

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ANGEL CRUZ, ENCARNACION, DEFENDANT AND APPELLANT.

G.R. No. L-146. May 07, 1946

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal from the judgment of the Court of First Instance of Manila convicting the accused Angel Cruz y Encarnacion of the crime of attempted qualified theft and sentencing him to suffer 20 days of *arresto menor*, with the accessories of the law and to pay the costs.

The first witness for the prosecution, Sgt. Robert C. Cooper, presented during the trial in the Court of First Instance, testified that at about 12:00 o'clock noon on May 12, 1945, Sgt. Tom Reilly apprehended Pablo Lisan in an attempt to bring out of the 3909th Signal Depot (U.S.A.) at Sta. Mesa, Manila, 8 cases containing 16 storage batteries, which were loaded in a truck driven by the latter; that Lisan implicated Rafael Advincula, a checker, who in turn implicated the accused Angel Cruz as the person who made the arrangements with the other two to bring out the batteries; that acting on this information, Sgt. Cooper went to the house of the accused and arrested him; and that in the course of the subsequent investigation conducted by said Cooper, the accused signed the following confession (Exh. A):

"I, Angel Cruz, civilian who lives at 823 G. Tuason Street do confess to Sgt. Robert C. Cooper, Provost Marshall, to having taken from the Sta. Mesa, Signal Depot, Four (4) cases of Batteries BB-55, each case contained two (2) storage batteries. These batteries were taken from the Depot-about the 5th of May and sold. I also confess to having attempted taking eight (8) cases of batteries BB-55, from the Sta. Mesa Signal Depot, on the afternoon of 12 May 45 at about 1200 hours."

The testimony of the other two witnesses for the prosecution, Justo Camat and Ormond D. Abbot, a limited to the effect that the accused understood the confession and voluntarily signed the same.

The accused, testifying in his own behalf, denied having had any connection with either Pablo Lisan or Rafael Advincula, and claimed that he signed the confession, Exh. "A", because he was forced to do so by Sgt. Cooper, who boxed him in the stomach and threatened him with a pistol, and that he was alone in a room with the Sergeant when the latter forced him to sign said confession.

In the rebuttal, Cooper denied having used any force or intimidation against the accused.

The guilt of the appellant has not been proven beyond reasonable doubt. The appealed decision relies mainly on the appellant's alleged extra-judicial confession (Exh. "A"). Assuming that said confession was not obtained by force and intimidation, as alleged by the appellant, it is insufficient to sustain the appellant's conviction because it was not corroborated by evidence of *corpus delicti*. (Sec. 96, Rule 123, Rules of Court.)

The only witness who testified about the *corpus delicti* was Sgt. Cooper, and his testimony is mere hearsay. Asked whether he was the officer who saw some laborers stealing batteries," he answered: "No, Sergeant Tom Reilly. He

is in Tokyo now." And asked whether the witness was the one "who arrested those persons who stole the batteries," the witness answered: "Yes, he turned them over to me." His testimony about the information given to him by Lisan and Advincula, who were not presented as witnesses, regarding the participation of the appellant in the commission of the offense charged, is also hearsay. His testimony on both points having been objected to, cannot be considered as evidence of corpus delicti against the appellant.

In view of the foregoing, we find that the recommendation made by the Solicitor-General in his brief that the appellant be acquitted of the crime charged and the case dismissed, is well founded. Wherefore, the appellant is acquitted of the crime charged and the case against him is dismissed, with costs de officio. So ordered.

Moran, C.J., Paras, Pablo, and Briones, JJ., concur.

MORAN, C.J.:

I certify that Justice Jaranilla voted in conformity with this decision.

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