

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PERFECTO TAYAG AND ATANASIO MORALES, DEFENDANTS AND APPELLANTS.

G .R. No. 40512. March 03, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

The defendants and appellants Perfecto Tayag and Atanasio Morales were convicted of attempted robbery in an inhabited house, located at No. 325-A San Marcelino Street, Manila, having, on the night of September 12, 1933, attempted to enter the said house with intent to rob, according to the allegations of the information, by means of force and by using a bolo and a screw driver to force one of the doors thereof, which were then closed and barred.

The court, which tried the case against the said two appellants, imposed upon Perfecto Tayag, the penalty of four years and two months of prision correccional plus the additional penalty of six years, he being a habitual delinquent, according to the said court; and upon Atanasio Morales, the penalty of four years and two months of prision correccional plus also an additional penalty of ten years, he being likewise a habitual delinquent with a greater number of former convictions. From this sentence, the defendants appealed.

The facts disclosed by the evidence of the prosecution, which are certainly overwhelming and leave no room for doubt, are: that at a little after two o'clock on the morning of September 12, 1933, the said two appellants, armed with a bolo and a screw driver, went to Juan Nicasio Go Cuay's store, which also served as his dwelling, located, as aforesaid, at No. 325-A, San Marcelino Street, of the City of Manila. Believing that they were unnoticed, they proceeded to open one of the doors of the said store with the tools—bolo and screw driver—which they then carried and which, of course, were not the proper means for that purpose. After they had succeeded in loosening one of the bars of the door and upon becoming aware that the inhabitants of the store had been awakened, they tried to escape but policemen A. Santos, J. Rubic and G. Malap, who up to that time had been watching them, detained and placed them under arrest. The said policemen found the bolo, Exhibit A, in the possession of the appellant Perfecto Tayag, and the screw driver, Exhibit B, in the possession of the other appellant Atanasio Morales.

In the store of said Juan Nicasio Go Cuay there were, at that time, a little more than P40 in cash, which represented the proceeds of his sales the day before, and merchandise valued at around P1,000. However, there is absolutely nothing of record to show that the said appellants' intention on that occasion was to commit robbery, or that they somehow knew that they would find money amounting to P40 therein. In every criminal proceeding, the guilt of the accused must be proven by means of competent and conclusive evidence and should never be based on mere inferences, however reasonable these may be, particularly when there still remains, as in this case, a sufficient indication of the existence of an intention different from that of committing robbery. It would be arbitrary, not to say absurd, to suppose that had the appellants succeeded in entering the store of said Juan Nicasio Go Cuay, they would have carried away all the goods therein, because they would not have been able to do so by themselves, not having any vehicle at their disposal.

The act committed by the appellants simply constitutes the crime of attempted trespass to dwelling, as defined in article 280, paragraph 2, of the Revised Penal Code, that is, trespass committed by means of violence. (Decision of the Supreme Court of Spain of February 8, 1899, Viada, Fourth Supplement, p. 399; Decision of the Supreme Court of Spain of December 10, 1900, Id., p. 401; Decision of the Supreme Court of Spain of April 5, 1890, Hidalgo, Penal Code, vol. 2, p. 512.)

The documentary evidence presented by the prosecution, consisting of Exhibits C, D and E, which are the records of criminal cases Nos. 38880, 38924 and 38923, does not show that the appellants are habitual delinquents. The most that the said documents disclose is that at about the same time, the appellants committed the crimes of theft with which they were charged therein, and therefore the 10th aggravating circumstance, that is, previous convictions, should be taken into consideration against them. The aggravating circumstance of nocturnity should likewise be considered against the said appellants.

Wherefore, and taking into consideration that the penalty lower by two degrees than that prescribed for trespass to dwelling by means of violence in article 280, paragraph 2, of the Revised Penal Code is *arresto mayor* in its minimum and medium periods (from one month and one day to four months), the penalty imposed upon the appellants is hereby modified by sentencing them, each to three months and one day of *arresto mayor*, with the corresponding accessory penalties, and to pay the proportionate part of the costs of both instances, without prejudice to their being credited with one-half of the time during which they have undergone preventive imprisonment, in accordance with article 29 of the Revised Penal Code. So ordered.

Street, Villa-Real, Abad Santos, and Butte, JJ., concur.

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