, leaving her jewels on the washstand, she went outside to give the gold to the goldsmith who was waiting for it. After that she went to the kitchen, and presently returned to her room, where she collected her jewels and again plated them in the box which she put in her wardrobe; she did not observe the absence of the pair of earrings until Sunday, the 24th, when she missed them from the case in the jewel box.

From the investigations made it appears that Saturnina Lambergue, who was also in said house on the 12th of May, while at work milling jocoy, observed that during the absence of Andrea Arao from her room, Valeriana Deuda, who together with her mother had remained in said room, picked up a green jewel case and after removing its contents replaced it inside the box, and that in the same evening both the mother and daughter left the house after taking leave of the injured party, who was still unaware of the loss of the earrings.

It was afterwards found that in the afternoon of the 21st the said two women called on the goldsmith Marcelino Rodriguez, who resided in Casiguran, and requested him to repair the setting of one of the earrings which was only tied with a string, but the goldsmith, upon examining said earrings and seeing the defect, declined to do the work for fear of breaking the stones; on the 23rd of said month of May, the aforesaid mother and daughter went to the house of Eugenia Pongo who also lived in Casiguran and pawned the earrings for P15, but later on they sold them to her for P80, and she therefore kept the jewels and paid them the difference of P65. When Eugenia Pongo was summoned to testify in the investigation of the loss of the earrings, she carried them with her in a case of the same green color, inside a basket. Before appearing in the court of the justice of the peace, she lodged in the house of the injured party, the said Andrea Arao; but when dressing herself or changing her clothes, she missed the case containing the earrings from the basket that she had laid near the wardrobe of the injured party, so that she appeared in court without the earrings; on the following day, however, she found the case with the jewels

underneath the said wardrobe.

In view of the foregoing the provincial fiscal filed a complaint on the 7th of August, 1908, with the Court of First Instance of Sorsogon, charging Valeriana Deuda and Basilia Decano with the crime of theft; after the proceedings were instituted the trial judge, on the 24th of October of the same year, sentenced Basilia Decano to the penalty of one year eight months and twenty-one days of presidio correccional, and Valeriana Deuda, being under age, to the penalty of four months and twenty-one days of arresto mayor; the pair of earrings were ordered returned to Andrea Arao, and the two accused were jointly and severally sentenced to pay the sum of P80 to Eugenia Pongo with the corresponding subsidiary imprisonment in case of insolvency, and each of them to pay one-half of the costs; the court further ordered that Valeriana Deuda be detained in the Hospicio de San Jose in Manila for a period of one year, and that execution of the sentence imposed in this cause be suspended by virtue of the provisions of section 1 of Act No. 1438. From the foregoing judgment the accused have appealed. The above-stated facts have been fully proven in the present case, and it is inferred therefrom that the crime of theft of a pair of gold earrings, set with diamonds, has been committed, and that the said earrings were stolen from the possession and house of Andrea Arao Nepomuceno, in the town of Sorsogon, Sorsogon, and were contained in a green case that was placed upon the washstand inside the room; that the theft was committed without the employment of force or violence; that the jewels were valued at P600 and were owned by Petronia Azopardo and were kept by Andrea Arao as a pledge to guarantee a debt of P345. The crime is defined and punished by paragraph 1 of article 517, and paragraph 2 of article 518 of the Penal Code.

The case contains conclusive evidence that Valeriana Deuda, a girl under 18 and above 15 years of age, was the person who stole the said pair of earrings from the case at a time when she was in the bedroom of Andrea Arao and the latter was outside of it; despite her denial and exculpatory allegations, the due consideration of the evidence and other data offered by the prosecution produce in the mind absolute conviction of the guilt of the accused as the sole principal of the crime herein prosecuted.

Effectively, shortly before committing the crime, the accused and her mother, who was also in the said room, upon seeing the jewel, inquired of Andrea Arao the value thereof; Saturnina Lambergue, who was then working in the sala or hall of the house, saw the accused, Valeriana, in the act of opening a green case and saw her remove its contents and put the case back into the jewel box which the owner of the house had left on the washstand when she went outside to deliver a piece of gold to the waiting goldsmith; the accused Deuda took advantage of the opportunity to possess herself of said earrings. The goldsmith, Marcelino Rodriguez, a resident of Casiguran, in said province, stated in turn that in the afternoon of May 21, after the theft was committed, Valeriana Deuda and her mother, Basilia Decano, called at his house and showed him a pair of earrings; they desired him to repair one that was only tied with a string; this he refused to do for fear of breaking some of the diamonds which he considered were of great value. Said witness at the trial recognized the pair of earrings as being the same that the accused had shown him on that occasion.

Eugenia Pongo testified that on the 21st or 23d of May the accused called at her house and pawned said earrings for P15, and that later on they returned and sold them to her for P80, and that, as she had previously paid them P15, she only gave them the difference, to wit, P65; said witness also recognized the earrings exhibited at the trial as being the same that she had bought from the accused; and that, when she was summoned before the justice of the peace to testify regarding the crime in question, she carried them in a green case, which she also recognized at the trial; that, while she was staying at the house of Andrea Arao, she missed the earrings and the case when she was taking her clothes out of the basket or tampipi which she carried, and which was placed near a wardrobe, but that, on the following day, they were found underneath the said wardrobe, and that in this manner the earrings were recovered by the said Andrea Arao Nepomuceno.

All of the above data offered by the prosecution-the absolute absence of proof contained in the vague statements made by the two accused, as well as the lack of explanation on the part of Valeriana Deuda as to how she came to be in possession of said pair of earrings-constitute satisfactory and conclusive evidence of her culpability as the sole convicted principal of the theft.

In the commission of the crime herein the presence of circumstance No. 10 of article 10 of the Penal Code must be considered, because there is no question that Valeriana, while staying together with her mother in the house of the injured party, took advantage of the occasion when Andrea Arao left her room, and for the moment had abandoned her box of jewels; she abused the confidence which in some manner the owner of the house had shown them both by receiving them and freely lodging them in her own bedroom; this circumstance does not appear counteracted in its effects by any generic mitigating circumstance, beyond the special privileged circumstance of article 9 of the code, for the reason that she is under 18 years of age; therefore, the said Valeriana Deuda has incurred the maximum degree of the penalty immediately inferior to that imposed by paragraph 2 of article 518, by virtue of the provisions of paragraph 2 of article 85, that is to say, *arresto mayor* in its medium and maximum degrees, imposed for the maximum period as appears in the judgment appealed from.

It does not appear from the proceedings that Basilia Decano had taken any part, in stealing the said earrings, inasmuch as the only eyewitness of the crime, Saturnina Lambergue, only points out Valeriana Deuda as being the person who took the green case from the box, and after opening it took the jewel therein contained, and at once returned the case to the box; Basilia Decano was not then present; it appears that she was at the window of the room, a certain distance away from the washstand on which the owner of the house had left the "jewel box, nor does it appear that the mother had induced her daughter to commit the crime or that she acted in accord with the latter in the commission thereof. But it can not be denied that the mother saw the earrings in the possession of her daughter, and the latter had no right to possess them, and, instead of investigating how they came into her possession, or returning the jewels to their owner, together with her daughter she took steps to obtain gain and profit from their value, since she went with her daughter to have them repaired by the goldsmith Rodriguez, and also pawned and finally sold them to Eugenia Pongo. Such behavior clearly indicates that she was an accessory after the fact.

Paragraph 1 of article 15 of the Penal Code reads:

"Accessories are those who, having knowledge of the commission of the crime, and without having participated therein either as principals or accomplices, subsequently take part in its execution in any of the following manners :

"1. By themselves making profit or by assisting the delinquents to profit by the effects of the crime."

Article 16 of the same code also prescribes:

"Those who are accessories of their spouses, ascendants, descendants, legitimate, natural, or adopted brothers or sisters, or relatives by affinity in the same degrees, are exempt from the penalties imposed upon accessories, with the only exception of such accessories who may be included in No. 1 of the preceding article."

Therefore, notwithstanding the fact that Basilia Decano is the mother of the principal accused, her relationship does not exempt her from liability as the accessory of her daughter, for the reason that she assisted her in obtaining profit from the theft and herself obtained profit therefrom, and since no mitigating nor aggravating circumstance is present with relation to the former, the penalty prescribed by article 68 must be imposed in the medium degree.

For the foregoing considerations it is our opinion that the judgment appealed from should be affirmed, as we do

hereby affirm it with respect to Valeriana Deuda, and reversed as regards the accessory Basilia Decano, upon whom we impose a fine of 2,000 pesetas and, in case of insolvency, to suffer subsidiary imprisonment, which shall not exceed one month and one day according to the provisions of article 92 of the code, and both accused shall pay, share and share alike, the costs of this instance; it is further ordered that the earrings be returned to Andrea Arao if the same have not yet been delivered to her. So ordered.

Arellano, C.J., Mapa, Johnson, Carson, and Moreland, JJ, concur.

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