

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ATANACIO JAGON AND LUIS DAYAO, DEFENDANTS AND APPELLANTS.

G. R. No. 26017. November 11, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Atanacio Jagon and Luis Dayao appeal to this court from the judgment of the Court of First Instance of Nueva Ecija convicting them of the crime of robbery defined and penalized in article 508, paragraph No. 1, of the Penal Code, sentencing each of them to suffer twelve years and one day cadena temporal, with the accessories of the law, to indemnify, jointly and severally, the spouses Martin Dasig and Ismaela Ramos in the sum of P1,009, without subsidiary imprisonment in case of insolvency, in view of the nature and gravity of the principal penalty, and to pay the costs of this action. The complaint reads as follows:

"That on or about the 20th day of January, 1926, in the municipality of Talavera, Province of Nueva Ecija, Philippine Islands, and within the jurisdiction of this court the above-named accused Atanacio Jagon and Luis Dayao armed with bolos and accompanied by two other persons, conspiring, confederating and mutually aiding one another, did voluntarily, maliciously by means of violence upon person and force upon things, go up the" house of Martin Dasig and once inside said accused by means of violence and intimidation did voluntarily, maliciously, and feloniously with intent of gain, take, abstract and carry away P906 in cash and jewels valued at P50 and other articles valued at P57.20 all having a total value of P1,013.20, equivalent to 5,066 pesetas belonging to Martin Dasig and Ismaela Ramos. All contrary to law."

The following facts were proven at the trial beyond a reasonable doubt: About midnight of January 19, 1926, while Ismaela Ramos was nursing her baby girl in her house situated in the barrio of Plaridel, municipality of Talavera, Province of Nueva Ecija, her attention was attracted by the barking of some dogs, whereupon she went to the window to see what the trouble was. She saw some persons standing in front of her house, among whom she recognized the herein accused-appellant Atanacio Jagon. Upon seeing her they inquired the way to Basang-hamog. She replied that she did not know. They then asked for a drink of water and she replied that she had none because her husband had not brought home any water. Thereupon Atanacio Jagon remarked: "Therefore you have no companion." She answered them yes, but that her husband was in the field threshing palay. After receiving this reply, Atanacio Jagon went towards the place mentioned leaving a man, whom Ismaela Ramos did not recognize, beside the house.

Martin Dasig, Ismaela Ramos' husband, who was sleeping on the threshing ground, was awakened by the barking of the same dogs and saw four persons, two of whom approached him and inquired the way to Basang-hamog.

When he answered that he did not know, one of them said:

"How annoying it is to lose one's way." He then called to his other companions who came towards him and immediately one of them pointed a revolver at Martin Dasig. When all of them had come near him they asked him

if he was going to resist and he answered "No." They asked him whether or not he was willing to give them any money and he replied that he was willing to give them whatever amount he had. Later on they forced him to lie face downward, and then they made him sit up. When seated, one of them was ordered to get a rope, and the herein accused appellant Luis Dayao with his bolo cut the rope with which Martin Dasig's carabao was tied; then Luis Dayao and Atanacio Jagon conducted Martin Dasig to a post where they tied his arms with the rope with his back towards the post. The two accused with their companions then left him and shortly after he heard the report of a firearm behind him. When they had left he succeeded in freeing himself from the post to which he was tied. Once free, he went to the house of his neighbor, Bernardo Villa, to ask for help, where he met his wife, Ismaela Ramos, who had also gone there for the same purpose when she saw the robbers going towards where her husband was, inasmuch as she feared that they might harm him. After Ismaela Ramos had awakened Bernardo Villa and explained to him what had happened, the latter, trembling with fear, started to look for his bolo, while his nephew, Gregorio Padilla, went down to help him. Upon arriving at a papaya tree Bernardo Villa heard the report of a firearm and ran back home with fright.

When Martin Dasig thought that the robbers had gone, he returned and found his house open, their clothes scattered about, their trunk open, their valise broken open and the money which it contained, amounting to P906, had disappeared, as well as the jewelry and slippers which Ismaela Ramos had bought from Florentina Maravilla to sell to her workers on shares, and other wearing apparel to the total value of P1,013.20.

The spouses Martin Dasig and Ismaela Ramos had known the accused for a long time—Luis Dayao for about seven years and Atanacio Jagon for about three years.

The accused, testifying as witnesses in their own behalf, denied, of course, all the allegations made by the offended parties against them and tried to establish an alibi.

Luis Dayao tried to prove that on the night of January 19, 1926, he slept in his father's house, having gone to bed at 10 o'clock at night and awoken the following morning.

Atanacio Jagon tried to prove that on the night in question he slept in Juan Jose's house, together with the sister-in-law of the latter, whom he had promised to marry two days before, that is, on the 17th of the same month, considering her then as his mistress.

The testimony of these two accused that on the night in question they did not leave their respective houses where they slept is not corroborated by the testimony of their witnesses who testified that they only saw them go to bed that night and wake up the following morning. They could have left the house that night without the knowledge of said witnesses. Besides, the witnesses who testified to the alibi are the father of the accused Luis Dayao and the intended brother-in-law of Atanacio Jagon. The latter's alleged motive in passing the night in Juan Jose's house is very improbable and far from establishing his alibi disproves it. It is not customary among Filipinos for prospective spouses to live in concubinage before marriage or while the marriage preparations are going on.

Ismaela Ramos clearly and positively recognized Atanacio Jagon when the latter spoke to her in front of her house, and Martin Dasig also recognized Luis Dayao and Atanacio Jagon when they tied him to the post; and the accused having proven by their own testimony that the spouses had never had any grudge against them, the proof of the alibi of the accused, weak as it is, cannot prevail over the testimony of the offended parties, who have known Luis Dayao for about seven years and Atanacio Jagon for about three years. It has not been proven that said spouses had any motive for injuring the accused, if they really did not commit the criminal act imputed to them.

The acts, proven beyond a reasonable doubt at the trial, constitute the crime of robbery defined and penalized in

article 508, paragraph 1, case No. 4, of the Penal Code, inasmuch as on the night in question the accused entered the house occupied by the spouses Martin Dasig and Ismaela Ramos, broke open a valise and appropriated its contents, consisting of money, jewelry and wearing apparel to the value of P1,009.

The Attorney-General, following the doctrine laid down in the case of *People vs. Callueng* (G. R. No. 19939), is of the opinion that the accused can be convicted only of the crime of robbery in an uninhabited house, defined in article 512, paragraph No. 1, of the Penal Code, inasmuch as the complaint does not specifically allege that the house where the robbery was committed was inhabited.

The complaint in the case of *People vs. Callueng* (G. R. No. 19939) reads as follows:

"That on or about January 16, 1922, in the municipality of Iguig, Province of Cagayan, P. I., the said accused Jacinto Callueng, Que Ponso alias Poncio and Pascual Ruma, voluntarily, illegally and criminally and with intent of gain, taking advantage of the absence of the spouses Bibiana Galit and Felipe Maralli, and using force upon things, broke open two trunks and appropriated the contents of one of them consisting of the following articles: One diamond ring worth P100; one gold plated watch worth P20; one pair of earrings with pearls worth P18; two pairs of plain earrings worth P7 and one P20 bill, aggregating the amount of P165, equivalent to 825 pesetas, belonging to another, and without the consent of their owners, the spouses Bibiana Galit and Felipe Maralli. Contrary to law."

It will be seen that said complaint does not state that the robbery was committed in a house, but simply relates the manner in which the robbery was committed, the articles taken and the owners of the same.

It is alleged in the complaint in the present case that the robbery was committed in Martin Dasig's house and that the accused broke open a valise which they found in the house from which they took money, jewelry and other article of value belonging to Martin Dasig and Ismaela Ramos.

From the facts alleged in the complaint in the case of *People vs. Callueng* above cited, it cannot be deduced with certainty whether the robbery was committed in a house or not, inasmuch as it does not definitely say so.

From the facts alleged in the present case it may be deduced with certainty that Martin Dasig and Ismaela Ramos' house where the robbery was committed, was occupied by them inasmuch as it is not logical or reasonable to suppose that they would have a house exclusively for their trunks, valises, wearing apparel and jewelry, and another house exclusively for the residence. The words "Martin Dasig's house" in connection with the words "trunk, valise, money, jewelry and wearing apparel" are sufficient to show that the house was the home of the spouses Martin Dasig and Ismaela Ramos, without the necessity of using the specific word "inhabited."

The acts alleged in the complaint in the present case are, therefore, sufficient to constitute the crime of robbery committed in an inhabited house by armed robbers, who broke open a locked valise, defined and penalized in article 508 of the Penal Code.

By virtue of the foregoing, and finding no error in the judgment appealed from, the same is hereby affirmed with the costs against the appellants. So ordered.

Avanceña, C. J., Johnson, Street, Ostrand, Johns, and Romualdez, JJ., concur.

[1] Promulgated September 15, 1923, not reported.

DISSENTING

VILLAMOR, J.,

I regret to dissent from the majority opinion. It has been repeatedly held by this court that the accused in a criminal case has a right to be informed of the true nature of the crime with which he is charged, and, in order that the complaint may be sufficient, it is necessary that it contain a complete description of the act complained of and the circumstances qualifying it.

In a recent decision handed down by this court in bane, that is, in the case of *People vs. Callueng*, (G. R. No. 19939), it says:

"It is not alleged in the complaint that the house where the robbery was committed was inhabited. The crime of robbery in an inhabited house is distinct from that committed in an uninhabited house and the penalty provided by law for each is also different, the penalty for the latter being less severe. Although the evidence shows that the house stated in the complaint was inhabited, yet this circumstance not being alleged in the complaint, the accused can be sentenced only in accordance with the wording of the complaint, considering the robbery as having been committed in an uninhabited house."

Following the rule established in the majority opinion that, from the wording of the complaint, it may be inferred that the crime is that of robbery defined and penalized in article 508 of the Penal Code, we might say with reference to the above cited *Callueng* case (G. R. No. 19939), that the words in the complaint "in the absence of the spouses Bibiana Galit and Felipe Maralli * * *" in connection with "broke open two trunks and appropriated the contents of one of them consisiting * * *" indicate that they refer to the inhabited house of Bibiana Galit and her husband where the trunks which were broken open were kept, as it cannot be imagined that said trunks were kept in places outside of the house; but said interpretation was rejected by this court and it refused to convict the accused under article 508, but only under article 512 of the Penal Code.

The complaint in the present case uses the following language: "* * * go up the house of Martin Dasig and once inside said accused by means of violence * * *" In my opinion, a similar expression in the complaint is not sufficient to express the legal qualification of "inhabited house" required by article 508 of the Penal Code; and the reason is that, to say "To go up the house of Martin Dasig" does not necessarily mean that the house was inhabited, because Martin Dasig may be the owner of the house and, yet, it might be uninhabited.

It is true that the evidence snows that the house in question was inhabited by the spouses Martin Dasig and Ismaela Ramos. It is also true that in the *Callueng* case (G. R. No. 19939) the evidence showed that on the day in question the spouses Bibiana and Felipe left their house for the municipality of Alcala, with their two trunks locked, one of which contained their jewelry. The court, however, in that case, refused to hold the complaint sufficient to charge the crime of robbery under article 508, but only under article 512 of the Penal Code.

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