

Since, therefore, we have no evidence of an actual, nor an unequivocal appearance of an attempt to do bodily harm, the District Court erred in its finding of guilty.

JUDGMENT

The finding of guilty and the judgment of the District Court of Yap District are reversed, and this cause is remanded to that court with directions to find the defendant not guilty.

FANAMTHIN, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 153

Trial Division of the High Court

Yap District

May 16, 1958

Defendant was convicted in Yap District Court of petit larceny in violation of T.T.C., Sec. 397. On appeal, defendant claimed that evidence did not prove him guilty beyond reasonable doubt and that court's finding as to damages and its order for restitution were excessive. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that trial court was warranted in its finding of guilt and that its finding as to value of property involved based on local values will be sustained by appellate court.

Affirmed.

1. Larceny—Petit—Value

Where evidence shows taking of personal property worth less than fifty dollars from home of another with intent to convert it to accused's own use, trial court is justified in finding accused guilty of petit larceny. (T.T.C., Sec. 397)

2. Larceny—Intent

In criminal prosecution for petit larceny, it is immaterial that defendant may have assumed he was merely borrowing property and would return it when it no longer served his needs. (T.T.C., Sec. 397)

3. Larceny—Generally

Larceny is the fraudulent taking and carrying away of a thing without claim of right, with intention of converting it to use other than that of owner without his consent.

4. Criminal Law—Appeals—Scope of Review

Trial court in criminal proceedings is better able to judge credibility of witnesses as to issue on which there is conflicting testimony than is appellate court.

5. Larceny—Petit—Value

In criminal prosecution for petit larceny, since trial judge is assumed to have sufficient acquaintance with local values of new and used merchandise, his findings in this regard will be followed by appellate court. (T.T.C., Sec. 397)

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TOOMIN, *Associate Justice*

This is an appeal from a conviction of Petit Larceny in the taking of a phonograph. It appeared that the defendant, while under the influence of liquor, had removed the phonograph and a quantity of records from the home of the complaining witness, and had taken them into the boondocks, there the better to enjoy the beauties of music under the stars. When the cold, gray light of dawn overtook him, he was unable to find the machine where he thought it had been left. Subsequently, when found by a passerby, it proved to have been damaged in the amount found by the court to be the sum of \$20.00.

The trial judge found the defendant guilty, and fixed his punishment at thirty days' imprisonment. He also directed the defendant to make restitution of the \$20.00 of damage to complainant at the rate of \$5.00 per month. Defendant has served his jail sentence, but contends it was improper, as the evidence did not prove him guilty beyond a reasonable doubt. He also claims the damages were excessive, as the value of the phonograph at the time of taking was not to exceed \$10.00.

[1-3] As regards the evidence of guilt, it appears from the record that the court was warranted in its finding. The evidence shows a taking of personal property worth less than \$50.00 from the home of another, with intent to convert it to the defendant's own use. It does not matter that the defendant may have assumed that he was merely borrowing the machine and would return it when it no longer served his needs. This is larceny nonetheless, as that term may be defined as the "fraudulent taking and carrying away of a thing without claim of right, with the intention of converting it to a use other than that of the owner without his consent". *Ledvinka v. Home Insurance Company*, 139 Maryland 434, 115 A, 596, and 32 Am. Jur., Larceny, § 2, p. 882.

[4, 5] With respect to the question of value, the evidence is conflicting. However, the trial court was better able to judge the credibility of the witnesses on this issue, and will be assumed to have sufficient acquaintance with local values of new or used merchandise, and his findings in that regard will be followed by this court.

JUDGMENT

Accordingly, there being no merit in this appeal, the judgment order of the District Court of Yap District finding the defendant guilty of Petit Larceny, and directing restitution of the property damaged, is affirmed.