

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO MELCHOR AND CATALINO AGBAYANI, DEFENDANTS AND APPELLANTS.

G. R. No. 16413. March 11, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellants were convicted in the Court of First Instance of Cagayan of the crime of robbery with lesiones, and, in accordance with article 503, No. 4, in relation to article 416, No. 3, of the Penal Code, were sentenced as follows: Francisco Melchor, to 12 years and one day of cadena temporal, and Catalino Agbayani, to ten years and one day of presidio mayor; and both were sentenced further to the accessories provided by law, to indemnify jointly and solidarily the Chinaman Go Suy Sing in the sum of P36.50, to return the effects robbed or pay their value which amounts to P564.35, and to pay each one-third of the costs.

The crime charged is described as follows:

"That on or about the 13th day of December, 1918, in the municipality of Gattaran, Province of Cagayan, Philippine Islands, said accused Francisco Melehor, Catalino Agbayani, and Panfilo Guillermo, voluntarily, illegally, and criminally, taking advantage of the darkness of the night, with treachery, and with deadly weapons, attacked and wounded the Chinamen Go Sui Sing and Laurencio Sui Sing, while the latter were profoundly sleeping and unable to defend themselves, inflicting upon them several wounds tending to kill them, but which did not produce their death because of reasons independent of the will of the accused; that said Chinamen having fallen down as a result of the wounds received from the accused, and when the latter believed them to be already dead, the accused with intent of gain and without the consent and against the will of the owner, Go Sui Sing, took merchandise of the value of P601.75, equivalent to 3,008 pesetas; that the lesiones received by the Chinamen Go Sui Sing and Laurencio Sui Sing produced complete deformity and incapacitated them from their ordinary labor and required medical attendance for a period of more than ninety days; that said accused previous to December 13, 1918, had been sentenced for a crime of the same nature as that charged in this information and falling under the same title of the Penal Code."

It is beyond doubt that on the night of December 13, 1918, with the intent of robbery, three persons, two of whom were armed with bolos, entered the store and dwelling house of the Chinaman Go Sui Sing at midnight, breaking a door to gain entrance, and once inside they wounded the Chinese Go Sui Sing and his son, a boy of 7 years, Laurencio Go Sui Sing. It is also indisputable that those three persons took away money and effects of the total value of P600.85.

The attorney for the appellants contends that the evidence of the prosecution is insufficient to identify the accused, especially when the evidence as to the defense of alibi presented by the accused is considered. This contention is not sustainable. The two Chinamen, father and son, who were wounded on the occasion of the robbery, have repeatedly declared in court that they recognized the three robbers who entered their store to rob after they had been wounded; on that night, the Chinaman, Go Sui Sing, recognized Francisco, calling him by name, saying

"What are you doing Siccu?" a name which the other Chinaman also heard; they recognized the accused Agbayani because he was the one who took hold of the light to see the wounds; and they recognized these two accused because they used to go to their store to make purchases, and the other accused, Teofilo Guillermo, who was excluded from the prosecution, because he served them at times as oarsman. The declaration of the two Chinese identifying the accused Melchor and Agbayani, is corroborated by that of the witness Teofilo Guillermo, who states that he was invited by the accused Francisco Melchor to go to the store of the Chinaman Chiquito (Go Sui Sing). The witness Guillermo gave the details of how Francisco wounded, the two Chinese and how they entered the store to rob; and although at that time he did not know the other accused, Catalino Agbayani, he said, nevertheless that the other fellow who went with them was of the same height as the accused Agbayani. The trial court declared that the accused are sufficiently identified and we find no reason to alter this conclusion. The evidence we have examined convinces us that the accused are the authors of the crime charged.

The defense of alibi is of no value in this case. The evidence for the accused tends to show that they were far away from the scene of the crime on December 12, 1918; but the evidence for the prosecution shows, and the trial court with reason so declared, that the robbery in question took place on December 13, 1918.

In the commission of the crime the aggravating circumstances of its having been committed in the dwelling house of the offended persons, and at nighttime, should be considered against the accused, and, furthermore, against Francisco Melchor, the aggravating circumstance of treachery should be applied, for he wounded the two Chinese under conditions which prevented them from defending themselves. The trial court, with respect to the accused Catalino Agbayani, compensated the two aggravating circumstances mentioned with the mitigating circumstance of article 11 of the Penal Code as amended by Act No. 2142. This is an error. This court has repeatedly declared that the lack of instruction should not be considered as mitigating in crimes against property.

As a result of the robbery the accused Francisco Melchor inflicted upon the two Chinese wounds which it took more than ninety days to cure, and incapacitated them from their ordinary occupation during that time, at the same time that these wounds produced deformity on their faces. This fact falls within the provisions of article 416, No. 3, of the Penal Code, for which the two accused are solidarily responsible, because, although Agbayani did not commit any attack upon the persons of the inmates of the store robbed, nevertheless, dealing with complex crimes, the robbers who participated in the robbery are responsible for such other assaults as may have been committed by any of them on the occasion of the robbery. (U. S. vs. Tiongco, 37 Phil., 951.)

Article 503, No. 4, of the Penal Code provides:

"A penalty ranging from presidio mayor in its medium degree to cadena temporal in its minimum degree, whenever the violence or intimidation employed in committing the robbery shall have been carried to a degree clearly unnecessary to the commission of the crime, or when in the course of the perpetration of the crime the offenders shall have inflicted upon any persons not connected with its commission any of the physical injuries falling; within the terms of paragraphs three and four of article four hundred and sixteen."

Therefore, the judgment should be modified by sentencing the accused, Catalino Agbayani, to the maximum degree of the penalty just as his coaccused Francisco Melchor, that is, to twelve years and one day of cadena temporal, with the corresponding accessories, and both accused should be further sentenced to indemnify the injured persons jointly and severally in the sum of P665 for the expenses incurred in effecting the cure of the wounds. In all other respects the judgment appealed from should be affirmed. It is so ordered, with costs.

Mapa, C. J., Araullo, Street, and Malcolm, JJ., concur.

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