

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TELESFORO FRIAS, DEFENDANT AND APPELLANT.*G.R. No. 7422. August 22, 1912*

Ponente: MAPA, J.

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The herein defendant was sentenced in the Court of First Instance for the crime of theft charged against him in the complaint to the penalty of four months and one day of *arresto mayor*, to make restitution of what was stolen or pay indemnity for its value in the amount of P120, with the corresponding subsidiary imprisonment, if necessary, and to pay the costs of the trial. From that sentence he has appealed to this court.

On January 13, 1911, the defendant went from the pueblo of Nagcarlang to that of San Pablo, both of the Province of Laguna, to attend the fiesta held in the latter pueblo, in company with Dionisia Castillo and three other persons. Dionisia rode horseback and the rest followed on foot. During the trip between the two pueblos Dionisia dropped unawares some jewelry which she was carrying in a handkerchief, consisting of a clasp pin of tumbaga and three finger rings of the same metal, two of them set with three diamonds. The third was set by means of clasps with four diamonds, all colored and of the size of a mongo seed, and one of the stones, at one end of the clasps, had a flaw easily perceptible, apparently, to the naked eye. With the exception of this last mentioned ring, all the said jewelry was found in the road and returned to its owner, the clasp pin and one of the rings set with three diamonds by the defendant, and the other ring of three stones also by a schoolboy of the barrio of Rizal, municipality of Nagcarlang. The defendant returned the clasp pin and the ring during the trip to San Pablo a few moments after he found them, though it is not clearly shown in the record whether he did so voluntarily or because some of his traveling companions had learned of his find and immediately told Dionisia Castillo. Be this as it may, the abovedescribed ring with the four-stone setting was not recovered.

The defendant well knew, as shown by his own testimony, that Dionisia Castillo lost the said ring besides those which were returned to her, and if he really found and appropriated it to himself and did not return it to her, as the prosecution claims, it is evident that he committed the crime of theft described in paragraph 2 of article 517 of the Penal Code, according to which "those who finding something lost, and knowing who its owner is, appropriate it with the intent of profit," are guilty of theft.

The defendant roundly denied the charge that he had found the ring in question. He testified that he found only the clasp pin and the ring with the three diamonds, which he returned at once to Dionisia Castillo. There is indeed no direct evidence of that fact. The defendant's traveling companions saw him pick up something from the ground, whereupon he told them that he had found some diamonds, but none of them saw at the time how many or what kind of jewels were found by him. There are, however, two witnesses who saw the ring referred to in the possession of the defendant two or three days after the date mentioned in the complaint. One of them testified that on the second day of the fiesta of San Pablo he and the defendant met in the cockpit of the said pueblo and that the latter offered to sell him, for the price of sixty pesos, a tumbaga ring with four colored diamonds of the size of a

mongo seed, set therein by means of clasps, one of which stones, at one end of the clasps, had a flaw, for which reason and also because he had no money he did not wish to buy it. The other witness stated that on January 16, 1911, in the pueblo of San Pablo, the defendant tried to pawn to him for P25 a tumbaga ring which had four colored diamonds of the size of a mongo seed set in it by means of clasps, and that he did not accept it as he did not then have any money. This witness also declared that one of the stones at one end of the clasps had a flaw in it. The testimony of these two witnesses was not disproved nor contradicted in any manner by the defendant while on the stand, and we hold it to be true.

Now, the description which those witnesses give of the ring which the defendant tried to sell or pawn to them coincides exactly in all its details with that of the ring lost by Dionisia Castillo the same kind of metal, the same number and size of diamonds, the same kind with respect to color, the same defect in one of the stones and, finally, the same form of setting as had the ring of the said Dionisia. It would be difficult to imagine more perfect and conclusive proof of the identity of these two rings. We are fully convinced that the ring seen by the witnesses mentioned in the possession of the defendant is the same one concerned in this case. In view of the evidence it appears to us unquestionable that the defendant found it together with the other jewelry which with good or bad grace he returned to Dionisia Castillo. As he appropriated it, knowing that it belonged to her, he is clearly guilty of the crime of theft with which he is charged in the complaint.

The judgment appealed from is affirmed, with the costs of this instance against the defendant. So ordered.

Arellano, C. J., Johnson, Carson, and Trent, JJ., concur.

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