

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELIXBERTO VENTURA AND DOMINGO VICENTE, DEFENDANTS AND APPELLEE.*G.R. No. 13715. January 22, 1919*

Ponente: TORRES, J.

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In the cause, instituted in the Court of First Instance of Pangasinan, by virtue of an information filed by the provincial fiscal charging the above-named four defendants with the crime of robbery, judgment was rendered, on November 16, 1917, whereby Felixberto Ventura and Domingo Vicente were each sentenced to the penalty of 3 years, 6 months, and 21 days of presidio correctional, to the accessory penalties, to pay jointly and severally an indemnity of P67 to the offended party, Calixto Dizon, and, in case of insolvency, to suffer the corresponding subsidiary imprisonment, and each to pay one-fourth of the costs. With respect to Pio Apostol, the proceedings were dismissed, with one-fourth of the costs de officio. From that judgment counsel for the two convicted defendants appealed. The other defendant, Ramon Carcha, who pleaded guilty, was also convicted and was sentenced to the penalty of 2 years, 11 months, and 11 days of presidio correctional, to the accessory penalties, to return to the offended party the stolen merchandise, or, in default thereof, to pay an indemnity of P67, and, in case of insolvency, to the corresponding subsidiary imprisonment, not to exceed one-third of the principal penalty, and to pay one-fourth of the costs. From this judgment the defendant Carcha did not appeal.

On the night of August 18, 1917, or early in the morning of the following day, the four defendants, having previously and successively joined each other on the initiative of Felixberto Ventura, went, at a late hour that night to the vicinity of the house and small store of Calixto Dizon situated in the barrio of Talibao of the municipality of Calasiao, and while the defendants Apostol and Carcha remained outside in the street to keep watch, by arrangement made by the other two, Ventura and Vicente, the latter proceeded to open a hole in the inclosure or bamboo partition of the ground floor of the said house, where the store was that belonged to the owner of the building. After the opening had been made they entered the store; after a while they came out of it, Felixberto Ventura carrying a bundle of cloth, and Domingo Vicente a basket containing matches, cakes of soap, and other articles, which they had stolen from the inside of the said store and which were worth all together P67. Thereupon, one of the two last named, before leaving, gave to Pio Apostol a two-peso bill, with the instruction that he should tell no body of what he had seen; but Ramon Carcha, on seeing what had happened, became frightened and ran away.

The agents of the authorities, having been informed of the crime, proceeded to investigate it, and Pio Apostol was arrested, who immediately pointed out his three codefendants as having been his companions in the commission of the robbery. Ramon Carcha was likewise arrested and also admitted his guilt. As Felixberto Ventura and Domingo Vicente, when arrested, denied any participation in the crime, they were placed in the presence of the aforesaid Apostol and Carcha who, on hearing that Ventura and Vicente denied their participation in the robbery, reproached them, saying, "Why do you people deny it?" And afterwards Pio Apostol, while in the presence of his coaccused Vicente and Ventura, told them to bring out the cloth that they had taken possession of. Moreover,

Ramon Carcha, in testifying as a witness for the prosecution, after he had already been convicted by a final judgment, as a coprincipal in the same crime, stated that Felixberto Ventura and Domingo Vicente were his companions in the perpetration of the robbery in question; thus corroborating Pio Apostol's testimony in its essential feature.

The facts as related do, in fact, constitute the crime of robbery, committed in a small store located in the ground floor of Calixto Dizon's house, which store is a dependency of the same house inhabited by the latter and his family. This house has an inside communication with the store located on its lower floor, and both of them, house and store, form one single building, inasmuch as, according to the testimony of their owner (record, p. 104) the entrance to the store, in front and towards the street as well as the exit were fastened on the inside with a padlock. This description shows that the inmates of the house, in entering the store, do not descend a stairway cut through the floor but go down the main-stairway, and pass through the yard or lot to enter the door of ingress, fastened with a padlock and leading to the inside of the store. For this second door would not be on the side of the other one in the street, but would, of course, open on the yard or lot of the house. Therefore it cannot be affirmed that the store is not a dependency of the house and has no interior communication therewith, as both house and store form one single whole, without any partition whatever. As the upper floor of the house was inhabited, the robbery committed in the shop located in the lower part of the building must be classified as robbery in an inhabited house or a dependency thereof, pursuant to the legal provision contained in the last paragraph of article 508 of the Penal Code, which crime is punished with considerable severity for the reason that, in such cases, the inmates of the house are more exposed to personal danger during the act of the robbery. For, as in the instant case, had Calixto Dizon become aware of the robbery at the time of its perpetration or during the time when the opening was being made in the partition or enclosure of the lower part of the house and the store, and had he come forward to defend his property, he would have exposed himself to a sure and certain danger, if he had been attacked by the four robbers, who might at that time have been carrying arms, if not all at least some of them, although it was not brought out at the trial whether they were armed, and, for this reason, only the provision contained in the last paragraph of said article 508 of the Code is applied to them. (Decision of the supreme court of Spain, of January 4, 1898.)

After Pio Apostol, who testified as a witness for the prosecution, had been excluded from the proceedings, and Ramon Carcha convicted by a final judgment, the record discloses that it is fully proven that the other defendants, the appellants Felixberto Ventura and Domingo Vicente, are coprincipals and convicted as such; for, notwithstanding that they pleaded not guilty and made certain allegations which were not proven, the record furnishes convincing and abundant evidence that they had a direct participation in the commission of the robbery as the principal perpetrators thereof, inasmuch as they were charged as such and were the two men who entered the said store through a hole they had previously made in the enclosure or partition and it was they who took possession of the stolen articles. Such facts were asserted by Ramon Carcha who confessed and pleaded his guilt, and by the witness and accomplice in the crime, Pio Apostol, not only before the agents of the authorities but also during the trial of the cause. Therefore the guilt of the two defendant-appellants is unquestionable. Moreover, on their being confronted with the defendants Apostol and Carcha, the latter reproached and incriminated them.

As regards the four so-called errors assigned to the judgment appealed from, it should be stated that, in excluding Pio Apostol from the proceeding to use him as a witness, the trial court acted in accordance with law and the provisions of Act No. 2709, in the exercise of the discretion which the law confers upon him; for both Apostol and Carcha admitted their participation in the robbery in question. Besides, the testimony given by Carcha is virtually a corroboration of the statements made by Apostol, and the testimony of both of them, as confessed coprincipals, of their participation in the crime of robbery, evidences without the slightest doubt the guilt of the two appellants. When the codefendants and accomplices confess their coparticipation and complicity, as did the

said Apostol and Carcha, it is proper to admit their testimony against the other defendants, the coprincipals of the crime.

With respect to the pleading and proofs found in the record, in connection with the alibi set up by the defendant-appellants, such allegations and evidence have not invalidated the conclusive evidence of the prosecution which shows fully and in a satisfactory manner the guilt of the appellants Felixberto Ventura and Domingo Vicente.

In the commission of the crime the aggravating circumstance of nocturnity was undoubtedly present, inasmuch as, without the darkness and the silence of the night—on which occasion the malefactors knew that the inmates of the house, of which the said store is a dependency, and the other residents of the locality were asleep and at rest— they would not have dared to perpetrate the robbery by means of the opening which they made in the enclosure or wall of the store, which acts they undoubtedly would not have ventured to perform in broad daytime; and as there is no extenuating circumstance to offset the said aggravating one, the penalty specified by the law should be imposed in its maximum degree.

For the foregoing reasons, deeming the errors assigned by counsel for the defendant-appellants to have been refuted, it is proper to affirm the judgment appealed from and the penalty therein fixed, which is in conformity with the evidence, for said judgment is in accordance with law, and we do hereby affirm the same, with the costs of this instance against the defendant-appellants: Provided, however, That the said Felixberto Ventura and Domingo Vicente, jointly and severally with Ramon Carcha, are ordered to return the stolen articles, or to pay an indemnity for their value, and, in case of insolvency, they shall suffer the corresponding subsidiary imprisonment. So ordered.

Arellano, C.J., Johnson, Street, Malcolm, and Avanceña, JJ., concur.

DISSENTING

ARAULLO, J.,

I dissent from the preceding decision as regards the classification of the crime and the penalty that should be imposed upon the defendant-appellants.

It is, in fact, proven that on the night of August 18, 1917, various articles belonging to Calixto Dizon were stolen in the barrio of Talibao of the municipality of Calasiao, Province of Pangasinan; but it was not proven that the robbery was committed in an inhabited house, or in a dependency of an inhabited house, as the majority of this court held in said decision.

There is no proof whatever in the record that the place in which the robbery was committed was a dwelling place and store at the same time, that is, the dwelling and small store of Calixto Dizon, as stated in the opinion referred to. The store of Calixto Dizon, in which the robbery took place, was not used by him as a dwelling place, nor did any person whatever inhabit it, and the fact that the store occupied a portion of the lower part of the house cannot justify its classification as a store and dwelling place.

There may be in the lower part of a house, the upper part of which is inhabited, a place that is used as a store; but the store should not necessarily be considered as a dependency of the inhabited house, or a store and dwelling place, as the building in question has been classified to be, in order, after various reasonings, to reach the conclusion—an erroneous one, in my opinion—that the robbery was committed in a dependency of an inhabited house. In the vulgar acceptance of the term, a "dependency of an inhabited house" may be any room of the lower part of, or within, the house itself; but it has not always that meaning in legal terminology.

The second paragraph of article 510 of the Penal Code reads:

"All interior courts, corrals, warehouses, granaries, straw sheds, coach houses, stables and other enclosed places contiguous to any inhabited house * * * having an interior entrance connected therewith, and which form part of the whole, shall be deemed dependencies of such house * * *." So that it is not sufficient that the enclosed places above-mentioned form part of the whole inhabited house, but they must also have an interior entrance connected therewith. If such interior communication between the enclosed places and the inhabited house does not exist, said enclosures may not, according to legal definition, be termed "dependencies of an inhabited house." The supreme court of Spain has so ruled in numberless decisions, not necessary to be cited here because they are top well-known, and the pronouncements therein contained have been constantly and uniformly applied in cases decided by this Supreme Court.

Calixto Dizon, describing the small store in which the robbery was committed, said that it almost faced the Buen-lao landing, in front of his house, and was in the lower part of his house where there was a shed; that it was not separated from the house, and that only a shed had been placed under the floor of the latter; that it directly adjoined the house and almost formed one single structure therewith; that no person lived inside the store; that the front door of the store was closed and fastened from within, by means of a cross-bar, and that the door of egress was fastened with a padlock. He added that the door was intact, and that beside it, towards the left, the robbers had torn down the bamboo enclosure. Witness was questioned, first by the fiscal: "And is that corral a part of a lot, or of the store itself?" To which he replied: "Of the store itself." Then he was asked by the judge: "Do the partitions belong to the store, or to a lot separated from the store?" Witness replied: "No sir; they are the very partitions of the store." When Dizon was finally questioned as to what those partitions consisted of, he said that they were made of bamboo.

From the description given by Calixto Dizon, it appears clearly explained that the store in which the robbery was committed consisted of a shed or covering which, fastened to the enclosure or bamboo partitions of the house, on its ground floor, had two doors: one, in front, fastened from within with a cross-bar, and the other, for egress, fastened with a padlock. In the whole of Calixto Dizon's testimony, and in that of the witnesses who testified at the trial there is not a single word about the door of egress, which, according to Dizon, was fastened with a padlock, leading to the yard or lot of the house, as the preceding decision states that it did, nor is anything at all said about there being a yard or lot belonging to the house. So that there is no ground whatever in support of the following statements found in the main decision: "This description shows that the inmates of the house, on entering the store, do not descend a stairway cut through the floor, but they have to go down the main stairway and pass through the yard or lot to enter the door of ingress, fastened with a padlock and leading to the inside of the store." Nor does evidence support the additional statement, "For this second door would not be on the side of the other one in the street, but would, of course, open on the yard or lot of the house,"

As appears from the main decision, the writer thereof has endeavored to draw from the testimony of Calixto Dizon the conclusion that, as the store had two doors—one in front, which was fastened from within by means of a cross-bar, and another, for egress, which was fastened with a padlock— this second door necessarily communicated with the yard or lot of the house. This conclusion is incorrect, because it was not proven, nor can it be asserted as even possibly true, and for the simple reason that the front door of the store, which was closed, might be a part of the front covering of the store, which was fastened from within, and the door of egress, which was fastened with a padlock, might really be the door of the store leading to the street, in which case it could not be affirmed that the latter door, provided the interior communication between the store and the house. Be that as it may, there is no proof whatever that there was any such interior communication between the house inhabited by Calixto Dizon and the store located in the lower part of the building. Such a connection, if it existed at all, should have been indubitably proven by the, prosecution, for, as aforesaid, it was not sufficient that the store should have

formed one single whole with the house, in order that it might legally be deemed to be a dependency of an inhabited house. This court could not base, and should not have based, its findings on inferences and deductions unwarranted by the evidence, in order to hold that the crime charged was proven and to classify the same as one of robbery committed in an inhabited house or dependency of an inhabited house, and, consequently, to impose upon the defendant-appellants a severer penalty than that which, in justice and in consideration of the evidence, and solely of the evidence, should be imposed upon them. Such penalty is that prescribed in the second paragraph of article 512 of the Penal Code, for the crime under prosecution should be classified as one of robbery in an uninhabited place, or in a building not such as any of those comprised within the first paragraph of article 508, and the value of the articles stolen does not exceed 1,250 pesetas. Said penalty is *arresto mayor* in its maximum degree to *presidio correctional* in its minimum degree, and taking¹ into account that the commission of the crime was attended by the aggravating circumstance of nocturnity, not offset by any extenuating circumstance whatever, the defendant-appellants should be sentenced to two years and four months of *presidio correctional*, with the respective accessory penalties, and ~~to~~ to the penalty of three years, six months, and twenty-one days of the same nalty, as provided in the said decision.

Judgment modified.

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