

[G. R. No. 18974. November 20, 1922]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANTONIO GODIA ET AL., DEFENDANTS. FRANCISCO ATIENZA AND JOSE TANTOCO, APPELLANTS.

D E C I S I O N

STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the City of Manila, finding the appellants, Francisco Atienza and Jose Tantoco, guilty of the offense of theft, and sentencing the first to undergo imprisonment for two years, eight months and eleven days, *presidio correccional*, with the accessories prescribed by law, and the second to undergo imprisonment for five years, five months and eleven days, *presidio correccional*, with the corresponding accessories, and requiring each to pay severally one-fourth the costs.

As the case was presented in the court below Antonio Godia and Julian Santos were joined as codefendants with the appellants; but at the hearing in the Court of First Instance Antonio Godia was acquitted. Julian Santos was convicted, jointly with the appellants, and he was sentenced to undergo imprisonment for one year, eight months and twenty-one days, *presidio correccional*, with the corresponding accessories, and to pay one-fourth the costs. From said judgment Julian Santos appealed, but his appeal was dismissed by this court for failure of his attorney to file his brief in this court within the time allowed by the rules, with the consequence that his case is not now before us for review.

The offense which is the subject of this prosecution is alleged to consist of the furtive withdrawal by the accused of two cases of merchandise from pier 5 in the city of Manila, where said goods had been disembarked, from a ship arriving at this port, consigned to W. F. Stevenson & Co., Ltd.; and in order to impart an adequate understanding of the case, it is necessary to give some account of the steps which have to be followed in withdrawing imported merchandise from the custody of the Bureau of Customs.

In this connection it appears that, upon the disembarkation of the goods, the consignee, or holder of the proper documents of title, is required to obtain what is called a delivery permit, issued by authority of the Insular Collector of Customs, and authorizing the delivery of the goods which are described therein.

Armed with this permit, the importer, or his agent,—usually a customs broker or the representative of such,—presents himself at the pier and requests delivery of the goods. The customs checker on the pier takes the permit and when the property called for is identified, allows it to be sent out, making the proper record of deliveries on the back of the permit. At the same time it is the duty of the checker who makes the delivery to fill out and sign a gate pass, in the form of Exhibit A-1, stating the number of packages to be taken away. As the merchandise is carried out, the gatekeeper counts the packages and, if the number is in conformity with the gate pass, they are allowed to pass out. Both the record of deliveries and the gate pass are required to be verified by the signature, or initials, of the person effecting withdrawal. As the merchandise passes out the gate, custody is finally transferred to the importer or his agent, and the responsibility of the Collector of Customs ceases.

Passing now to the concrete facts of the present case, we find that in the latter days of April, 1921, certain merchandise consigned to W. F. Stevenson & Co., Ltd., of Manila, consisting of eight cases of cotton textiles and 75 cases of lanterns, was disembarked at pier 5 from the steamer *Katuna*; and two separate delivery permits were issued by the Collector of Customs, authorizing the withdrawal of said merchandise from the customhouse. In order to get the goods out, W. F. Stevenson & Co., Ltd., engaged the services of a firm of customs brokers, consisting of Angel Jose and Hilarion Tantoco. These brokers in turn executed their agency through their employees who, in respect to these transactions, were Jose Tantoco, Julian Santos, and Antonio Godia. The first named was assigned to pier 5, and it was his duty, as the principal representative of his employers, to attend to matters on the pier and to effect withdrawals of merchandise therefrom. Julian Santos acted as a sort of assistant to Tantoco and, in respect to the transactions presently to be mentioned, served as receiver of merchandise issuing from the gate. Antonio Godia, a chauffeur, was the driver of truck No. TG192, which was used in removing merchandise from the customhouse to the appropriate bodegas of the customs brokers or to other places where delivery should be made.

On May 6, 1921, Jose Tantoco presented himself at pier 5 with the delivery permit, dated April 30, calling for 75 cases of lanterns. This permit was placed in the hands of the checker Francisco Atienza, whose duty it became to identify the packages of lanterns and to make delivery thereof according to usual practice. Upon this occasion 72 of the packages in

question were forthcoming; and these were placed upon truck No. TG192 on the pier. In making record of this delivery on the back of the delivery permit, the checker incorrectly noted only 70 cases as having been delivered to Jose Tantoco, and to the right of this entry Jose Tantoco placed his initials, acknowledging the receipt of 70 cases (Exhibit B).

In connection with this delivery it should be observed that the checker, Francisco Atienza, admits that 72 cases were delivered by him; and he explains his act in noting only 70 as an unintentional error committed in the pressure of work. That 72 cases of lanterns were in fact delivered at this time is conclusively shown, not only by the gate pass upon which they were carried out but, by the records from the office of the customs brokers (Exhibit C), which show that 72 cases of lanterns belonging to W. F. Stevenson & Co., Ltd., were delivered from the customhouse and duly accounted for on May 6, 1921.

The remaining three cases of lanterns were delivered on June 4th, and their delivery was correctly noted in the record of deliveries on that date by one Latorre, another checker of the customhouse; and the fact of said delivery is corroborated, not only by the gate pass on which these three packages were carried out, but also by the records of the firm of brokers (Exhibit C), which show that on that date three cases of lanterns belonging to W. F. Stevenson & Co., Ltd., were received from the customhouse.

All of the cases in the consignment of lanterns are thus accounted for; but upon turning to the delivery permit we find noted thereon a delivery of two other cases, purporting to have been effected on May 7, 1921. The note concerning this delivery is in the handwriting of Francisco Atienza, and his initials are found in the column which should show the name of the person by whom delivery was made. This entry falls in the line immediately below the line containing the entry with respect to the delivery of 70 cases on the preceding day; and a curious circumstance is that the initials of the accused Jose Tantoco, which should have appeared after both deliveries, if both were really made, are written only once and this precisely on the dividing line between the two entries. As there were no cases of lanterns in this consignment that could have possibly been sent out on this date (May 7), the whole entry with respect to these two cases is fictitious. This conclusion is corroborated by the circumstance that the records of the firm of customs brokers (Exhibit C) contain nothing to indicate that any lanterns pertaining to this consignment were taken out of the customhouse on that date. The significance of this false entry will be presently apparent.

Of the eight cases of textiles, called for in the delivery permit (Exhibit A), four cases were withdrawn on May 14. These are identified by their numbers as noted in the record of

deliveries on the back of the delivery permit, and repeated in the records kept by the brokers (Exhibit C), thus showing that these four cases were properly withdrawn and duly accounted for to the owners.

The other four cases of textiles called for in the delivery permit were numbered respectively 291027, 291028, 291029, and 291030; and all four of these cases were carried out on May 7, 1921. Of these four cases, the two bearing the numbers 291027 and 291029 were properly noted in the delivery permit (Exhibit A) as having been delivered upon that date by Francisco Atienza to Jose Tantoco, and these two cases were duly accounted for in the reports made to the brokers. The other two cases, numbered 291028 and 291030 are not noted on this permit as having been thus delivered, but that they were carried out at or near the same time as cases numbered 291027 and 291029 is indubitably shown by the circumstance that on this same day Francisco Atienza issued two gate passes numbered consecutively 312935 and 312936, each calling for two cases of merchandise belonging to "W. F. S. & Co." Only one of these gate passes, however, is recorded as pertaining to the delivery of textiles. This is gate pass No, 312935. The other, No. 312936, is recorded in the fictitious entry in the record of deliveries of lanterns, there ascribed to the same date, or May 7, 1921. The two cases of textiles bearing the numbers 291028 and 291030, and whose withdrawal is not noted in the record of deliveries (Exhibit A), have not subsequently been recovered, and their disappearance supplies the basis of this prosecution for theft.

Only one other circumstance needs to be stated in this connection, which is, that all of the gate passes relating to the withdrawals above-mentioned bear the initials of Julian Santos on the reverse side, showing that he received at the gate the cases to which those passes pertained.

In the light of the foregoing explanations it is clear that the two cases of textiles, numbered 291028 and 291030, and having a value together of P700, more or less, were furtively withdrawn from the customhouse on May 7, 1921, and that in order to conceal their disappearance they were sent out on the gate pass numbered 312936, and fraudulently allocated to the fictitious entry in the record of the deliveries of lanterns (Exhibit B). The circumstance should not pass unnoticed that when the four cases of textiles were sent out on May 7, 1921, it was necessary to make out two gate passes in order that two of the cases might be noted on Exhibit A and two on Exhibit B, whereas if the withdrawal of the goods had been accomplished in good faith, one gate pass for the four cases would have sufficed. The circumstance that the two gate passes used in this transaction bear numbers which are in immediate sequence, indicates that the four cases were sent out together, an inference

which is corroborated by the fact that all four of the cases went away on truck TG192.

That this furtive withdrawal of two cases of textiles from the customhouse constitutes theft does not in our opinion admit of doubt; and the crime was committed when the merchandise passed out of the custody of the custom-house and into the control of the person, or persons, outside who appropriated the same. The proximate author of this crime was of course Francisco Atienza, who directly manipulated the device by which the surreptitious withdrawal of the goods was accomplished, and this be it noted was by means of double falsification of a commercial document, and in serious abuse of the confidence reposed in him as an employee of the Bureau of Customs.

As was observed by his Honor, the trial judge, the scheme that was followed in the perpetration of this crime was impossible of realization without collaboration on the part of more than one person; and that Jose Tantoco was acting in collusion with Francisco Atienza in the perpetration of said offense is in our opinion clearly deducible from the circumstances attendant upon the crime. In this connection it must be remembered that imported merchandise can be withdrawn from the customhouse only upon the initiative of the importer, or his agent; and in the case before us Jose Tantoco was charged by his employers with the duty of superintending withdrawals of merchandise from pier 5. He therefore undoubtedly knew that 72 cases of lanterns had been placed upon the truck for withdrawal at the time he signed the receipt for 70 cases, and his astuteness is observable in the fact that his initials are so placed in the record of deliveries (Exhibit B) as to cover either one or both of the two false entries found in that document. We also note that this appellant signed his full name in the column of receipts in the record of deliveries (Exhibit A) after the entry relating to the cases of textiles numbered 291027 and 291029. But, as we have already seen, the two cases of stolen textiles were sent out contemporaneously with said cases, and it is impossible to suppose that he did not participate in the criminal act by assisting in the withdrawal of the two cases which have disappeared.

We may add with respect to the accused Jose Tantoco that the information alleges that he is a recidivist, having been four times convicted of the crime of theft, and this is proved.

Upon the record before us both of the appellants are in our opinion clearly guilty of the offense of theft, qualified in the case of Jose Tantoco by his repeated reincidence in this crime, and in the case of Francisco Atienza by serious abuse of the confidence reposed in him as an employee of the Bureau of Customs. The fact that the theft was accomplished by means of a double falsification of a commercial document cannot be taken into account for"

the purpose of convicting the accused of the complex offense of theft by means of falsification, since the crime of falsification is not charged in the information.

As to Jose Tantoco the judgment appealed from is in accordance with the law, but as to Francisco Atienza, the penalty must be raised to five years, five months and eleven days, *presidio correctional*, thus placing the period of imprisonment assigned to him on a parity with that of Jose Tantoco. As thus modified, the judgment appealed from will be affirmed, and it is so ordered, with costs against the appellants.

Araullo, C. J., Johnson, Malcolm, Avanceña, and Ostrand, JJ., concur.

DISSENTING

ROMUALDEZ, J., with whom concurs JOHNS, J.,

After a careful consideration of the evidence, I fail to be convinced that the guilt of the appellants has been fully proven.

As to Francisco Atienza, the fact that he made incorrect entries is not necessarily attributable to a criminal intent on his part. I am rather inclined to believe that such was an unintentional error committed in the pressure of work, any other corroborative evidence independent of that fact being absent. There is no evidence to show collusion on his part with some other person or persons in the commission of the theft.

With regards to Jose Tantoco, his intervention as disclosed in the case, was to call for 75 cases of lanterns, and to place his initials acknowledging the receipt of 70 cases. There is no evidence tending to prove that he took or profited for himself, or aided in any way another person to take or profit by the cases of merchandise which disappeared.

I am, therefore, of the opinion that the guilt of the appellants has not been established sufficiently and beyond reasonable doubt, and that consequently they should be acquitted.

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