

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SANTIAGO VEGA ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 10479. September 21, 1915

Ponente: TRENT, J.

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TRENT, J.:

The appellants, Santiago Vega, Gabino Vega, Buenaventura del Mundo, Macario Embalsado, Julio Marquinio, Aurelio Dagala, and Benito Bacus, were sentenced to eleven years of imprisonment, to jointly and severally indemnify the injured party in the sum of P2,000 and to pay the costs of the cause for the crime of robbery.

On the night of June 8, 1914, all these appellants together with Pablo Miguela, who was excluded from the complaint to be used as a witness for the Government, proceeded together, each being armed with a bolo, to the tienda of Go Bongco, situated within the jurisdiction of Balingasag, Province of Misamis, and, after making inquiries in reference to the condition of that tienda and the whereabouts of the owner thereof, the owner being temporarily absent in Cebu at that time, proceeded to force by means of bolos an entrance into the tienda which was inhabited at the time, and took therefrom money and merchandise to the value of at least P2,000. There can be no question about these facts, as the testimony of the accomplice, Pablo Miguela, is corroborated in every essential detail by other witnesses; and, furthermore, there was found in the possession of some of these appellants part of the identical goods taken from that tienda on the night in question.

The Attorney-General is of the opinion that the conviction of the appellants under article 508 of the Penal Code cannot be sustained for the reason that it is not alleged in the complaint that the tienda of the complaining party was inhabited at the time of the robbery. He, therefore, recommends that the penalty provided for in article 512 of the Code be imposed in its maximum degree and that the judgment in all other respects be affirmed, with costs against the appellants.

The complaint read as follows: "The undersigned accuses Santiago Vega, Gabino Vega, Buenaventura del Mundo, Macario Embalsado, Julio Marquinio, Aurelio Dagala, Benito Bacus, and Pablo Miguela of the crime of robbery defined (previsto) and penalized by article 508, paragraphs 2 and 4, of the Penal Code, committed as follows: That on or about the 18th day of June, 1914, at night, in the municipality of Balingasag, Province of Misamis, the said accused did willfully, unlawfully, and criminally and by use of force against things, break with the arms which they carried the wall of the tienda of the Chinaman Go Bongco, and did, with intent of unlawful gain, remove from the said tienda and take possession of various effects and money, to the value of p2,000, belonging to the said Go Bongco, contrary to law."

The above-named provisions of the Penal Code read: "(ART. 508.) Any armed person who shall commit a robbery in an inhabited house, public building or edifice devoted to religious worship shall suffer a penalty ranging from presidio mayor in, its medium degree to cadena temporal in its minimum degree, if the value of the property taken shall exceed one thousand two hundred and fifty pesetas, and the robber shall have entered the house or building in which the robbery was committed, or any dependency thereof, by any of the following

means: at

"2. By breaking any wall, roof, or floor, or forcing any door or window.

"4. By the breaking of doors, wardrobes, chests or any other kind of furniture or locked or sealed receptacle, or by taking the same away to be broken or forced open outside the place of the robbery."

Article 512 penalizes by presidio correctional in its medium and maximum degrees robbery committed in an uninhabited place or in any building other than those mentioned in article 508 if the property taken exceeds in value 1,250 pesetas.

We agree with the Attorney-General that "inhabited house" is a qualifying circumstance in the crime of robbery, defined and penalized in article 508 (supra), and that, if this circumstance is not charged in the complaint, it cannot be taken into consideration as such (U. S. vs. Campo, 23 Phil. Rep., 368).

There are two essential elements or qualifying circumstances in the crime mentioned in article 508, aside from those relating to the manner of the entrance into the building, (1) the person or persons must be armed at the time and (2) the house must be either inhabited or one devoted to religious worship or a public edifice. If the house is inhabited and the robbery is committed by force or intimidation against the person, the article is not applicable. The defendant in a criminal case has a right to be informed as to the nature of the offense with which he is charged before he is put on trial. To convict him of a higher offense than that charged in the complaint on which he is tried would be contrary to law. These are the reasons why the complaint should accurately and clearly allege all the essential elements of which the offense is composed, not necessarily in the words of a statute, but in such form as to enable a person of common understanding to know what is intended and the court to pronounce judgment according to right.

The complaint (supra) specifically charges the appellants with the crime of robbery defined and penalized in article 508, and that this robbery was committed in the tienda of a Chinaman by forcibly breaking with arms the wall of the building. By the mere designation of article 508, the appellants could not know whether they were charged with robbery in an inhabited house, or a public building or edifice devoted to religious worship, but the allegations in the complaint clearly inform them that the building was not of the latter class, for it is alleged that it was a tienda of a Chinaman. So, up to this point, they certainly knew what was intended by these allegations and, being persons of common intelligence, they were informed of the charges which they had to meet. Taking into consideration the fact that the appellants were represented by counsel, that the complaint specifically pointed out the article of the Code violated, and that the complaint also contains a specific allegation that the robbery was committed in the tienda of a Chinaman, we must conclude that the appellants were sufficiently informed that they were charged with the crime of robbery committed in an inhabited house. The testimony of record fully establishing all the essential elements of the crime charged in article 508, with the aggravating circumstance of nocturnity, and without any extenuating circumstance, the penalty must, therefore, be imposed in its maximum degree.

For the foregoing reasons the judgment appealed from is modified by substituting in lieu of eleven years of imprisonment, twelve years and one day of cadena temporal, and by condemning the appellants to the accessory penalties provided by law. In all other respects the judgment is affirmed, with costs against the appellants.

Arellano, C. J., Torres and Carson, JJ., concur. Johnson, J., concurs in the result.

DISSENTING AULLO, J.,

I do not agree with the foregoing decision in so far as the defendant-appellants are therein found guilty of the crime of robbery committed in an inhabited house, denied and punished by article 508 of the Penal Code.

At the beginning of the information, transcribed in the said decision, it was stated that Santiago Vega, Gavino Vega, and the other appellants were charged with the crime of robbery defined and penalized by article 508, paragraphs 2 and 4, of the Penal Code; but in relating in the body of the information the acts constituting the crime committed, it was said that they took place in the tienda of the Chinaman Go Bongco, without stating whether this tienda was or was not inhabited, or whether it was or was not a dependency of an inhabited house at the time the accused perpetrated the robbery therein.

This Supreme Court, in the case of *United States vs. Lim San* (17 Phil. Rep., 273), held as follows:

"The crime of which the defendant stands accused is that described by the facts stated in the information, and not that designated by the fiscal in the preamble thereof. "The designation of the crime by name in the caption of the information is a conclusion of law on the part of the fiscal. The denial of that conclusion raises no issue. "An issue in a criminal action is one of fact. It is raised by the allegation of facts in the information and the denial of those facts by a plea of not guilty.

"It is not necessary, for the protection of the substantial rights of the accused, nor for the effective preparation of his defense, that he be informed of the technical name of the crime of which he stands charged. He must look to the facts alleged.

"As a matter of fact the court is the only person or institution authorized by law to say what crime has been committed. Such designation is a conclusion of law resulting from the facts proven upon the trial. Until that time arrives it is of no consequence, either to the people or to the accused, what the technical name of the crime of which the accused is charged may be.

"The designation by the fiscal of the crime in the information by its technical name is a usurpation of the powers of the court and, if binding, would be in effect an adjudication by him of the crime of which the accused must be convicted, if he were to be convicted of any offense." It cannot be denied that in charging Santiago Vega and the other appellants, in the beginning of the information, with the crime of robbery defined and penalized by article 508, paragraphs 2 and 4, of the Penal Code, the fiscal who framed the information thereby makes a conclusion of law; neither can it be denied that this conclusion is not deduced from the acts, which, according to the same information, the accused performed, because the tienda of the Chinaman Go Bongco, where the robbery was committed, might or might not have been inhabited, might or might not have been a dependency of an inhabited house when the acts charged took place. So long as neither of these circumstances be affirmatively set forth in the information the said tienda could not be considered to be inhabited or an inhabited place for the purpose of applying the aforementioned article 508 of the Penal Code, for a tienda, in the true and genuine acceptance of the word, is a house, establishment, or place where groceries and other goods are sold.

In the foregoing decision it is said: "By the mere designation of article 508, the appellants could not know whether they were charged with robbery in an inhabited house, or a public building or edifice devoted to religious worship, but the allegations in the complaint clearly inform them that the building was not of the latter class, for it was alleged that it was a tienda of a Chinaman. So, up to this point, they certainly knew what was intended by these allegations and, being person of common intelligence, they were informed of the charges which they had to meet." By this, apparently, the meaning intended to be conveyed in the decision is that the accused were informed that the robbery with which they were charged was not committed in an inhabited house or in a public building or in a place devoted to religious worship, but in a tienda of a Chinaman. Nevertheless, from the fact that the

appellants were represented by counsel, that the information specifically designated the article of the Code which had been violated, and that the said information also contained the specific charge that the robbery was committed in the tienda of the Chinaman Go Bongco, the conclusion is reached in the preceding decision that the appellants were perfectly informed that they were charged with the crime of robbery in an inhabited house.

I do not believe that such a conclusion can be sustained, because, even though the information specifically pointed out the article of the Code which, according to the provincial fiscal, had been violated, from the fact of it being specifically alleged in the information that the robbery was committed in the tienda of a Chinaman, counsel for the appellants could not deduce that conclusion for the simple reason that, as aforesaid, a tienda is not necessarily an inhabited place, but, from the very definition of the word, must be understood not to be such, unless it be clearly stated that it is.

At all events, every accused person must be informed of the acts charged against him in the information, with all their circumstances, because only then can he deny or admit them and properly prepare his defense. And what is said of the accused should, with all the more reason, be said of his counsel. Neither the one nor the other should be informed of the facts by deduction, by virtue of the relation that may be established between the acts actually charged against the accused and the fiscal's classification contained in the information as to the crime those acts constitute, for the reason that the evidence to be presented at the trial should relate to such acts, and especially to their circumstances when these classify the crime they constitute. That the important, the indispensable requisite to secure the conviction of an accused person, is not the definition of the offense in the information but the statement of the facts that constitute such offense has also been held by this court in the case of *United States vs. Campo* (23 Phil. Rep., 368), wherein it said: "Except in a very early case (*U. S. vs. Dinsing*, 1 Phil. Rep., 738), wherein a contrary view appears to have been taken apparently without extended discussion, but which has long since been overruled, we have uniformly and frequently laid down the rule that an accused person may be convicted of 'any crime described and charged by the facts set out in the information' irrespective of and without regard to the designation or characterization of the crime set forth in the title of the complaint or information by the private complainant or the public prosecuting officer."

This same rule was followed in the case of *United States vs. Lim San* (supra). In that case the defendant was charged, in the title or caption of the information, with the crime of attempted murder, but the facts set out in the body of the information were such as to constitute the crime of frustrated murder, and it was held that the crime with which the accused was considered to be charged was the latter—that is, the one described by the facts related in the information and not the one designated by the fiscal in the preamble thereof—and for that crime, despite its being more serious than that of attempted murder, the accused Lim San was sentenced in the said decision. Therefore, in view of the reasons and conclusions set forth in the two cases aforesaid, it may be affirmed that it is also now a rule established by this court that, when there is any disparity between the fiscal's classification of the crime in the title or preamble of an information or complaint and that appearing from the statement of the facts set out in the body of the information as constituting the crime charged, the latter should prevail and the accused who has been informed of the complaint, if this is not duly amended, must be convicted of the crime which the facts related in the said complaint constitute, and not for the one that may have been designated by the provincial fiscal in the title or preamble of the information.

In the case at bar, since the facts related in the information do not constitute the crime of robbery in an inhabited house or dependency thereof, but that of robbery in an uninhabited place as defined and penalized in article 512 of the Penal Code, and since it is improper to impose upon the defendant-appellants a greater or severer penalty than that applicable to the crime with which they were charged, they should not be sentenced to the penalty of *cadena temporal* imposed by the foregoing decision, but to that of *presidio correccional* in its medium and maximum

degrees.

This should be applied in its maximum degree for the reason that the crime was attended by the generic aggravating circumstances of being committed in the nighttime and by a band, with no extenuating circumstance to offset them.

I am therefore of the opinion that the judgment appealed from should be reversed and each one of the defendant-appellants should be sentenced to the penalty of six years of presidio correctional, together with the accessory penalties mentioned in article 58 of the Penal Code, jointly and severally to indemnify the offended party, Go Bongco, in the sum of P2,000, or, in case of insolvency, to suffer the corresponding subsidiary imprisonment, and to pay one-seventh of the costs of this instance and one-eighth of those of first instance.

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