

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LIM HO PENG, DEFENDANT-APPELLANT.*G.R. No. L-229. August 29, 1946*

Ponente: TUASON, J.

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By the judgment from which the present appeal has been taken, the defendant, Lim Hoc Peng, was sentenced for robbery with intimidation under Art. 294, par. 5, of the Revised Penal Code, to an indeterminate penalty of from six months of arresto mayor to six years of prision correccional and to pay the costs.

The appellant's brief attacks the sufficiency of the evidence as to the commission of the crime charged, or as to the presence of intimidation, granting that the complaining witness told the truth.

Lim Eng Seng testified substantially as follows; On September 25, 1945, he boarded a carretela at the Divisoria Market bound for Grace Park where, he had his home. When the carretela reached the corner of Aurora Avenue, the accused stopped the vehicle and climbed-up. This man was garbed in a guerrilla uniform. Defendant started a conversation with Lim Eng Seng by asking him where he was going and where he came from. Shortly thereafter defendant told complainant to hand him all his money and personal belongings, and when complainant replied he had no money, the accused told him to stand up and searched his watch pocket. In this pocket the accused found ₱40.00 in paper currency which he took. From another pocket of complainant's trousers, the accused got ₱3.00 more and some coins and handed them to the carretela driver. However, this money was given by the driver back to the offended party. Lim Eng Seng allowed defendant to search him because the accused threatened to kill him. Moreover, the accused kept on pushing him back and forth and looked as if he was going to strike the complainant. He did not see the accused carry any weapon. Besides him, the accused and the driver there was no person in the vehicle. He and the defendant talked in Chinese. He did not ask for help from the driver because he was afraid on account of the accused's threats, and he did not know if the latter was armed or not. After the accused got off at the corner of Blumentritt Street and Aurora Avenue, the carretela proceeded on its way to Grace Park with the plaintiff. On reaching home he related the robbery to one of his companions after which his housemate accompanied him to Blumentritt Street. There they called a policeman and asked the officer to accompany them to where the accused was to be found at that time. He knew where the accused was; because when they passed at the corner of the street, they saw Lim Hoc Peng there in a kneeling position. The policeman arrested the accused and searched him. The policeman found ₱40.00 in defendant's shirt pocket and a few pesos in one of the pockets of his trousers.

Virgilio Regala, policeman, said that around September 25, 1945, he arrested the accused at the corner of Aurora Avenue and Blumentritt upon complaint of Lim Eng Seng, who said that he had been held up by Lim Hoc Peng. He declared he searched the accused in the presence of two fellow officers and some bystanders at the place mentioned. He found one 20-peso bill and two 10-peso bills. Upon seeing these bills, the offended party claimed that that was his money. The accused did not admit that that money had been stolen by him. The accused voluntarily showed him some more money in his pocket, and there were some coins in defendant's other pockets.

The accused was not armed.

The accused testified that on the morning of September 25, 1945, he went to the Chinese Hospital to visit an uncle. In the afternoon, at the corner of Blumentritt Street not far from the hospital, he waited for a carretela to take him home. He denied having boarded in Aurora Avenue a carretela wherein the complainant was riding. He denied having robbed the offended party. He also denied having paid the "cochero" of the complainant's carretela. Asked why he had been arrested, he stated the reason was that he and the complaining witness had quarreled at the Rex Theater. He said that on July 7 there was a celebration and a parade in calle Ongpin and he met the complainant in the Rex Theater. On that day and at that place, he said, he, as member of a guerrilla unit, was supposed to take charge of the theater and when Lim Eng Seng came, he escorted complainant to a seat. The complainant thanked him and asked him in what guerrilla unit he belonged, while he, in turn, asked the complainant his name. After that he never saw the plaintiff again. Later, however, the defendant said that the quarrel he had with this complainant took place three days after July 7. On cross-examination, he said again that July 7 was the first time he met the complainant. When asked if he did not tell on direct examination that after the meeting on July 7 he had never met the complainant again, he said that he saw Lim Eng Seng on Soler street near the headquarters on Reina Regente riding in a carretela.

At Detective Bureau Precinct No. 4, to which he had been taken after his arrest, he was pointed out by another Chinese named Sy Ten, who had come to complain, as the person who had robbed him of P280.00 and threatened him with a .45 caliber pistol. Sy Ten's complaint was embodied in the information filed in this case but was not substantiated because Sy Ten had not appeared or had not been found. Sy. Ten alleged that he had been held up also at the corner of Blumentritt Street and Aurora Avenue on September 25, 1945.

From the foregoing evidence, the trial court found the accused guilty as charged beyond reasonable doubt. We believe that the evidence fully sustains defendant's conviction.

The reason for the non-presentation of the carretela driver does not appear in the record. Not knowing the reason, we cannot justly consider such non-presentation as a reflection upon the veracity of the complainant's testimony. There were many conceivable reasons why the driver was not brought to testify.

That the accused did not abscond, having been arrested at or near the place where he got off or got on the carretela, was not so strange and so unnatural as to discredit the prosecution's evidence. As the carretela went on its way to Grace Park with, the offended party after the robbery, that might have led the defendant to believe that his victim was not going to complain to the authorities. Another possible reason was that the place was a good place of operation for his trade, so it seemed. We have seen that Lim Eng Seng was at least defendant's second prey that day in that vicinity.

The testimony of the accused is contradictory and incoherent. After stating that he had never met the complainant more than once, on July 7, he said he had met Lim Eng Seng one week after that date. Almost in the same breath he contradicted himself again, this contradiction more striking than the first, by saying that he and the complainant quarreled three days after July 7, without stating the place and how the quarrel started. These glaring, unexplained contradictions and dissonance in his testimony brand defendant's evidence as perjured.

We find no merit in the contention that no intimidation sufficient to raise the crime to robbery was used. The rule as stated in, among other cases, *U. S. vs. Osorio*, 21 Phil. 237, cited by the appellant, sustains the conviction of the accused for the offense alleged in the information. The acts performed by him in their nature and by reason of the circumstances under which they were executed, inspired Lim Eng Seng with fear and restricted and hindered the free exercise of his will. The complainant said that he was frightened because the accused "was threatening me and he told me that he would kill me", and because the said accused pushed him back and forth and went through

the motion of hitting him. He also said that although he did not see any weapon, he was not certain the accused was unarmed.

The judgment of the lower court is affirmed, with costs against the appellant.

Moran, C.J., Feria, Bengzon, and Briones, JJ., concur.

Mr. Justice Hontiveros did not participate.

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