

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FILOMENA SANTIAGO, DEFENDANT AND APPELLANT.*G.R. No. 9375. August 07, 1914*

Ponente: CARSON, J.

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The appellant was convicted in the court below of the theft of P120 from the complaining witness Carlos Perez.

The evidence of record conclusively establishes the following summary of the facts upon which appellant was convicted. On the morning of December 15, 1912, Perez received from one Galura, in the town of Bacolor, the sum of P150 in paper money which he undertook to deliver to Mercan & Co. in Manila. He doubled the bills twice into a small bundle and placed them in the watch-pocket of his trousers. Galura also gave him a P2 bill to pay his railroad fare to Manila. He arrived at the station in Bacolor in a carromata just as the train was about to leave for Manila, and hurried to the ticket window, at the same time drawing out from his watch-pocket the P2 bill which had been given him to buy his ticket. Unnoticed by him, the bundle of bills amounting to P150 dropped at his feet at the moment when he drew the P2 bill from his pocket just after he stepped from his carromata on to the platform, and while he was moving along the platform toward the ticket window. The accused woman, who was well acquainted with Perez, was passing by at that moment, picked up the bundle of bills, and hastily concealing them, moved on up the platform. After Perez returned from the ticket window, to the place where his cochero had placed his baggage, having in the meantime purchased his ticket and counted his change, the woman approached him and handed him one P20 and one P10 bill, in all P30, saying that this was the money he had dropped. Greatly surprised, Perez put his hand in his pocket, found it empty and asked her where the rest of the money had gone. She replied that that was all she had found, and Perez then ran excitedly up and down the platform looking for the lost bills. Two passengers on board the train, entire strangers to the parties, who came from another town, and a third passenger who had just boarded the train saw the incident from the window of the car in which they were sitting. One of them, a lady named Milagros P. de Martin, tried to call Perez' attention to the loss of his money as he ran toward the ticket window, but failing to do so, when he again passed her window looking for the bills which had not been returned to him, pointed out the woman who had picked up the bundle of bills and called to him that that woman had picked up his money. There was no time to give him any details, as just then the train moved off, and Perez, after hastily searching and researching his pockets, gave up his plan to go to Manila. He made some inquiries of those left at the station as to what they had seen, and learning nothing of value he went back to the owner of the money and reported his loss. He then hurried to San Fernando in search of a man named Siling, whom he suspected for some reason of having had something to do with the disappearance of the lost bills. It does not appear whether he found the man or not, but he spent the next few days in Manila looking for Mrs. Martin, and fortunately met her at the station, apparently on her way back to her home. From her he learned exactly what had occurred, and thereafter this action was instituted, charging the accused woman with the theft of the P120 which he lost from his pocket as above set forth.

There does not appear to be a shadow of doubt as to the substantial accuracy of the facts just related; and upon

those facts we are of opinion that the trial court properly convicted the accused of the crime of theft with which she was charged.

Subsection 2 of article 517 of the Penal Code provides:

"Art. 517. The following are guilty of theft:

"2. Any person who, having found anything which has been lost, shall with knowledge of its ownership appropriate the same with intent of gain."

Under the facts as proven, there can be no reasonable doubt that the accused found and appropriated, with intent of gain, the money lost by the complaining witness, with full knowledge of its ownership.

The accused testified that she picked up the money when she saw it fall, and immediately and voluntarily handed it to Perez. Several witnesses, friends and companions of the accused, were called for the defense, who attempted to corroborate her statement that she handed the money to the complaining witness immediately after he dropped it, and before he went to the ticket office. But their account of the transaction is put in doubt by the marked inconsistencies in their testimony, and is conclusively shown to be false by the testimony of the disinterested eyewitnesses on the train who saw her pick up the money, although they were apparently not in position to see just what it was that she gave him after he left the ticket office, she having moved away at that time from the place outside the window of the car where they were sitting.

Not only did these witnesses, directly contradict the story of the accused as to the immediate return of the money, but their testimony as to the size of the small thick bundle of folded bills dropped by Perez strongly corroborates his testimony as to the number of bills in the bundle; as to which indeed there would be no reasonable doubt, even without this strong corroborative proof.

Counsel for appellant insists that the story of the whole incident as told by the witnesses for the prosecution is put in doubt by the conduct of Perez himself as the train moved away, and immediately thereafter. It appears that he searched and re-searched his pockets, and, after the train left, went in search of a man who, as he suspected, might have something to do with the loss of his money. But it must be remembered that he did not learn the full details of the incident until some days afterwards, when he met Mrs. Martin, who had seen the accused pick up the bundle of bills, but did not have time to do more than point to the accused as the woman who had picked up his money, just before the train moved away. Distracted with the apparently inexplicable loss of his money, what more natural than that Perez should search and re-search his pockets, in the vain hope he might have been mistaken as to his loss. And until he learned the exact facts at a later day, his suspicions were naturally aroused against any person who by any possibility could have anything to do with the loss of his money. The accused woman went on board immediately after handing him the two bills which she said were all she had found, and until he had learned all that occurred, he had no sufficient reason to doubt her story. The natural inference at that moment was that some one else had gotten the rest of the money, and that the woman had told the truth when she said she had only found the two bills which she returned.

Some attempt is made to weaken the force of Mrs. Martin's testimony by inviting attention to an alleged contradiction in the statement of the witnesses for the prosecution as to the failure of the accused to return the money forthwith. One of the witnesses, who was in the car with Mrs. Martin, and saw the accused pick up the money, testified that he and Mrs. Martin saw her hand Perez something after he left the ticket window; but he could not say whether it was money or not, as by that time the woman had moved away from the window of the car. He evidently saw the accused, hand the two bills to Perez, but while he may well have thought that Mrs. Martin, who was sitting near him, also saw the accused in the act of handing something to Perez, he could not be certain that she did so, unless he happened to glance toward Mrs. Martin at that moment. He himself did not see

distinctly what occurred, and as the accused had moved away from the window there is no reason to doubt Mr. Martin's statement that she did not see the money returned. But whether Mrs. Martin did or not see the actual return of these two bills is a matter of no practical importance. Both prosecution and defense are agreed that she did hand him some bills, the vital issue being whether she did so immediately after she picked up the money dropped by Perez, and upon this point Mrs. Martin was in absolute agreement with the other disinterested witnesses for the prosecution. The whole incident was discussed by the passengers on the train after it got in motion, and if she herself did not see the accused hand Perez the bills after he left the ticket office, she doubtless learned of that incident on the train, which may account for her apparent uncertainty upon this point at the trial. But however this may be her evidence as to the finding and concealment of the bundle of bills dropped by Perez is clear and convincing, and her conduct throughout the whole transaction was that of an honest and honorable disinterested witness, rendered highly indignant by a contemptible theft perpetrated before her eyes.

We have not the slightest doubt as to the truth of the story told by her and the other disinterested eyewitnesses; and certainly there is nothing in the record which would justify us in disturbing the findings of the trial judge as to the degree of credit which should be accorded the respective witnesses of the prosecution and the defense.

The judgment entered in the court below convicting and sentencing the appellant should therefore be affirmed, with the costs of this instance against her. So ordered.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

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