

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCOS LUMANLAN ET AL., DEFENDANTS. MARCOS LUMANLAN, APPELLANT.

G. R. No. 10708. September 24, 1915

Ponente: TORRES, J.

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TORRES, J.:

This case was instituted by a complaint filed on March 17, 1914, by the provincial fiscal in the Court of First Instance of Pampanga, charging the above-named defendants with the crime of robo con lesiones (robbery with physical injuries), and judgment was rendered on July 30 of the same year, whereby all four of them, Brigido Gonzalez, Zacarias Torres, Alejandro Dizon, and Marcos Lumanlan, were sentenced to the penalty of four years of presidio correccional, to the accessory penalties, to indemnify the offended parties in the sum of M55 and to the payment by each of them of one-fourth of the costs. Only the last-named, Marcos Lumanlan, appealed from this judgment.

Between the night of the 13th and the early morning of the 14th of March, 1914, while Cesareo Dimalanta and his wife Bibiana Goingco were asleep in their house, situated in the place called Sapangbato, of the pueblo of Angeles, Pampanga, they were awakened by the noise made by some persons who had entered the house. Two of these, who subsequently turned out to be Brigido Gonzalez and Zaearias Torres, immediately caught and held the woman Bibiana by the hair and demanded that she point out the place where she kept her money. Through fear she took from under her pillow and delivered to them a purse which contained P10 and the key of a trunk. Thereupon the two men proceeded to open the trunk, which was at one side of the house, and removed therefrom P130 in bank bills, a pair of earrings, and a tumbaga ring set with pearls, these articles being valued at P15. In the meanwhile the other two male-factors, who turned out to be Alejandro Dizon and Marcos Lumanlan (the latter provided with a revolver) proceeded to maltreat the woman's husband, the owner of the house, a blind old man 60 years of age, whom Lumanlan struck with said revolver several times on his head and breast because he resisted, thereby inflicting a wound in the left parietal region, which, according to the medical certificate, was cured in about ten or fifteen days. As there was a light in the house at the time of the occurrence, Brigido Gonzalez and Zaearias Torres were recognized by the woman Bibiana Goingco and by her son, Carlos Dimalanta, about 12 years of age. This boy also recognized the other two men, Alejandro Dizon and Marcos Lumanlan, and testified that when his father Cesareo Dimalanta resisted and tried to seize Lumanlan's revolver Lumanlan said: "Aren't you going to let go of that, . . . I'm going to shoot you, and you'll smell of smoke;" Dimalanta, on hearing these words, recognized his aggressor and was able to identify him. Moreover, on the robbers leaving the house after the commission of the crime they were met in the road near the dwelling they had robbed by Emilio Goingco, who had responded to the victims' cries for help and who clearly recognized Marcos Lumanlan at the time as being one of the four men who had come from the house in question.

As the defendants Gonzalez, Torres, and Dizon did not appeal, we shall concern ourselves solely in this decision with the appellant Marcos Lumanlan who pleaded not guilty; denied the charge preferred against him and alleged

that, in the afternoon of March 13, he left Sapangbato and went by train to Concepcion, carrying with him a letter from the station master of Dau for that of Capas, and that he remained in Concepcion until the 15th of the same month. He stated, however, that, as lieutenant of the barrio, he knew the offended parties and their relative, Emilio Goingco.

Notwithstanding that several witnesses testified in support of the alibi set up by the appellant, their testimony is overthrown by the evidence adduced by the prosecution for, although, Cesareo Dimalanta was blind, when he was being maltreated by Dizon and Lumanlan, he recognized the latter by the words uttered when Dimalanta resisted and tried to seize the revolver which Lumanlan carried, for he was familiar with appellant's voice, the latter being a resident of the barrio where they both resided and accustomed to frequent Dimalanta's store and the neighboring houses. The 12-year-old boy, Carlos Dimalanta, corroborated the testimony of his parents and stated, further, that he recognized Marcos Lumanlan very well when this defendant was striking witness's father on the head and breast with said revolver; that he had known Lumanlan previously as a lieutenant of the barrio where witness lived; that he had seen defendant several times in his father's store; that on the occasion of the robbery this defendant wore a black undershirt and a reddish-colored pair of trousers. The boy's testimony relative to the color of these garments was corroborated by the witness Emilio Goingco who, while going to the house that had been robbed, met in the road and recognized the defendant Lumanlan among the robbers who had come from the scene of the crime.

The witness Victor Catap, called by the defense to testify in rebuttal, stated that on the night of March 13, the date of the robbery, he saw the defendant in the cinematograph of the town; that he was sure of this fact for he was well acquainted with Marcos Lumanlan, and that, as he was a laborer in the employ of the post quartermaster, he perfectly remembered the date, which was a Friday night.

This testimony appears to be corroborated by the witness Clara Dizon who testified that, on the said evening, she saw Marcos Lumanlan at the door of the cinematograph which was well lighted.

The defense alleged that, according to the witness David McCreamers, an American negro who lived in a house behind the one robbed, Pedro Dimalanta, the eldest son of the offended parties, was in this witness's house one day after the robbery, in company with the Constabulary soldier Tranquilino de Ocampo. On that occasion Dimalanta spoke to McCreamers and offered him money to testify in the case. Notwithstanding that McCreamers testified that such a proposition had been made to him and that he had been offered money by the man who went in front of his house in company with Constabulary soldier, pointing out, while on the stand, Pedro Dimalanta, yet withal, these facts were not proven because this testimony was invalidated by that of the Constabulary soldier, Tranquilino de Ocampo, and of Pedro Dimalanta, who both left the place upon hearing McCreamers' reply that he refused to testify as he knew nothing of the robbery that had taken place. Dimalanta further stated that, as Ocampo asked the negro the question in English and the latter replied in the same language, witness did not understand the conversation and learned the nature of the reply only when he was told by Ocampo.

From the foregoing facts it has been fully proven that, in the early morning of March 14, 1914, the crime of robbery of jewelry and money was committed with violence against the inmates of the said house by four malefactors, two of whom were armed, one with a revolver and the other with a bolo—a crime comprised within articles 502 and 503, No. 5, of the Penal Code. This crime against property cannot be classified as robbery by a band, for the reason that it does not appear from the record that the other two malefactors carried arms when assaulting and robbing the house of the offended parties.

As opposed to the denial and unproven allegations of the defendant Marcos Lumanlan, the sole appellant, the record discloses enough incriminating facts and evidence to show conclusively his guilt as a principal, together

with the- other three defendants already convicted, by direct participation, of the crime under prosecution. His alibi cannot be admitted as proven, as it was completely invalidated by the testimony of witnesses who, several hours previous to the robbery, saw him in the cinematograph of the barrio; moreover, he was positively recognized by the offended parties and by a witness who responded to their cries upon the departure of the malefactors. This witness recognized Lumanlan on meeting him in the road coming from the house that had been robbed.

It must be held that the commission of the crime was attended by the aggravating circumstances 15 and 20, article 10, of the Penal Code, because the robbers perpetrated the crime by availing themselves of the darkness and silence that usually prevails at night, and of the house of the offended parties, who were surprised while they were resting and sleeping. These aggravating circumstances are not offset by any extenuating one, nor can the special circumstance provided for in article 11, as amended by Act No. 2142, be taken into account, because lack of education cannot be held to extenuate the perversity of the perpetrator of a robbery. This crime is usually committed with equal malice by the intelligent and educated as well as by the most uncultured men in the world; both the former and the latter act under the impulse of passion and a keen desire to take away property belonging to another.

For the foregoing reasons Marcos Lumanlan should be, as he is hereby, sentenced to the penalty of nine years of presidio mayor, to the accessory penalties specified in article 57 of the code, to indemnify the offended parties in the sum of P150, jointly and severally with the other defendants. He shall not suffer subsidiary imprisonment, however, by reason of the nature of the penalty imposed, but shall pay one-fourth of the costs of first instance and all of those of this second instance. The judgment appealed from is thus affirmed, with respect to the defendant-appellant, in so far as it is in agreement with this decision and is reversed in so far as it is not. So ordered.

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

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