1 Phil. 294

[G.R. No. 503. July 15, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ELSIDA RAPINAN, DEFENDANT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:

This prosecution is based upon a charge of the theft of a gold chain of the value of 70 pesos. The information alleges that this theft was committed upon an occasion on which the defendant had gone to the house of Dona Cayetana Veloso with the pretext of seeing and selecting a chain for the purpose of buying it. It is supposed that this chain was lost—that is, taken—on one day in June, 19U0. A year afterwards, in June, 1901, Florentina Remoquillo stated to Dona, Cayetana Veloso that she had seen in the possession of the accused the chain which had been missed a year ago.

A prosecution was commenced, and of the three witnesses called on behalf of the Government—one of them the woman Remoquillo—none were able to testify as to the actual theft nor to the fact that the accused was in the house of the complaining witness to see about buying a chain. At the trial all three, as well as the complaining witness, made self-contradictory statements, their testimony being different from that given at the preliminary investigation. It was found impossible to prove anything when the case was called for trial. The complainant offered to produce other witnesses, and the oase was set for a later day. On this occasion five more witnesses were presented. By the testimony of three of them an attempt was made to show that the accused had tried to give an account of her acquisition of the jewelry in question. Two of them directly testified to the theft of which the accused is charged. These two witnesses testified that they had been present a year before and that they had seen the accused commit the theft. Nevertheless, they said nothing about it to the complaining witness until the day before they were put on the stand. The 29th of July, 1901, having been fixed as the day for the continuance of the trial, one witness, Mateo Ufana,

stated that on the 28th he had gone to the house of the complaining witness for the purpose of telling her what he knew about the matter, and that on this account she had called him as a witness, together with Melchor del Mar, his companion on that occasion, whom Ufana reminded of what had taken place a year before in order that he might be called as a witness.

The court can not consider that the theft has been proven by the testimony of these two witnesses: it is sufficient to read their testimony and compare it with that of the complainant in order to observe its self-contradictory and partial character. The fact of the theft of which the accused is charged not having been proven, it follows that she was the lawful possessor of the chain in question. The latter was spontaneously exhibited by counsel for the defense to the court in order that it might be shown to the witness.

In accordance with articles 620, 844, and 635 of the Law of Criminal Procedure of Spain promulgated on the 14tb of September, 1882, made supplementary law in these Islands by virtue of article 95 of the provisional regulations for the application of the Penal Code and still in force by virtue of the provisions of section 1 of General Orders, No. 58, series of 1900, on the subject of criminal procedure, the person in possession of a thing at the time it is seized by order of the trial court is presumed to be the owner of it. The possession of personal property acquired in good faith is equivalent to title thereto, in accordance with article 464 of the Civil Code now in force, and by the provisions of article 434 good faith is always to be presumed, the burden of proof being upon him Vho asserts that the possessor holds in bad faith.

What appears to be really questionable is whether the accused is the owner of the chain, in view of the assertions of the complaining witness. “Who is the owner? Who is the possessor? This it is impossible to determine a priori. The relation of the person to the thing or the right is apparently the same with respect to ownership as with respect to possession. From an exterior point of view he who exercises acts of ownership must be regarded as the owner. Hence it is that owing to the impossibility of determining the question from appearances and in view of the impossibility of looking into the conscience of the possessor—a matter entirely beyond the scope of judicial investigation—article 434 establishes the presumption of good faith; it does not say that good faith exists, but that it is presumed. This presumption is just, because possession is the outward sign of ownership. It is to be presumed that the right of the possessor is well founded. This appearance of lawful possession must be accepted even though it be in reality nothing more than a disguise for bad faith, because this can not be known with certainty until proved, and because every person is presumed to

be honest until the contrary is shown. Hence, protection is given to the possessor against all other persons, whoever they may be, and hence, the precept of article 434 which demands proof of bad faith." (Manresa, Commentary on the Spanish Civil Code, Vol. IV, p. 96.)

> "He who may have lost a chattel or has been illegally deprived of it may recover it from the person in whose possession it may be." (Art. 464, Civil Code.)

These were the questions in issue.

Therefore the judgment below by which the defendant is convicted of theft and condemned to two months and one day of *arresto mayor* and to the restoration of the chain in question, which is now in the hands of the clerk, and to the payment of costs, is hereby reversed and set aside, with the costs of both instances *de oficio*. The chain in question will be returned to the accused, in whose possession it formerly was. So ordered.

Cooper, Mapa, Willard, and *Ladd, JJ.,* concur.

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