

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GAUDENCIO BAGUYO (ALIAS FLORENCIO BAGUYO), FLAVIANO FERNANDEZ, RUPERTO GREGORIO (ALIAS TOTONG), AND FELIX DE JE...

G.R. No. 27345. August 12, 1927

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

This action was instituted by the filing of the following information:

"That on or about and in the early morning of October 9, 1926, in the residential district of the municipality of Bauan, Province of Batangas, Philippine Islands, the said Gaudencio Baguyo (alias Florencio Baguyo), Flaviano Fernandez, Ruperto Gregorio (alias Totong) and Felix de Jesus (alias Antonio Rivera), who are the above-named accused, together with the chauffeur Paguntalan, now a fugitive from justice, conspiring, cooperating and mutually aiding one another, and making use of a Dodge Brothers car No. 6168 (engine No. A-29-144), and taking advantage of the darkness of night, went to Dr. Florencio Buendia's store situated in said district of Bauan, and with intent of gain, by means of force and violence and making use of an iron bar, forced open the bronze lock that fastened the door of the said store of Dr. Florencio Buendia, and once the door was opened, they entered the store and took possession of the safe which contained money and jewels, and of the merchandise of the store, which articles, jewels, money and safe, are described in detail as follows:

A safe (Schwab Safe Co. Lafayette), Ind. U. S. A., 50 x 51 x 62, weighing 208 kgs. and valued.....

P200.00

"And within which were the jewels and money enumerated as follows:

A pair of gold-coin cuff links.....

25.00

A bracelet of 9 gold coins.....

50.00

A pair of earrings.....

25.00

A coral pendant.....

80.00

A locket and chain.....

45.00

A coral ring.....

10.00

A watch chain with a Russian gold coin.....

80.00

A ring with an Osmeña stone.....

5.00

A pair of earrings with black stones.....

2.00

Money.....

543.24

and the goods of the store are:

Six packages of 'La Insular' cigarettes.....

P20.40

Three packages of 'La Pureza' cigarettes.....

6.75

Five packages of 'Zulma' cigarettes.....

10.50

Six packages of 'La Reina' cigarettes.....

12.42

A package of 'Mahinhin' cigarettes.....

2.30

A package of 'Dalisay' cigarettes.....

2.30

A box of B. M. C. (white) thread.....

3.10

A box of B. M. C. (blue) thread.....

3.75

A box of O. N. T. (white) thread.....

2.90

Two pieces of 'Pato' percale.....

25.00

Two pieces of 'Sana' coco cloth.....

24.00

Five yards of 'Grano de Oro' cloth.....

2.10

making a total of P1,180.76, equivalent to 5,903.80 pesetas, all belonging to the said Dr. Florencio Euendia. That the said accused, after having taken possession of said articles, goods and money above described put them in the Dodge car above-mentioned and carried them away, and that said accused were caught in the municipality of San Jose, of the Province of Batangas, and the goods, money and jewels above-mentioned were taken from them; that the said accused took possession of the same without the knowledge or consent of the owner, Dr. Florencio Buendia, and to his prejudice. That each and every one of the said accused is an habitual delinquent, having been convicted more than twice of the same crime of robbery, of which they are now accused, and of theft. That the following aggravating circumstances were present in the commission of this crime: First, that they took advantage of the darkness of night, and second, because said accused are recidivists, Gaudencio Baguyo (alias Florencio Baguyo) having been convicted of two crimes of theft by final judgment in the municipal court of Manila in case No. C-9909, and by the Court of First Instance of Cavite in criminal case No. 4028; Flaviano Fernandez was convicted of robbery by final judgment by the Court of First Instance of Albay in criminal case No. 4732 and in the Court of First Instance of Manila in case No. 29424 and of two thefts in the municipal court of Manila in cases Nos. C-87696 and C-92544; Ruperto Gregorio (alias Totong), of six (6) thefts, five in the municipal court of Manila in cases Nos. B-16878, B-40889, B-52587, 67586-7 and C-81027 and by the Court of First Instance of Manila in case No. 31176; and Felix de Jesus (alias Antonio Rivera) was convicted of theft by final judgment in the municipal court of Manila in two criminal cases Nos. B-20860-62.

"In violation of paragraph No. 4 of article 508 of the Penal Code, in connection with the circumstances 15 and 18 of article 10 of the Penal Code, and Act No. 3062."

The accused upon being arraigned on the foregoing information, pleaded guilty. The court held that the acts of the accused constituted the crime of robbery as defined in article 508, paragraph No. 4, of the Penal Code, with the aggravating circumstances of nocturnity and recidivism, and applying Act No. 3062, sentenced each to eighteen years and one day cadena temporal, with the accessories of law, and one-fourth of the costs of the action. The accused appealed from this judgment.

Article 508 of the Penal Code applied by the court, refers to robbery committed in an inhabited house, public building or edifice devoted to religious worship. The information does not allege that the crime was committed in any of the places mentioned. The allegation that it was committed in a store is not equivalent to the allegation that it was committed in an inhabited house. A store may be inhabited, but not necessarily. Ordinarily it is not inhabited. This element being essential to it, must be expressly alleged in the information. Needless to say, a store is neither a public building nor an edifice devoted to worship. This being so, the crime must be considered to be included in article 512 which refers to robbery committed in an uninhabited place. Since each of the accused is a recidivist, having been convicted at least twice, the penalty provided in said article 512 must be imposed, according to article 514 of the Penal Code in the next higher degree, which, in this case is presidio mayor in its minimum and medium degrees. Since there is the aggravating circumstance of nocturnity, without any extenuating circumstance, this penalty should be imposed in its maximum degree, or from eight years, eight

months and one day to ten years presidio mayor. As the appellants are, moreover, recidivists according to the terms of Act No. 3062, half of the penalty imposed must be added. We agree with the recommendation of the Attorney-General, that, in view of the provisions cited, each of the appellant's be sentenced to fifteen years presidio mayor.

Counsel for appellants in this instance argues that, according to the terms of the information, Act No. 3062 cannot be applied to the appellants, because all of the requirements for the application of this law have not been alleged therein. Counsel contends that it is not alleged that the appellants are habitual delinquents in accordance with Act No. 3062. But it is said in the information that they are habitual delinquents and that they are guilty of violation of Act No. 3062. In the case of *People vs. Nayco* (45 Phil., 167), this court held that, for the application of Act No. 3062, the allegation that the accused is an habitual delinquent according to the terms and provisions of this Act is sufficient. We are of opinion that this doctrine of this court is substantially applicable to the information in the present case.

The defense calls particular attention to the fact that, with regard to the appellant Felix de Jesus (alias Antonio Rivera), the two judgments against him mentioned in the information were only a fine, and were rendered on February 8, 1916. In order that the recidivism have the effect of aggravating the penalty, according to Act No. 3062, it is necessary that the crime charged should have been committed within five years after the last sentence was extinguished. Although the appellants pleaded guilty, and it does not appear that any oral proof was introduced, there are attached to the record brought to this court, the documents which show the sentences served by the appellants, among them the one referring to Antonio Rivera, which bears out the statements of counsel for the defense in regard to him. This being so, the Act is not applicable to him.

In view of the foregoing, the appellants are sentenced to fifteen years presidio mayor, except Antonio Rivera, who is only sentenced to ten years presidio mayor, with costs against them all. So ordered.

Johnson, Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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