

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NICOLAS MACAMAY, DEFENDANT AND APPELLANT.

G.R. No. 11952. September 25, 1917

Ponente: STREET, J.

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STREET, J.:

The question of fact in this case is whether the defendant Nicolas Macamay was a participant in a robbery committed on the night of May 5, 1915, in the house of Juan Mar, in the municipality of Catarman, Province of Misamis. The robbery was perpetrated by an armed band of more than three men; and assuming the truth of the evidence which implicates the accused the band consisted of seven. Six were brought to trial in the Court of First Instance of the Province of Misamis and convicted; but in the present case only four were tried together, the other two having been granted a separate trial. From a judgment of conviction rendered in this case the defendant Macamay has appealed.

It appears that at about 10 o'clock at night, at the time and place mentioned, armed men entered the house of Juan Mar, and with threats and menaces ordered the inmates to give up their money. Aquilina Mar, a sister of Juan Mar, was required to produce the keys to certain trunks in the sala. These were opened and searched, but no valuables were found in them. Three of the robbers then repaired to the bedroom of Juan Mar, leaving three of their companion on guard in the sala. In the bedroom a trunk or receptacle was discovered which, upon being opened with a key, likewise obtained from Aquilina Mar, was found to contain P2,500 in money, which was taken by the robbers. They also carried away a few articles of personal property, worth about P5. In these acts one of the principal parts was taken by a man who was sufficiently identified at the trial as Lorenzo Tinampay. At the time of the robbery his face was blackened, probably with charcoal, but otherwise none of the participants were disguised.

The main evidence connecting the defendant Nicolas Macamay with the crime consists in the testimony of Nicolas Ranollo and Benigno Madria, each of whom admitted his own complicity in the crime. Their story is substantially to the following effect: About two days before the perpetration of the robbery Simeon Ventusal and Lorenzo Tinampay, being in a barrio somewhat remote from the scene of the robbery, there induced Benigno Madria and Francisco Bacleon to join them on the pretence that they were going over into a neighboring barrio to gamble. The party then proceeded to the home of Nicolas Macamay, the defendant, where they arrived at about 10 o'clock on the night of May 4. Here they were entertained until the next night. Here also they were joined by Basilio, whose surname was not ascertained; and here Macamay and Ranollo, who had been employed by him a few days before as a laborer, identified themselves with the enterprise. After supper the party of seven left the house of Macamay and had proceeded but a short way when they were halted and told by Simeon Ventusal that the real purpose of the expedition was to rob the house of Juan Mar, who lived some 2 kilometers away. When this revelation was made Madria and Ranollo desired to abandon the party, so they claim, but were forced by threats to stay with the band. Nicolas Macamay, who had come along in the rear of the party, then produced arms which were distributed among the seven. There was one rifle, which was given to Madria; and each of the others

was supplied with a cutting weapon of some kind, such as a barong, bolo, sword, or dagger. The band then proceeded to the house of Juan Mar and on approaching found it necessary to wait awhile in a coconut grove until a serenader should go away. After his departure the band approached the house, and after Nicolas Macamay and Basilio had been posted downstairs as a guard, the other five went upstairs with the results already stated.

Upon leaving the place of the robbery the party returned to the home of Macamay and obtaining a light repaired a short distance away where the money was divided in the early hours of the morning. Only the silver coin, amounting to a few hundred pesos, was here divided among all the members of the band; and some P1,700 in bills was reserved by the three leaders from this division—a circumstance which probably led to dissatisfaction among the others.

Nicolas Macamay was a man of some substance and prior to this affair his conduct appears not to have been subject to criticism. His family was distantly related to that of Mar, but they do not seem to have been on a footing of intimacy. Macamay denied participation in the robbery and attempted, in an unconvincing way, to prove an alibi. He admits that about the middle of April four members of the band had visited him seeking for work, and that on May 6, 1915, five members of the band again appeared on the same errand. They took dinner, and according to Macamay's statement left in the early afternoon.

The testimony of the witnesses Ranollo and Madria is corroborated by the testimony of Francisco Bacleon which was given in the court under the following circumstances: Bacleon was one of the four who were tried in this case, and not being represented by a lawyer, was asked by the court if he had any witnesses whom he wished to call. He responded that he had not. The court then told him he had a right to testify if he wished to do so, but that he could not be required to give evidence against himself. The witness said he wished to testify, and having taken the stand, told a story in all material respects the same as that told by Ranollo and Madria. This testimony was introduced after the defense for Macamay had rested. Macamay and his counsel were present in court and had an opportunity to cross-examine Bacleon, but failed to do so. This testimony was not a part of the evidence introduced by the Government; but we know of no rule under which it could be excluded from the consideration of the court in this case. The defendants were jointly accused, were tried together, and the testimony lawfully given at the trial by any of them was competent evidence against his companions.

The statements made by these three witnesses as to the connection of Nicolas Macamay with this robbery are credible and reasonable and in our opinion must be accepted as true, even without any weighty corroborative proof. However, we think that the admitted fact that this party was entertained at Macamay's house just before the robbery occurred is an important circumstance against him; and the statements of the witnesses mentioned relative to what occurred in the house of Juan Mar are fully corroborated by the testimony of the inmates of the house.

After a careful examination of the record we reach the conclusion that Macamay's complicity is shown with all the certainty which the law requires; and we think that the trial court committed no error in finding him guilty. No motive appears why the witnesses who testified against Macamay should have desired to implicate him, if he was innocent, and certainly there was no lack of others on whom to put the blame. We think it is evidently a case where these witnesses realized that lies would not serve any purpose, and animated doubtless by the hope of leniency they decided to make a full and true statement of the entire transaction. We here have a case where four men were tried together. Three successively took the stand and, admitting their own guilt, testified that the fourth was a member of the band. The proof clearly shows that this band was composed of seven men, of whom three, namely, Ventusal, Tinampay, and Macamay were what might be called strong characters, while these three implicating witnesses were of weaker metal. They were evidently drawn into the robbery by the influence which was exerted over them by the others, and were discriminated against in the division of the spoils. At the trial they yielded to the natural impulse to put the chief blame upon the principal authors of the crime. If courts did not have

the courage to declare an accused person guilty upon evidence such as that which is produced against Nicolas Macamay in this case, their judgments would reflect the mere whims and the caprices of particular judges; and the administration of justice would become a farce.

Our examination of the record in this case was primarily made with a desire to accede, if possible, to the recommendation of acquittal contained in the brief from the office of the Attorney-General; but our conclusion is that this recommendation cannot properly be followed.

In the court below the defendants were all sentenced to twelve years and one day, *cadena temporal*. This sentence was based on article 508 of the Penal Code, it being assumed by the court that the case fell under subsection 3 of that article, as the trunk from which the money was taken was opened with a key obtained from the owner by force and intimidation. This in the opinion of the court constituted the use of false keys (see art. 516) and brought the case under subsection 3 of article 508. It should be noted, however, that the use of false keys mentioned in subsection 3 has reference to the mode of entering the house and not to the method of opening a trunk in the house. In the present case the robbers came in through the door, and article 508 was inapplicable.

The crime committed in the present case is that of robbery *en cuadrilla*, with violence or intimidation against the person, with the aggravating circumstances of nocturnity and that the crime was committed in the dwelling of the injured person; and it should be punished in conformity with subsection 5 of article 503, in relation with articles 504 and 505. (U. S. vs. Gutierrez, 14 Phil. Rep., 388; U. S. vs. De los Santos, 12 Phil. Rep., 622; U. S. vs. Gamboa, 11 Phil. Rep., 39; U. S. vs. Quijano, 11 Phil. Rep., 368; U. S. vs. Sol, 9 Phil. Rep., 265; U. S. vs. Callotes, 2 Phil. Rep., 16.)

The defendants therefore should have been sentenced to ten years, *presidio mayor*, with the accessory penalties specified in article 57 of the Penal Code. With this modification the judgment of the court below should be affirmed, with costs of this instance against the appellant. So ordered.

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

MALCOLM, J., dissenting:

The main evidence connecting the appellant with the crime charged, according to the majority decision, consists in the testimony of his two coaccused, one of whom admitted that he had committed perjury in the preliminary examination, who had already been tried but not sentenced and who may have testified against the appellant for the purpose of revenge, whose statements are incredible and confused, and whose testimony, as confederates "should be received with great caution and doubtingly examined." (U. S. vs. Ocampo [1905], 4 Phil., 400.) This evidence, the decision says, is corroborated by the testimony of another accused in his own case and under circumstances which would not legally permit of cross-examination. On such faulty evidence, the court would convict the appellant, forgetting that the inhabitants of the house which was robbed, while they identified the other accused positively, stated just as positively that the appellant whom they knew was not in their house on the night of the robbery; forgetting also that none of the stolen property was found in the possession of the appellant; forgetting also that he was a man of means, intelligence, and standing in the community; and forgetting that he should be presumed to be innocent until proved guilty beyond a reasonable doubt. "A reasonable doubt is not a mere guess that defendant may or may not be guilty." (U. S. vs. Douglass [1903], 2 Phil., 461, 474.) And finally, the decision fails to give proper consideration to the extended presentation of the facts and the fair recommendation based thereon of the Attorney-General to the effect that the appellant should be acquitted.

I agree with the Attorney-General that the judgment of the lower court should be reversed and the appellant

acquitted with the costs de officio.

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