

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SIMON LAZARO, JUAN LAZARO AND FRANCISCO MANZANO, DEFENDANTS AND APPELLANTS.

G.R. No. 11562. August 31, 1916

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Pangasinan condemning the defendants, Simon Lazaro, Juan Lazaro, and Francisco Manzano, each to nineteen years one month and eleven days of cadena temporal, to the accessory penalties provided by law, to jointly and severally indemnify one of the offended parties, Catalina Madrazo, in the sum of P2,210, and to pay one-sixth of the costs of the cause for the crime of robbery in band, with serious physical injuries.

It is now urged that the trial court erred (a) in finding the above named defendants guilty of the crime of robbery committed in the house of Catalina Madrazo, (b) in qualifying the crime as that of robbery in band, (c) in finding that the wounds inflicted upon the offended parties were of such a nature as to fall within paragraph 3 of article 503 of the Penal Code, (d) in finding that there was present the aggravating circumstance of nocturnity, and (e) in imposing the penalty of nineteen years one month and eleven days of cadena temporal.

About 10 o'clock on the night of August 20, 1916, an armed band, consisting of at least seventeen men, went to the house of Catalina Madrazo, who was then 60 years of age, and surrounded it. Two of the party armed with bolos immediately went up into the house, while the remainder stayed below on guard. As soon as the two men entered, old lady and her granddaughter, Maura Lomboy, cried for help. The two men lighted, or caused to be lighted, a lamp and demanded money, at the same time striking the two women with the flat sides of their bolos. Catalina, as a result of these acts, opened a trunk, took out a pocketbook containing P40 in currency, and gave the money to them. They demanded more and she gave them P150 in currency. They were still unsatisfied, and the granddaughter hearing a voice below saying "kill her if she does not wish to give more," took from a secret hiding place P2,020 in bills and turned the same over to the two men. While all this was happening upstairs, Jorge Galang, in answer to the cries of the women, went to the house, but on account of the great number of bandits on guard below, he did not enter, but returned to call Inocencio Alberto, who is a brother-in-law of Catalina Madrazo. When the two men (Galang and Alberto) came near the house, the men below attacked them, striking Alberto on the arm with a bolo, causing a very severe wound, which finally left the arm absolutely useless. Galang escaped without injury, fled to a zanja (ditch) near by and, hiding himself therein, left Alberto to contend with the bandits alone. On hearing this confusion below, the two robbers who were upstairs in the house went to the window for the purpose of finding out the cause of the disturbance, one holding in his hand the lighted lamp. Soon thereafter the entire band disappeared. There can be no doubt about these facts. The principal question is that relating to the identity of the three appellants.

Catalina Madrazo testified that her house was situated in the barrio of Mabini, within the jurisdiction of the town of Urdaneta; that the two robbers, after entering her house at about 10 o'clock on that night, demanded money; that as the two men were armed with bolos, she turned over to them the P40 and the P150 and that her granddaughter turned over to them the P2,020; that before the money was turned over to the two robbers they had asked for a lamp, which was given to them by her granddaughter, and they lit it; that she did not recognize either one of the robbers; and that immediately after she gave the robbers the P150 she became almost unconscious on account of fright, as the robbers struck her several times with the flat sides of their bolos and as she heard one call out from below, "kill that old lady."

Inocencio Alberto testified that he did not recognize the assailant who struck him with a bolo because the fellow ran away immediately, and that there were a few less than twenty persons in the band.

Maura Lomboy, 14 years of age and a granddaughter of Catalina Madrazo, testified that she was in the house with her grandmother, where she had been living for sometime, on the night of the attack; that two of the robbers came upstairs, entered the room where she and her grandmother were, and demanded a lamp; that she gave them the lamp and they lit it that immediately thereafter they demanded money; that her grandmother gave them certain amounts of money and when they demanded more she, on hearing a voice below saying, "kill the old lady," secured the other money and turned it over to them; that the two robbers struck her and her grandmother with the flat sides of their bolos; that her grandmother did not see her give the robbers the P2,020 because she was compelled to keep her face toward the floor; that the robbers also ordered her to hold her head down, but she would raise it and look at them at times; that she recognized the two robbers who entered the house and that they were Juan Lazaro and Simon Lazaro. On cross-examination this witness admitted that she said to the police authorities on the night of the robbery that she did not recognize either of the two men who entered the house; that she made this statement through fear of the robbers, who had not yet been arrested; and that she did not know the names of the Lazaros on that night and only learned their names later.

Jorge Galang, after explaining the location of the zanja with reference to the house of Catalina Madrazo, testified that when the two robbers, who were upstairs in the house, came to the window to ascertain the cause of the disturbance below, he could see them clearly because one of them had lighted lamp in his hand; that the two men were Simon Lazaro and Juan Lazaro, sometimes called Benlañhan; that he did not know the real names of these two men until after they were arrested; and that he did not recognize any of the other bandits. On cross-examination this witness testified that the chief of police, with other officers, came to the house of Catalina Madrazo after the bandits had gone away; that these officers asked him if he knew any of the robbers and that he answered that he did not; that he gave this answer on account of fear as the bandits had not yet been captured; that he was on guard at Catalina Madrazo's house for several days after the robbery, during which time some of the police officers stayed there for a few days; that while he was there Simon Lazaro and Juan Lazaro were arrested and brought to the house; that it is true that he was charged with participating in the robbery, but was later excluded because the authorities found out that he took no part in it; and that he did not confess to Sergeant Fernandez that he took part in the robbery.

Telesforo Baltazar testified that he knew Catalina Madrazo and the house wherein she lived; that he knew of the robbery because he was taken there with the bandits; that there were about nineteen bandits, of whom he knew Francisco Manzano, Mariano Sabado, Leon Manzano, Simon Lazaro, Juan Lazaro, Jose Bengson, and Francisco Mendoza; that the bandits were all armed with long bolos; that the reason the bandits forcibly took him along was because, as he was on his way to the town to ascertain whether a certain case, in which he was interested, was going to be tried the following day> one of the bandits said, "It will not be well to let this man loose; it is better to detain him;" that he stated to Sergeant Fernandez all he knew about the robbery; that when he made these

statements he was then in jail; that it is true that he was charged with having participated in this robbery; and that the reason he did not sooner denounce the robbers was on account of fear.

Rufino Galina testified that he knew Jose Bengson and Francisco Manzano; that he saw these two men the first part of August; that Francisco Manzano came to his house and asked him to accompany a band to the house of Catalina Madrazo for the purpose of robbing the old woman; that he told Francisco Manzano that he could not go; that later on he passed the house of Francisco Manzano and Francisco then told him that they were going to rob the old woman on the 20th of August; that he saw Francisco again on the 22d and that Francisco then asked him if he had heard anything about what had occurred in Mabini; that he answered that he had heard that that place had been assaulted; that Francisco replied, saying, "Yes, we assaulted the place and if you had gone along you would have gotten something;" that he then asked Francisco for a part of the booty and the latter replied that Simon Lazaro had taken it all with him. On cross-examination this witness stated that Francisco Manzano is an intimate friend of his; that he considered Simon Lazaro as a father; that it is true that he was also charged with having participated in the robbery; and that the reason he asked for a part of the money, which was taken from the old lady, was because he was in a bad condition financially and also because the robbers had told him to say nothing about it.

Melecio Manangan, municipal policeman of Urdaneta and the first witness called for the defense, testified that on the night of the 20th of August, 1915, Jorge Galang and a rural policeman came to the municipal building and informed the authorities of the robbery which had just taken place in the barrio of Mabini; that he then asked Galang if he recognized any of the robbers and Galang replied that he did not; that he, with other policemen, then went on the same night to the place where the robbery occurred; that he asked Maura Lomboy if she knew any of the robbers or would know them should they be brought before her, and she also replied in the negative. The testimony of Gerardo Casison, another municipal policeman, is to the same effect, except that he further testified that Catalina Madrazo told him on the night of the robbery that the bandits had taken from her P190. The defendant, Francisco Manzano, testified that he was arrested and detained in the house of Catalina Madrazo for about eight days by Sergeant Fernandez; that his testimony before the justice of the peace was not true; that he so testified in the justice of the peace court because the police authorities had told him that if he did not do so they would punish him; that Telesforo Baltazar is an enemy of his and had been since May because they had had trouble about a piece of land; that the testimony of Baltazar is false; that the testimony of Rufino Galina is also false; and that he (the witness) took no part whatever in the robbery. On cross-examination this witness testified that he knew Simon Lazaro and Juan Lazaro. Simon Lazaro, another one of the defendants, testified that he was arrested in the barrio of Salcedo in Tarlac Province; that he was taken to the house of Catalina Madrazo and there detained for less than two weeks; that he had known Telesforo Baltazar since the month of May when they had had some trouble over some land; that he also knew Jorge Galang because he (Jorge) was present when he (the witness) had trouble with Baltazar; that he took no part whatever in the robbery here in question; that the testimony of Baltazar and Rufino Galina is false. Juan Lazaro, another of the defendants, testified that he had nothing to do with the robbery which was committed in the barrio of Mabini on the night of August 20; that on that night he was in his house studying Ilocano; that he did not know Galang until after they were arrested; and that Telesforo Baltazar is an enemy of his father, they having had trouble about some land. Telesforo Baltazar was recalled by the prosecution and testified that he had never had any trouble with either of the appellants or their families.

That Maura Lomboy was in a position and condition to recognize the two robbers who went up into the house, there can be no doubt. The two men lit a lamp in the presence of the girl and remained in the house several minutes with the lighted lamp in their hands. The girl personally handed to them the P2,020. The result is that the weakness of Maura's testimony does not lie in her inability to recognize Simon Lazaro and Juan Lazaro, but in the

fact that she stated to the peace officers, within a few hours after the robbery had occurred, that she did not recognize either of the men. The same may be said of Jorge Galang. He, too, was in a position to see the two men when they came to the window. The zanja, where he was in hiding, was only a short distance from the house of Catalina Madrazo. The statements of the two principal witnesses for the prosecution to the officers were not made under oath, but at a time when great excitement prevailed and before any of the bandits had been captured. Owing to the large number of bandits participating in the robbery and the fact that one innocent person (Alberto) who had gone to the house for the purpose of assisting the women was so severely wounded, it is not very strange that Maura, a young girl 14 years of age, and Galang would hesitate in stating that they did recognize the two robbers who went up into the house. If their testimony stood alone, there might be some doubt about these material facts, but when the same is so well corroborated, as above set forth, we find no difficulty in sustaining the finding of guilt made by the trial court, who had an opportunity to see and hear all of the witnesses testify. This and other circumstances of character are often as safe a guide as the mere language used by the witness in enabling the trial court to determine the truth or falsity of the testimony. It is true that witnesses may be impeached by evidence that they have made at other times-- statements inconsistent with their present testimony. But this character of evidence, which is introduced for the purpose of impeaching the witnesses, is not conclusive. It may be overcome by the probable nature of the story the witnesses may tell on the trial of the cause, their seeing and knowing the matters concerning which they testified, and, if from all the circumstances the court is satisfied that the statements of such witnesses are true, it has the right to accept them, especially when the material parts of the testimony of such witnesses are, as we have indicated, so well corroborated as in the instant case.

The trial court qualified the crime as that defined and penalized in No. 3 of article 503 in relation with 504 of the Penal Code, finding the existence of the aggravating circumstances of nocturnity and morada. No. 3 of article 503 provides that the penalty of cadena temporal shall be imposed when in consequence or on the occasion of the robbery any of the physical injuries falling within paragraph 2 of article 416 of the Penal Code shall have been inflicted. And the last-mentioned paragraph provides that the penalty of prision correccional in its medium and maximum degrees shall be imposed if, in consequence of the physical injuries, the person injured shall have lost any principal member or shall have lost the use of such member. The complaint charges, among other things, that the defendants on the occasion of the robbery inflicted upon Inocencio Alberto a grave wound on the left arm, the healing of which required, with the assistance of medical attendance, more than thirty days, during which time the injured party was incapacitated for his ordinary work. There is no allegation in the complaint that Inocencio Alberto lost his left arm or the use thereof, although the testimony of record establishes the latter as a fact.

The mere fact that the fiscal qualified the crime in the first part of his, complaint as "robbery in a band with serious physical injuries," not mentioning paragraph 3 of article 503, does not bring it within those provisions. The phrase "serious physical injuries" does not necessarily include the loss of the use of a principal member. We, therefore, agree with the Attorney-General that the crime charged falls within paragraph 4 of article 503, in relation with article 504, and paragraph 4 of article 416 of the Penal Code, and that the penalty therein provided should be imposed in its maximum degree.

For the foregoing reasons, the judgment appealed from is modified by substituting fourteen years and eight months of cadena temporal in lieu of nineteen years one month and eleven days of cadena temporal. In all other respects the judgment appealed from is affirmed, with costs against the appellants. So ordered.

Torres, Johnson, Moreland, and Araullo, JJ., concur.

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