

4 Phil. 242

[G.R. No. 1996. March 06, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ESPIRIDION ROQUE ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

In a complaint dated November 10, 1903, the assistant prosecuting attorney of the city of Manila charged Espiridion Roque, Nicolas Velasquez, Leon Lariosa, Tin Juan, and two others with the crime of theft. The complaint stated that these defendants on or about June 30 of the same year did in the city of Manila, willfully and feloniously, with the intention of profiting thereby and against the consent of the owner thereof, take and carry away one hundred and seventy-one cases of I. W. Harper whisky valued at \$1,539 and sixteen cases of sardines valued at \$ 104, both United States currency, all of the total value of \$1,643, United States currency, equivalent to 18,894.05 pesetas; that these goods were the property of the Pacific Oriental Trading Company, a corporation existing and doing business under the laws of these Islands; that the act was committed contrary to law.

The case having come on for trial, the court below sentenced these four defendants to the penalty of five years' imprisonment and the costs. The defendants Sinforoso and Ignacio Galang had not been apprehended and they are still absent. From this judgment the four defendants appealed.

From the evidence adduced in the case it appears that in pursuance of certain orders received from the Collector of Customs, the storekeeper, John A. Ryan, started to make an inventory of the goods

stored in the warehouses Nos. 3 and 6 of the Pacific Oriental Trading Company, which were under his charge. He noticed that in warehouse No. 6, situated near the river and close to the Quinta Market, one hundred and seventy-one cases of whisky and sixteen cases of sardines were missing, according to a memorandum which contained a list of the goods stored in said warehouse. That for this reason the manager, W. H. Anderson, a director of the company, an employee, Charles Snyder, and the storekeeper proceeded to make a minute investigation as to how the cases could have disappeared from the warehouse, because the building was constructed of stone, having one entrance with two keys, one being in the possession of the Collector of Customs and the other in the possession of the storekeeper. From their investigation they found that an opening had been made in the roof of the warehouse and that two pieces of timber had been cut out and the hole covered by two boards so as to conceal the traces of the theft. The acts took place between 10 and 12 o'clock on the evening of the 30th of June, 1903, favored by the darkness and silence of night. In order to remove these cases, the two absent defendants, Ignacio and Sinforoso Galang, entered the warehouse through the roof, and in order to do this made aforesaid opening and then passed the cases out through the hole and lowered them by means of ropes into the yard attached to the warehouse; from here the cases were taken to a banca with the assistance of Leon Lariosa and Nicolas Velasquez, who were outside of the warehouse; that after putting the cases in the banca Faustino Reyes and Espiridion Roque rowed over to Quinta Market, where Tin Juan awaited them, the latter receiving said cases and carrying them ashore with the assistance of some workmen whom he employed for this purpose. These facts constitute the crime of robbery committed in an uninhabited place, by means of force against the thing, scaling a building and breaking the roof. The value of the goods taken exceeds 1,250 pesetas. This crime is provided for and punished by article 512 of the Penal Code with the penalty of *presidio correccional* in its medium and maximum degrees. In order to remove the one hundred and seventy-one cases of whisky and sixteen cases of sardines, the property of the said company, the defendants had to make an opening in the roof of the warehouse, which was uninhabited, and they then entered said building by scaling the wall.

Taking into consideration that the complaint erroneously charged the defendants with the crime of theft, we can not find them guilty of or make them liable for the crime of robbery. We have examined the judgment of the court below, which is in conformity with the complaint and with the same point of view as established in the latter. The crime must not be allowed to go unpunished, even though it has been qualified as theft. As regards the participation of the defendants in the crime, all the evidence adduced in the case produces on the mind a clear conviction as to the guilt of the defendants Nicolas Velasquez, Espiridion Roque, and Tin Juan, the first two as principals and the latter as accessory.

It is a fact fully proven, indeed, that Velasquez, and Roque, with two others who are absent, took a direct part in the removal of the cases stored in warehouse No. 6 on Calle Isla de Romero, near the Pasig River, and belonging to the said company, and that for this purpose they broke in the roof of the warehouse and scaled the wall of same; that in order to deliver the, cases to the Chinaman Tin Juan, as they had agreed previously, Espiridion Roque took the cases in a banca to the wharf at the Quinta Market and there the Chinaman received them; that the Chinaman, without having any participation in the commission of the crime as principal or accomplice, but with knowledge of the criminal removal of the cases, profited by the crime and helped the principals to dispose of the effects stolen. The Chinaman, therefore, should be punished as an accessory after the fact.

In the commission of the crime we must take into consideration the existence of the aggravating circumstance provided for in subsection 15 of article 10 of the Penal Code. These defendants committed the crime taking advantage of the darkness and silence of the night. There is no extenuating circumstance to offset the effects of the former, and therefore the proper penalty provided for in article 518, paragraph 1, of the Penal Code should be imposed upon the principals in its maximum degree and on the accessory in the degree provided for in article 68 of the Penal Code. As regards Leon Lariosa, the case does not contain sufficient evidence to show that he took part in the commission of the crime for which he is now prosecuted. The fact that there may be some

doubt as to his innocence is not sufficient reason for convicting him, because the evidence is lacking. Therefore he should be acquitted.

By virtue, therefore, of the reasons above stated, we are of the opinion that Nicolas Velasquez and Espiridion Roque should be sentenced to five years of *presidio correctional* and the Chinaman Tin Juan to four months of *arresto mayor*, the principals being also obligated, jointly and severally to restore the effects stolen or the value thereof amounting to \$1,643, United States currency, and upon their default that the Chinaman Tin Juan be subsidiarily liable for the return of the effects robbed or the value thereof, and in case of insolvency of all of them to suffer subsidiary imprisonment; provided, however, that this latter penalty shall not exceed one year in the case of Roque and Velasquez or one-third of the penalty imposed on the Chinaman. They are also each sentenced to pay one-fourth of the costs in both instances. Leon Lariosa is hereby acquitted, with the remaining costs *de officio*; hereby affirming the judgment below in all other respects.

This case to be remanded to the court below with a certified copy of this decision and of the judgment which shall be rendered in accordance herewith. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.