

2 Phil. 47

[G.R. No. 1021. March 14, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FRANCISCO LESCANO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

Francisco Leseano is charged with the offense of theft committed in the following manner: That Don Ramon Panlilio left in his carromata upon quitting it at the porch of his house a case of surgical instruments valued at 1200 pesos, and that the defendant, who was his cochero, appropriated them to his own use, and also carried off a pair of lamps from the vehicle of the value of 60 pesos.

The defendant was found guilty of the charge and convicted by the Court of First Instance of Pampanga of the theft of an amount exceeding 250 pesetas, and was sentenced to the punishment of four years and three months of *presidio correccional* with accessories, and to the restitution to Don Ramon Panlilio of the stolen articles or to the payment of 210 pesos, the value of the same, and in case of his insolvency to subsidiary imprisonment as provided by article 50 of the Penal Code. He appeals from this judgment.

The circumstance that the defendant was a domestic at the time of the commission of the offense was applied in raising the penalty to the next higher degree than that prescribed in articles 517 and 518 of the Penal Code.

The evidence shows that Don Ramon Panlilio was at the time of the commission of the offense living with his aunt, Dona Maria Santos, as one of the family, the defendant then being in the employ of Sefiora Santos. It appears from the testimony of Don Ramon Panlilio that in the month of August of last year he made a professional call and was driven by the defendant in a carromata to attend it. That on returning home he forgot the case of instruments, leaving it upon the seat of the carromata; that about an hour afterwards he

remembered he had left the case of instruments in the carromata and called to the cochero to bring it to him; that the cochero had gone off and that the case of instruments had disappeared. The case of instruments was worth 200 pesos. He also noticed that the lamps were missing from the carromata, which were of the value of 60 pesos.

The defendant left Bacolor for Manila and did not return for several months.

Amado Gutierrez, a witness for the prosecution, testified that, he was acquainted with the defendant, having known him as an employee of Dona Maria Santos and in the employ of his sister, Dona Maria Rodriguez; that some time about midday on a day in August the defendant passed in front of witness's house carrying a case of instruments which he recognized as belonging to D. Ramon Panlilio; that he paid no further attention to it because he knew that the defendant was the cochero of Panlilio. That the street in which the defendant was seen by the witness was the road which leads to Guagua where the steamer is taken; that the defendant carried the case of instruments in his right hand; that the defendant was traveling on foot and alone,

Andres Panlilio testified that while in a drug store he saw the defendant pass carrying two lamps in his hand and a case of surgical instruments. He heard a few days afterwards of the loss of the instruments by Senor Panlilio, and then he told that he had seen the cochero pass carrying the lamps and the case.

The prosecution introduced other testimony in the case tending to show the loss of the case of instruments and the disappearance of the defendant at the time.

The evidence in support of the defense was confined to the proof of an *alibi*.

There can be no doubt that the defendant, Lescano, was at the date of the loss of the articles mentioned in the employ of Dona Maria Santos, and that he disappeared at the time the articles were missing. It will be unnecessary therefore to consider further the character of the testimony in support of the *alibi*.

Objections are made by the attorney for the defense to the answers of certain witnesses in the case to the effect that they supposed that the defendant was guilty of the crime, and to other statements made by them of a hearsay character considered by the court below.

The testimony of the witnesses Ramon Panlilio, Amado Gutierrez, and Andres Panlilio is sufficient to establish the guilt of the defendant without regard to the evidence to which

objection is made. The admission of this evidence was harmless error.

The judgment of the Court of First Instance is affirmed, and the costs of appeal is adjudged against the defendant.

Arellano, C. J., Willard, Mapa, and Ladd, JJ., concur.

Torres, J., did not sit in this case

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