

[G.R. No. 2092. April 15, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ALEJANDRO GONZALEZ (ALIAS DANDO) ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

In a complaint dated September 29, 1903, filed by one of the assistant prosecuting attorneys for the city of Manila, Alejandro Gonzalez and Genaro Atienza were charged with the crime of attempted robbery. The complaint stated that these individuals on the previous day entered a house at No. 105 Calle Echague where the Chinaman Sy Poco lived. For this purpose they made an opening in the exterior wall of the building with the intention of committing the robbery of 1,000 pesos which were in said house, although they did not consummate the crime for a cause or accident other than their own voluntary desistance, all contrary to law.

The case having come on for trial, the court, in view of the result of the proofs, declared the defendants guilty of the crime of attempted robbery and sentenced each of them to the penalty of two years of *presidio correccional* with the accessories and to pay the costs pro rata. From this judgment the defendants appealed.

From the evidence adduced during the trial it appears that between 3 and 4 o'clock on the morning of September 28, 1903, Alejandro Gonzalez and Genaro Atienza, together with two unknown men, entered the house No. 105 Calle Echague, district of Quiapo, inhabited by the Chinaman Sy Poco and others. They did this at a time when the inhabitants of the house were asleep. To accomplish their purpose they made an opening in the partition wall of said house between said house and the next one, No. 103, tearing away some of the boards, and through this opening they entered the former. The inhabitants of the house awoke and one of them, Sy Poco, asked the defendants what they wanted, and at that moment Gonzalez attacked said Sy Poco, wounding him with a poniard in the right arm, after which the

malefactors fled, two of them jumping through a window which opened on the back yard of the house, and the other two came down the stairway, leaving through the door of the house. It appears likewise that when the two defendants were arrested, in the immediate vicinity of the house, they were identified by Sy Poco as being two of the four individuals who entered his house; at the same time another Chinaman, Sy Sing, the companion of the former, identified them as two of the four men who entered the house, and stated that Genaro Atienza was the one who covered his face with a mosquito netting which was on the bed. Sy Poco stated that he had in his room in a trunk the sum of 1,000 pesos, the proceeds of a sale of rice.

These facts being perfectly proven in this case, they are clothed with all the characteristics of the crime of attempted robbery provided for and punished in article 508, paragraph 3, together with article 66 of the Penal Code, inasmuch as the defendants entered the house by means of scaling and breaking the wall, passing through the opening which was not the proper and ordinary entrance to said house, thus making a beginning in the execution of said robbery by overt acts and if they did not continue in the realization of their criminal purpose to a complete consummation of the crime it was because the inhabitants of the house awoke and they were afraid of being surprised by the authorities, and not because of their own voluntary desistance. They did not succeed in opening the trunk which contained the money, nor even approach said article of furniture, but all the acts which they performed from the moment they scaled the house, made the opening, and entered through same tended to the consummation of the crime which they had intended to commit. Intention is the essential element of the crime and it is revealed in the acts themselves, and must be considered from a rational criterion in each case, taking into consideration the appearance, transcendancy, and character of the acts punishable in themselves and susceptible of different or several meanings. This is in accordance with the existing doctrine established by the supreme court of Spain in judgments of October 6, 1871, May 14, 1883, and December 16, 1887.

It is undeniable that the two defendants are guilty as proven principals and clearly convicted, together with other unknown men, of the said crime of attempted robbery. They were arrested near the raided house at a very late hour on the night in question, and just a few moments after the robbery had been attempted, with their trousers soiled with mud on account of their having stumbled against some sugar jars covered with mud when they jumped through from the porch of the house. They were identified by the two Chinamen who lived in the same house. One of the Chinamen, Sy Poco, was wounded in the arm by the defendant Alejandro Gonzalez. The defendants were unable to justify their defense; their

testimony is not worthy of credit because, if they lived in Binondo and Tondo and came from work in the bay, it can not be understood how they were arrested on Calle Echague, Quiapo. They themselves, in spite of having pleaded not guilty, could not explain their presence in that vicinity; they could have landed at the Bridge of Spain, or if they came up as far as the Santa Cruz Bridge they would have landed at Plaza de Goiti, if we give any faith at all to their story of returning to their houses, which were situated one on Calle Reina Regente and the other in Bancusay.

In the commission of the said crime we must take into consideration the concurrence of the aggravating circumstance of nocturnity, without any extenuating one, and for this reason the penalty two degrees below that of *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree, or, in other words, the fine imposed as *correccional* in its minimum degree to that of *arresto mayor* must be imposed on the defendants in its maximum degree, and therefore, by virtue of the reasons above stated, we believe that with the reversal of the judgment appealed from, the defendants, Alejandro Gonzales and Genaro Atienza, are sentenced to two months' *arresto mayor* with the accessories and to pay the costs in both instances, one-half each.

The court is instructed to proceed in accordance with the law should any complaint for *lesiones* of the Chinaman Sy Poco be presented. This case to be returned to the court of origin, 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.