

[G. R. No. 3422. August 03, 1907]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MANUEL SAMONTE,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On January 9, 1906, an information was filed in the Court of First Instance of Manila of the following tenor:

“The undersigned accuses Manuel Samonte of the crime of robbery, committed as follows:

“That on or about the 30th of December, 1905, in the city of Manila, P. I., the said Manuel Samonte then and there willfully, unlawfully, and feloniously, with the intent of himself profiting thereby, and against the will of the owner, took possession of the personal property of one Nicolasa Sumbingco, which consisted of one bill of 10 Philippine pesos, two bills each of 5 Philippine pesos, five bills each of 2 Philippine pesos, 5 pesos in silver, and several silver, nickel, and copper coins of 50 centavos, 20 centavos, 10 centavos, and 1 centavo each, it being impossible to determine the number of each kind of coin, the total value thereof being thirty-eight (38) pesos, Philippine currency, equal to and equivalent in value to one hundred and ninety (190) *pesetas*, using violence and intimidation upon the person of the said Nicolasa Sumbingco, in the following manner: That the said Manuel Samonte then and there attacked, beat, struck, intimidated, and threw to the ground the said Nicolasa Sumbingco.

“That in the above-described acts, the following aggravating circumstances are present, to wit: (1) That said acts were committed by treachery; (2) that the said acts were committed at night and in a deserted place; (3) that said acts were committed with insult and disregard of the respect due to the said Nicolasa Sumbingco, on account of her age and sex; (4) that craft, fraud, and disguise were employed in committing said acts. All contrary to the statute in such case made and provided,”

Proceedings having been instituted by reason of the foregoing information, the judge, in view of the fact that said acts and the culpability of the accused had been fully established, rendered judgment on the 26th of March of the same year, and sentenced Manuel Samonte, the defendant, to six years ten months and one day of imprisonment (*presidio mayor*), the accessory penalties provided by article 57 of the Penal Code, to the refund to Nicolasa Sumbingco of the 38 pesos, less one cent, stolen from her, but without subsidiary imprisonment considering the nature of the penalty, and to the payment of the costs. From this judgment the defendant appealed.

According to the evidence produced at the trial, it has been fully proven that between 9 and 10 p. m. on the 30th of December, 1905, as Nicolasa Sumbingco, a girl 18 years of age, owning a booth at the Pasay race track, was returning to her house in Malate, in company of the aged person, Feliciano Tolentino, while passing through Calle Luna and nearing the house of an American named G. A. Lohr, Manuel Samonte suddenly approached her and snatched from her hands the sum of 38 pesos, which she was carrying tied up in a handkerchief. The complaining witness cried out at once that she had been robbed of her money and started in pursuit of the thief, whom she succeeded in seizing by the shirt, but the latter pushed her and as a result the shirt was torn and she fell to the ground, whereupon the assaulter started to run. The old man who accompanied the complaining witness and walked ahead of her carrying a lamp, upon becoming aware, by her cries, of what had happened, left the lamp on the ground and started to pursue the accused, whom he was unable to catch; but, by the light of the lamp, both the old man and Nicolasa were able to recognize the accused perfectly.

At the time when the affray took place, the attention of the American, Lohr, who was inside his house, was attracted by the barking of some dogs; he looked through the window and

saw that there was a struggle going on between a man and a woman, the latter quickly falling to the ground; he also saw that the man had started to run, and that another who carried a lighted lamp, left it on the ground, cried out, and then went in pursuit of the individual who had struggled with the woman. Nicolasa and the old man Tolentino went in the direction of the race track in search of Apolonia Paguio, whom they informed of what had happened, and together with the latter they called on Lohr, who at once descended from his house and accompanied the party to the police station to report the matter. On that same night, the hat of the accused, which was by him recognized at the trial, together with a one-cent coin, was found on the spot where the robbery had been committed, and on the following day Lohr reported the case to the secret service.

The fact of the robbery has been fully proved by the testimony of the complaining witness, Nicolasa Sumbingco, and her companion, Feliciano Tolentino, and confirmed by the testimony of G. A. Lohr, who in addition said that while the thief was being pursued by the old man, he heard the latter say, "Manuel, you had better give up the money," further confirmed by the statement of Apolonia Paguio, who testified that the amount which was stolen had been deposited with her, but that the complaining witness before returning to her house that night asked her for it, and that before making delivery of the same both of them had counted it, and for this reason there could be no doubt that the money did previously exist.

The act in question falls within case No. 5 of article 503 of the Penal Code, because the robber obtained the money which the complaining witness carried, by means of force and violence.

The defendant did not plead guilty, and, notwithstanding his exculpatory allegations, it is fully proven that he is the sole author of the crime for which he was convicted on the trial, since besides the testimony mentioned above the charge is corroborated by the suspicious fact that his mother, Cirila Legaspi, on that same night called on the complaining witness with the suggestion that the matter be settled between themselves; and, moreover, the accused immediately disappeared from his own house, the police also failing to find him at the "Germinal" factory, where he worked, and it was not until six days later that he was arrested at his house.

The accused alleges that on the night in question, as on other occasions, he was in company with Nicolasa and the old man, Tolentino, who went in front carrying a lamp, because he (the defendant) was making love to the girl; that his fiancée then informed him of her desire

that their marriage should take place as soon as possible, but that as he objected to it for lack of money, when they reached Calle Luna near Lohr's house, the complaining witness gave him a slap, and that on account of this he lost his hat, and on seeing that the old man, Tolentino, was approaching them he started to run and returned to his house.

In order to show that he was courting the complaining witness, the defendant summoned Francisca Concepcion, who stated that because she owned a booth close to that of Nicolasa Sumbingco, she saw the defendant converse every day with the complaining witness, although she never heard their conversation. Faustino Casanova, Romualdo Ignacio, and Pastor Hilario were called as witnesses by the defendant for the purpose of testifying as to what had happened on the night in question between himself and the complaining witness. Casanova testified that he was in company of the accused, of the old man Feliciano, and of Nicolasa Sumbingco when the latter was returning to her house on said night. The two last-named witnesses, Ignacio and Pastor, stated that as they were returning from the Luneta, and on reaching Calle Vito Cruz, they saw the accused and Nicolasa walking together, that an old man carrying a lamp preceded them, and that upon getting into Calle Luna they heard the report of a slap, and that shortly afterwards the accused, who was without a hat, came to them stating that he had had trouble (*un disgusto*) with Nicolasa Sumbingco.

The testimony of the above-named witnesses, who are intimate friends of the accused, as well as that given by his mother, is, however, outbalanced by the testimony of the witnesses for the prosecution who state that on the night of the robbery no one except the old man, Feliciano Tolentino, accompanied the complaining witness; The testimony of Faustino Casanova, of whom no mention is made by the other witnesses for the defense, is therefore untrue, and the testimony of Ignacio and Hilario is not, worthy of credit because the accused, who called them, states that after the slap he at once retired to his house. It is not true, therefore, that he went to them in order to inform them of what had taken place. Nor can the testimony of the mother of the accused be accepted, to the effect that the latter had not gone to work nor left his house for several days because of illness, in view of the fact that the policeman, Lucio Pelayo; who was pursuing him, failed to find him in his house or at the "Germinal" factory until six days later.

All of the allegations of the accused and the testimony of his witnesses have been nothing more than a means of defense chosen for the purpose of explaining in a different manner what had occurred between the complaining witness and the defendant, and to remove all appearances of the robbery under prosecution.

In the commission of the crime the generic aggravating circumstance of nocturnity is present, the accused having chosen the nighttime in order to more easily carry out the robbery. There is no extenuating circumstance to be considered.

The aggravating circumstances Nos. 1 and 20 of article 10 of the Penal Code, referred to in the judgment appealed from, are not applicable herein for the reason that in crimes against property it is not proper to consider said aggravating circumstance No. 20 (decision of the supreme court of Spain, February 24, 1876), in connection with the said article of the Code of the Peninsula, which is analogous to that in force in these Islands. Nor is circumstance No. 1 of the said aggravating circumstances to be considered by reason of relationship, because the complaining witness is the stepdaughter of a relative of the accused, since by another decision of the same court, dated October 30, 1890, the aggravating circumstance No. 1 of article 10 of the Penal Code can not be made to apply to persons other than those expressly specified by the law.

In view of the above considerations, and as in our opinion the penalty imposed on the accused is in accordance with the law, the judgment of the court below should be affirmed, with the costs of this instance against the accused, Manuel Samonte. So ordered.

Arellano, C.J. Johnson, Willard, and Tracey, JJ., concur.
