

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CHAN WAT, DEFENDANT AND APPELLANT.

G. R. No 24534. March 31, 1926

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the City of Manila, finding the appellant, Chan Wat, guilty of the offense of theft, and sentencing him to undergo imprisonment for one year, eight months, and twenty-one days, presidio correctional, with the accessories prescribed by law, to indemnify Ang Hong (alias Yu Lay), in the sum of P300, with subsidiary imprisonment in case of insolvency, and requiring him to pay the costs.

It appears that during the month of January, 1925, the accused for a time maintained Yu Lay, a Chinese woman 20 years of age, as his mistress in a house situated on Calle Blumentritt, in the City of Manila. Yu Lay was the owner of a pair of gold bracelets of the value of P200 and one gold necklace, with a Chinese gold coin attached, of the value of P100. This jewelry she was accustomed to wear on her person. The appellant, Chan Wat, being desirous of possessing himself of said jewelry, demanded that she should surrender the jewelry to him. This Yu Lay refused to do, and in order to scare the girl into giving it up, he pretended, upon the occasion with which we are here concerned, that a detective was coming to the house and that Yu Lay should place the jewelry in his hands. The ruse proved unavailing, and the appellant thereupon seized Yu Lay's hands and forcibly removed the bracelets, afterwards drawing the gold necklace from over her head. The jewelry thus taken was never afterwards returned to Yu Lay by the appellant. These are all the facts really material to the case; and that the incident occurred in the manner stated cannot be doubted, being clearly proved by the testimony of Yu Lay herself, corroborated by that of a Chinese woman named Uy Si Ga, who was at the time staying in the house where Yu Lay was kept. The accused admits that he was keeping Yu Lay as a mistress about the time stated, and he claims that he bought her in China and was instrumental in procuring her admission into the Philippine Islands upon a false certificate of residence. He denies, however, that he took from Yu Lay any jewelry whatever upon the occasion mentioned.

The information charges robbery and it is alleged therein that the accused used threats and intimidation against Yu Lay; but the trial court states in the appealed decision that intimidation has not been proved, with which conclusion we agree. It is a plain case of the forcible seizure of jewelry from the person of the owner.

Upon the foregoing facts the trial court found the appellant guilty of the crime of theft. We are of the opinion, however, that the offense exhibits every element of the crime of robbery, and for this offense the accused-appellant should have been sentenced. In *United States vs. Blanco* (10 Phil., 298), it was held that the seizure and appropriation of a pawn ticket by the accused from the hands of the bearer thereof, who was the lawful owner of the document, with intent to gain, constituted the crime of robbery. In the course of the opinion in this case, Mr. Justice Torres, speaking for the court, said: "The substantial difference between robbery and theft consists of the characteristic circumstance that, in the former, violence or intimidation is employed toward the

person, or force upon the thing itself; in the latter no such means are employed. * * *"

The case before us is fundamentally the same as a criminal case reported from the Supreme Court of Spain under date of February 21, 1873, where it appeared that the appellant had been convicted of theft for the seizure and taking away of a horse against the will of the owner. It appeared that the appellant in that case had demanded the delivery of a horse which was then in the possession of the offended party. The latter having refused to surrender the horse the appellant entered the stable where the horse was kept and carried the animal off against the will of the owner. Upon appeal to the Supreme Court of Spain it was held that the appellant had been improperly convicted of theft. The point upon which the court there discriminated the offense from theft was that the seizure had been effected against the will of the owner. Upon this feature of the case, the court, after comparing the definitions of theft and robbery in the Penal Code, observed that for robbery it is necessary that there should be a taking against the will of the owner and for theft it suffices that consent on the part of the owner is lacking. (8 Crim. Jur., 235.) In the case before us the offense was committed against the manifest will of Yu Lay and not merely without her consent.

The offense properly falls under paragraph 5 of article 503 of the Penal Code, without aggravating or mitigating circumstance. The judgment will therefore be reversed and the accused is hereby sentenced to undergo imprisonment for three years, eight months, and one day, presidio correccional, with the accessory penalties prescribed by law, to indemnify Yu Lay in the amount of P300, with subsidiary imprisonment in case of insolvency, and to pay the costs.

Avanceña, C. J., Villamor, Ostrand, Johns, Romnaldez, and Villa-Real, JJ., concur.

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