

7 Phil. 8

[G.R. No. 2958. November 23, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BRAULIO TUPULAR,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On a written complaint filed by the assistant provincial fiscal of Albay on the 13th of June, 1905, Braulio Tupular was charged with the crime of *coaccion* in that on or about the 13th of July, 1904, he, the said Tupular, in the town of Caramoran, Island of Catanduanes, Province of Albay, without being lawfully authorized, compelled the Chinaman Chan Chinco to deliver to him certain goods belonging to the said Chinaman, such as cloth, rice, and other articles of merchandise, to the value of P2,000, more or less, in payment of a certain indebtedness, and, notwithstanding the protest and refusal of the Chinaman, the defendant, aided by his agents, took and seized the said goods and carried them to his house without order of court. All of this contrary to the statute in such cases made and provided.

The case having proceeded to trial upon the said complaint, the court, after hearing tin1 evidence adduced, rendered judgment on the 4th of September, 1905, convicting the defendant of the crime charged and sentencing him to six months' imprisonment (*arresto mayor*), to pay a fine of 325 pesetas, and in case of insolvency to suiter the corresponding subsidiary imprisonment, this not to exceed one-third of the principal penalty, with the accessories of the law and the costs of proceedings, reserving to the Chinaman the right to institute a civil action to recover his property or the value thereof and such damages as he had incurred, from which judgment and sentence the defendant appealed.

It appears from the evidence, in this case that the Chinaman Chan Chinco was engaged in mercantile business in the town of Calogbon, Island of Catandunnes, Province of Albay; that at the suggestion of the defendant, the Chinaman took the goods which he had in his store to the town of Caramoran of the same1 province, in a *parao*, or *baroto* belonging to the

defendant; that in July, 1904, the defendant went to Caramoran and notified the said Chinaman that he had come there for the purpose of collecting what the latter owed to Antonio de la Riva, of Manila, from whom he claimed to have ample power to collect and demand payment of said debt; that the Chinaman Chan Chinco answered that he had no money with which to pay him, whereupon the accused informed him that he would proceed to make an inventory of all the goods then in the Chinaman's store for the purpose of ascertaining the value thereof, to which the Chinaman did not object; that the inventory was made on the 11th of July of the same year by the defendant with the assistance of three Chinamen who were employed for that purpose, the taking of the inventory being begun in the morning and finished in the afternoon; that upon the completion of the inventory the defendant insisted upon the payment of the debt and the Chinaman told him that he would speak to another Chinaman to get him to guarantee the debt, to which the defendant agreed; that about the 12th or 13th of July the defendant returned to the store of the Chinaman Chan Chinco and stated to him that he must either pay the debt or the, the defendant, would take the goods, and in view of the fact that neither the Chinaman nor his surety, Dy Biangco, had money, the defendant, Tupular, by means of his *cargadores*, took from the store of the Chinaman all the goods which the latter had, together with a trunk, several pictures, the Chinaman's certificate of registration, and about P130 in cash, and carried them to another house near by, notwithstanding the protest and refusal of the Chinaman; the defendant ignored the Chinaman's objection and the latter did not show any further opposition for the reason that he knew that the defendant had a revolver in his trunk, which had been left in his, the Chinaman's store, and thus the goods were forcibly taken away by the defendant; that, according to the Chinaman, these goods were worth P2,000; and that it appears from the record that the Chinaman Chan Chinco actually owed to Antonio de la Riva, of Manila, the sum of P1,004 on account of which indebtedness the Chinaman had already paid to the defendant the sum of P800.

The facts as established in this case show the commission of the crime of *coaccion* as defined in article 498 of the Penal Code which provides:

“The who with violence shall appropriate a thing belonging to his debtor in order to pay himself therewith shall be punished with the penalties of *arresto mayor* in its minimum degree and a fine equivalent to the value of the thing, but in no case under 325 pesetas.”

The defendant, as the agent of the creditor, Antonio de la Riva, took forcible possession of the goods which the debtor, the Chinaman Chan Chingo, had in his store in the town of Caramoran, Island of Catanduanes, Province of Albay, against the will and regardless of the objection of the debtor, in order to pay the debt of his principal therewith.

The defendant pleaded not guilty, and alleged that after the goods were inventoried he ordered that the same be removed from the Chinaman's store to another place with the consent of the debtor, who voluntarily transferred these goods to him in payment of his indebtedness to De la Riva, no receipt for the said goods having been given nor any document evidencing the payment of the debt executed, for the reason that the account of the Chinaman had not been definitely settled.

The evidence, however, is insufficient to support the claim of the defendant that the Chinaman had transferred to him the said goods in payment of the debt. If this were true there would have been no necessity for him imposing upon the Chinaman, ignoring his protests, and forcibly taking the goods for the purpose of paying the claim of his principal with the said goods. The defendant employed violence and intimidation upon the owner of the said goods, and he also employed physical violence when he forcibly removed the goods from the store.

As to the exact value of the goods in question there is no definite proof, and in view of contradictory testimony of the parties upon this point the doubt thus arising from such conflicting evidence should be decided in favor of the defendant who claims that the goods were worth MOO, and this for the purpose only of fixing the penalty that should be imposed under article 498 of the Penal Code, without prejudice to the right of the Chinaman to recover in a proper civil action such damages as he may thereby have incurred in addition to the actual value of the said goods.

There is no extenuating or aggravating circumstance to be considered in connection with the commission of the crime, nor even the special circumstance provided in paragraph 11 of article 10 of the Penal Code, as it does not appear that the defendant took advantage of his official position as auxiliary justice of the peace of the town of Calogbon, which is distinct from the town of Caramoran where the crime was committed, and the penalty should therefore be inflicted in its medium degree.

We accordingly reverse the judgment of the court below and hereby sentence Braulio Tupular to one month and twenty days' imprisonment (*arresto mayor*) with the accessories

prescribed in article 61 of the code, to pay a fine of P600, and in case of insolvency to suffer subsidiary imprisonment not to exceed one-third of the principal penalty, with the costs of both instances, and without prejudice to the rights of the Chinaman Chan Chingo to maintain a civil action for damages against the defendant Tupular.

After the expiration of ten days from the rendition of final judgment, the record will be remanded to the court below for execution. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.
