

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JUAN TUBOG ET AL., DEFENDANTS. FLORENCIO POSTRERO (ALIAS DIONISIO CASTRERO), APPELLANT.

G. R. No. 26284. November 17, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

This is an appeal by the defendant Florencio Postrero (alias Dionisio Castrero) from a judgment of the Court of First Instance of Bohol finding him and his co-defendants guilty of the crime of robbery. The information is as follows:

"That on or about June 22, 1926, in the municipality of Jagna, Province of Bohol, Philippine Islands, and within the jurisdiction of this court, the above-named defendants did willfully and criminally, with intent of gain and through force upon things, conspiring and armed with weapons, did take, steal and carry away the iron safe 'Safe Thomas Perry & Son, Bilston' containing the sum of P1,930 and other articles in the store of the Chinaman Jo Ebe, who is the owner of the safe, said defendants having broken the lock of one of the doors of the store and a part of the safe for the purpose of opening the same, and the defendant Juan Tubog as accessory after the fact.

"Contrary to law."

Upon arraignment all of the defendants plead guilty, and as to the defendant Santiago Rubi (alias Santiago Lucero) and the appellant, as principals, each was sentenced to ten years and one day of presidio mayor, with the accessory penalties, and to pay one-fourth of the costs. The defendant Juan Tubog was sentenced to five months and ten days of arresto mayor. From this judgment the defendant Florencio Postrero appeals without assigning any error.

JOHNS, J.;

His attorney de oficio in his brief says:

"That after a careful study of the case, the undersigned attorney de oficio finds that the penalty imposed by the trial court is in accordance with the law, and, therefore, recommends that same be confirmed."

The Attorney-General says that the penalty is in accord with the provisions of article 508 of the Penal Code. He then cites the decision of this court in *People vs. Callueng*, G. R. No. 19939, promulgated on September 15, 1923,[1] in which in the opinion written by the present Chief Justice, it is said:

"It is not alleged in the information that the house where the robbery was committed was inhabited. The crime of robbery in an inhabited house is different from that of robbery in an uninhabited house, and the penalty prescribed by law for the one and the other is also different, the penalty for the latter crime being less severe.

While the evidence shows that the house in question was inhabited, yet as this circumstance is not alleged in the information, we can only convict the defendant in accordance with the terms of the information, considering the robbery as committed in an uninhabited house.

"Therefore, the judgment appealed from is modified, and the defendant is sentenced, under article 512 of the Penal Code, to one year and one day, presidio correctional, and in addition to pay the indemnity imposed in the judgment appealed from, with costs"

The Attorney-General then says that in the instant case, the information does not allege that the store in which the robbery was committed was inhabited at the time of the commission of the crime, and that for want of which, the penalty should be imposed under article 512 of the Penal Code.

Article 508 is as follows:

"Any armed person who shall commit a robbery in an inhabited house, public building or edifice devoted to religious worship shall suffer a penalty ranging from presidio mayor in its medium degree to cadena temporal in its degree * *."

It will be noted that the language thus used is confined and limited to "a robbery in an inhabited house." It will also be noted that in the instant case, the robbery was "in the store of the Chinaman Jo Ebe, who is the owner of the safe," and that it is alleged "said defendants having broken the lock of one of the doors of the store." That is to say, the information alleges that the crime was committed "in the store" through the breaking of "the lock of one of the doors of the store," and the information does not allege that the store was used or occupied as "an inhabited house." It does not even allege that the store is attached to, connected with, or a part of, "an inhabited house." The question is thus presented as to whether the word "store" is "an inhabited house," within the meaning of article 508.

In the case of *United States vs. Vega* (31 Phil., 450), this court held: An information which charges the commission of a crime under paragraphs 2 and 4, of article 508, of the Penal Code, is sufficiently explicit as to the character of the building broken into to the effect that it was an inhabited house, public building or edifice "by alleging that it was the tienda of the Chinaman Go Bongco." That opinion was signed by Arellano, Chief Justice, and Justices Torres, Trent, and Carson. Justice Johnson concurred in the result. Justice Araullo wrote a very forcible dissenting opinion. In that case, the information specifically charged the commission of the crime of robbery as defined and penalized in article 508, and that it was committed in the tienda of a Chinaman by forcibly breaking with arms the wall of the building.

In the instant case, the appellant is not specifically charged with a violation of article 508, and the information alleges that the entrance was made by breaking "the lock of one of the doors of the store." The fact that entrance was made in that manner clearly implies and carries with it the further fact that there was no person inside the store at the time the lock was broken, and that the defendants had to break the lock to get into the store.

In a criminal statute the word "store" has a well-defined legal meaning, which is clearly distinguished from the meaning of the words "an inhabited place." Words and Phrases, vol. 7, page 6672, it is said:

" 'Store' is defined by Webster as any place where goods are sold, either by wholesale or retail.

" 'Store' is defined by Worcester as a building or room in which goods of any kind are kept for sale, and especially for the sale of goods.

"The word 'store' as applied to a building is intended to designate a place where traffic is carried on in goods, wares and merchandise."

Page 6673.

"The use of the word 'store' in an indictment charging breaking into a store is not sufficient to show the breaking and entering of a building, in violation of a statute making the breaking of certain designated buildings and other buildings criminal, but which does not include stores among the buildings specifically enumerated. (Commonwealth vs. Monagle, 1 Mass., 517.)"

Defining "an inhabited building," the same author in vol. 4, page 3604, says:

"Any building which has usually been occupied by any person lodging therein at night is an 'inhabited building'"

"An 'inhabited building' is any building, any part of which has usually been occupied by any person lodging therein at night."

It is a matter of more or less common knowledge that many Chinese use and occupy a tienda or store as a dwelling. Even so, that custom is largely confined to that particular class of people, and is not in general use among all classes.

For failure of the information to allege that the store was used and occupied as "an inhabited place" at the time of the commission of the crime, the contention of the Attorney-General must be sustained.

As the law now exists, the penalty for the commission of robbery committed in "an inhabited place" comes under article 508, and the penalty for the commission of that crime in a store, standing alone and within itself, comes under the provisions of article 512 which provides:

"Any robbery committed in an uninhabited place or in any building other than those mentioned in paragraph one of article five hundred and eight shall be punished by presidio correctional in its medium and maximum degrees," etc.

For such reasons, the penalty of the lower court is modified and reduced, and the defendant is sentenced to four years, nine months, and ten days of presidio correctional, and in all other respects, the judgment is affirmed, with costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

[1] Not reported.

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