

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELIPE DEDULO, SILVINO DINGCON, AND PEDRO SALARDA, DEFENDANTS AND APPELLANTS.

G. R. No. 10486. August 10, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of robbery. The complaint alleged: "That on or about the 25th of February of the present year, 1914, within the district of this municipality of Iloilo, Province of Iloilo, Philippine Islands, the said accused, being municipal policemen of Iloilo and availing themselves of their character of public officers, did willfully, unlawfully, and criminally, with known premeditation and intent to derive unlawful gain, seize the sum of P200, the property of the Chinamen Haw You and Yap Tiao, through intimidation against persons, employing fraud and craft in the commission of the crime; with violation of law." (Page 1 of the record.)

Upon said complaint the defendants were duly arrested, arraigned, tried, found guilty, and sentenced to be imprisoned for a period of seven years of prision mayor and to indemnify the offended persons in the sum of P200 and to pay the costs. From that sentence the defendants appealed to this court.

The only question presented by the appellants here is one of fact. They allege that the proof adduced during the trial of the cause was not sufficient to show that they are guilty of the crime charged in the complaint.

Judge J. S. Powell, who tried the defendants, who saw and heard the witnesses, in his decision said: "I have listened to the facts in this case twice, spending a whole day each time, and I am convinced that there is not the slightest doubt about the guilt of these defendants as charged."

After a careful examination of the evidence, we find that the following facts are proved beyond a reasonable doubt:

- That one Kong Tang is a Chinaman and the owner of a store or tienda in the barrio of Lapus-Lapus in the municipality of Iloilo; that said tienda is located just across the river from the city of Iloilo.
- That on the night of the 25th of February, 1914, there were two other Chinamen in his store or tienda by the name of Haw You and Yap Tiao.
- That on said night of the 25th of February, 1914, the three defendants entered the house, tienda or store of Kong Tang, pretending to be policemen or officers of the law, and said that they desired to search the house of Kong Tang for opium.
- That the said defendants pretended to make a search of the house and pretended that they had found a bottle, after said search, and pretended to the Chinamen that the bottle contained opium.
- Upon finding the said bottle they notified the three persons in the house or tienda that they would have to accompany them; in other words, the defendants represented to the said Chinamen that they were placed under

arrest.

- Later the defendants represented to the Chinamen if they would pay them P300, they would not arrest them. The Chinamen did not have the money. After some discussion and further threats on the part of the defendants, the Chinamen promised to pay to them, in order to be relieved from arrest, the sum of P200.

- The Chinamen did not have that amount of money in their possession. Kong Tang, in order to secure the money, sent his servant to the house of Kio Kiu to obtain the money. Kio Kiu refused to deliver the money to the servant. Later Kong Tang went personally to the house of Kio Kiu, and after explaining to him why he needed the said P200, Kio Kiu gave him said amount. Kong Tang then returned to his house or tienda and delivered the same to the defendants, whereupon the defendants left the tienda or store of Kong Tang and the incident was closed. Later the complaint above was presented against them. Judge Powell found that the defendants were guilty of the crime of robbery. From that decision the defendants appealed to this court.

We think the rule is well established in this jurisdiction that one who obtains money by pretending to be an officer of the law by threats of arrest and imprisonment is guilty of the crime of robbery by force and intimidation. (U. S. vs.. Smith, 3 Phil. Rep., 20.)

A policeman who knowing that a person has committed no crime for which he could be lawfully arrested and tried, nevertheless arrest such person, falsely accusing him of a crime, and then by means of threats of presentation and imprisonment, thus playing upon his ignorance and fear, obtains money from said person, secures such money by force and intimidation and commits the crime of robbery as defined in the Penal Code. (U. S. vs.. Fulgencio, 2 Phil. Rep., 452; U. S. vs.. Flores, 19 Phil. Rep., 178; U. S. vs.. Martin, 23 Phil. Rep., 58; 3 Viada, 341; decision of supreme court of Spain of June 24, 1875.)

After a careful examination of the record brought to this court we find no reason for changing or modifying the sentence of the lower court, except that the imprisonment should be presidio mayor instead of prision mayor. With this modification, the sentence of the lower court is hereby affirmed with costs. So ordered.

Arellano, C. J., Torres, Carson, Trent, and Araullo, JJ., concur.

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