

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. REGINO BALUYOT, HERMENEGILDO MAÑALAC, ANDRES ALFONSO AND JACINTO DAVID, DEFENDANTS AND APPELLANTS.*G.R. No. 14528. September 10, 1919*

Ponente: STREET, J.

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This appeal is prosecuted on behalf of Regino Baluyot, Hermenegildo Manalac, Andres Alfonso, and Jacinto David to reverse a judgment of the Court of First Instance of the Province of Pampanga, convicting them of a robbery committed on the night of November 24, 1917, in the dwelling of Dolores Coronel in the pueblo of Betis, municipality of Guagua, Province of Pampanga, and sentencing each of them to undergo imprisonment for the period of twelve years and one day, cadena temporal, with the accessory penalties provided in article 56 of the Penal Code, to indemnify Dolores Coronel in the sum of P15,000, and to pay each one-fourth of the costs.

It appears in proof that at the time and place mentioned in the complaint, Dolores Coronel, a rich spinster, 80 years of age, was living at her home with her niece Maria Coronel and a grand-niece Rosario Coronel, there being no man on the place, when, at about 2 or 3 o'clock in the morning, two malefactors, identified at the trial as Regino Baluyot and Hermenegildo Manalac, effected an entrance into the dwelling by scaling a bamboo pole and passing in through an opening above the window. The bamboo pole had been prepared beforehand; and the branches had been cut in such manner as to leave knots at the joint, with the result that when one end of the pole was rested against the side of the house it could be used like a ladder.

Having effected an entrance into the sola [parlor] of the house in the manner just stated, the two individuals mentioned proceeded to awake the inmates. The first to be aroused was Maria Coronel who, upon seeing the miscreants, screamed aloud, notwithstanding their warning to make no noise. Rosario Coronel, hearing the outcry of her aunt Maria in the same room, also awoke. Meanwhile Dolores Coronel, the aged owner of the house, sleeping in another room, heard, the noise and at once appeared upon the scene. One of the assailants thereupon hit her several blows with his fist on the head, back, and shoulders, while the other struck at her with a bolo but did not cut her.. As the house was dimly lighted, Rosario Coronel was told to get another lamp, while Maria Coronel was ordered to cover herself with a sheet and remain in bed. These orders being complied with, Rosario was directed to go down stairs and open the door, the robbers intimating that they had companions outside. Upon descending and opening the door as directed, Rosario saw two men a short distance away under the banana trees but did not discern their features.

Meanwhile the two robbers already inside lost no time in possessing themselves of a large sum of money which Dolores Coronel was known to have in her possession. To this end they forced the old lady, by threats of cutting her throat, to open two trunks and the money they were after was in fact discovered therein. Altogether the robbers obtained P15,000, which they carried away, together with some documents apparently of little importance. When ready to leave they told Rosario to accompany them to the door in order to light the stairway;

and at the instant of departure one of the two asked her, apparently in a spirit of light bravado, whether she recognized them.

As the women were afraid to go out in the night to inform the authorities, no alarm was given until after daylight. Upon investigation suspicion was directed to the four accused as the probable offenders, and they were soon picked up by the Constabulary and landed in jail.

At the hearing Baluyot and Manalac were fully identified by both Maria Coronel and Dolores Coronel; and upon the proof presented it is impossible to entertain the slightest doubt as to their guilt. The proof connecting Andres Alfonso and Jacinto David with the robbery is also sufficient in our opinion to show their guilt beyond a reasonable doubt, but this feature of the case requires, as it has received, at our hands a closer scrutiny.

That four persons at least participated in the robbery is proved by the fact that Rosario Coronel saw two men outside when she opened the door, and the corroborative statement by those who had entered that there were others outside is admissible in evidence as part of the *res gestae*, being explanatory of the reason for opening the door. It is therefore only necessary to establish the identity of the two human figures seen by Rosario outside of the house, in order to fix guilt upon all four of the companions in crime.

Valentin Paddu, aged more than 50, resident of Guagua, Pampanga, testified that after midday on November 23, 1917, being out for the purpose of cutting grass for his carabao, he suddenly came upon the four accused while they were seated on an embankment and hidden in the cogon grass. They were so sitting as to be facing each other, two and two. The witness was unperceived and, lending attentive ears to what might be passing, he heard snatches of conversation to the following effect:

"ANDRES. What's the matter, fellows? Let's do what we have been talking about.

"REGINO. All right.

"ANDRES. Then, I am going to get supper ready at home.

"REGINO. You get ready the instruments that we are going to use.

"ANDRES. There's no danger, they are all women."

After this the four separated, Regino and Hermenegildo going towards Santa Rita, while Jacinto and Andres directed their course towards Betis.

Another witness, Andres David, aged above 50, resident of Betis, testified that at nightfall on November 23, 1917, he saw Regino Baluyot, followed by Hermenegildo Manalac and Jacinto David, pass along behind the witness' house in the direction of the home of Andres Alfonso. The witness also stated that, as the three were thus passing along, he heard Regino say to Hermenegildo: "We two will go up while the other two stay below."

Gregorio Manalo, over forty, also called as a witness for the prosecution, testified that at a rather advanced hour of the night of November 23, 1917, he was returning to his home in Betis, when he met four persons in the road, whom he recognized as the four accused, going in the direction of the house of Dolores Coronel. Regino was carrying a bamboo pole, such as has been already described. The witness observed that the four approached the house of Dolores Coronel and placed the bamboo pole in position. As they came away the witness accosted Jacinto David, who is his compadre, but received no reply. After the witness had gone into his own house and had eaten something, he again went out to lead his carabao to a feeding ground and the four accused again passed near him. Next morning before breakfast the witness went out and encountered Andres Alfonso in a carromata, passing in the direction of Santa Rita. Upon arriving at the house of Hermenegildo, Andres alighted and went in. The witness thereupon crossed the road and looking in saw that Regino was present. Upon the second occasion when

this witness saw Regino and Hermenegildo, he heard the latter say "I have left all the silver to Andres and Jacinto."

We have thus stated at some length the substance of the testimony of the three principal witnesses for the prosecution for the purpose of observing that it proves the complicity of Jacinto and Andres almost too well to be fully credited. The trial judge had his suspicions aroused by this circumstance and dismissed the testimony of Gregorio Mafialo as unworthy of credit. He nevertheless credited the testimony of Valentin Paddu and Andres David and convicted Andres and Jacinto upon the weight attributed by him to the testimony of said two witnesses.

The propriety of the conviction of the two accused last mentioned is now attacked, and it is insisted that the veracity of each of the three witnesses whose testimony we have detailed is equally open to question. In this connection it is argued that there is great similarity in the tenor of their respective stories and the circumstances narrated are so harmonious that the falsity of the whole is at once apparent. We are not unmindful of the force of this suggestion and agree that the words which the witnesses Andres David and Gregorio Manalo put into the mouths of Baluyot and Manalac are somewhat improbable, considered with reference to the time and place where supposedly spoken. Nevertheless the argument against the conviction is in our opinion unconvincing. The simple truth probably is that knowledge of the projected enterprise having as its object the relieving of Dolores Coronel of the burden of a part of her wealth had become noised abroad among certain of the low populace; and one at least was apparently hanging around either out of idle curiosity or in the hope of sharing in the spoils. It is therefore not surprising that information as to the details of the crime was more widely disseminated than the chief actors could have desired.

It appears that Regino Baluyot and Hermenegildo Mañalac carried bolos while perpetrating the robbery, but there is no proof that the members of the party who remained outside were armed. For this reason the crime in question cannot be considered as having been committed by a band of armed men. The offense must therefore be defined as robbery under article 502 of the Penal Code, committed by the use of intimidation against the person and punishable under subsection 5 of article 503 of the same Code. There were present in the commission of the offense the aggravating circumstances of nocturnity and that the crime was committed in the dwelling of the injured person. The appropriate penalty is, therefore, 10 years, presidio mayor, with the accessories prescribed in article 57 of the Penal Code.

The trial court considered the offense to be robbery committed by armed men in an inhabited house, punishable under article 508 of the Penal Code, and accordingly sentenced the accused to 12 years and 1 day, cadena temporal. It is undoubtedly true that every element of the offense denned in article 508 is here present; but it is the established practice of this court, where the crime of robbery is characterized by intimidation of the person, to apply article 503, instead of article 508, it being considered that the factor of intimidation of the person supplies the controlling qualification; and this practice is followed even where, as in this case, the penalty to be applied under article 503 is lighter than that which would result from the application of article 508. Robbery characterized by violence or intimidation against the person is evidently graver than ordinary robbery committed by force upon things, because where violence or intimidation against the person is present there is greater disturbance to the order of society and the security of the individual.

For the reasons stated, the judgment appealed from must be modified by substituting 10 years, presidio mayor, with the accessories prescribed in article 57 of the Penal Code, for so much thereof as imposes the penalty of 12 years and 1 day, cadena temporal, with the accessories prescribed in article 56 of the same Code. As thus modified the judgment is affirmed, with proportional costs against the several appellants. So ordered.

Arellano, C.J., Torres, Johnson, Araullo, Malcolm, and Avanceña, JJ., concur.

Judgment modified.

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