

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DOMINGO POLINTAN, DEFENDANT AND APPELLANT.

G. R. No. 3419. August 07, 1907

Ponente: TORRES, J.

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TORRES, J.:

On May 11, 1905, a complaint was filed in the Court of First Instance of this city (Manila), which reads as follows:

"The undersigned accuses Domingo Polintan, as principal, and Juan Bautista and Pedro Pabalan, as accessories, of the crime of robbery committed as follows:

"That on or about the 7th day of May, 1905, in the city of Manila, P. I., the above-mentioned Domingo Polintan, willfully, illegally, and feloniously, at night and with intent of profiting thereby, took possession of personal property belonging to the California-Manila Lumber Company, a commercial firm doing business in and duly registered under the laws of the Philippine Islands, by employing force with regard to said personal property, in the following manner: That said Domingo Polintan, by wrongful entry and by breaking through the walls, ceiling, and floor and by forcing doors and windows, entered the said warehouse belonging to the California-Manila Lumber Company, of the said city of Manila, and then and there appropriated for his own use and took possession of certain articles which, as per attached list, are valued at P1,306.44. Said articles are the property of the above-named California-Manila Lumber Company and valued at P1,306.44, Philippine currency, which is equivalent to P6,532.20 pesetas.

"That the said Juan Bautista and Pedro Pabalan, having knowledge of the commission of the crime as alleged and described above, willfully, illegally, and feloniously, subsequently took part in its execution, by themselves, making profit thereby and by assisting the said Domingo Polintan to profit by the effects of the above-described crime, and concealing and rendering useless the body, effects, and instruments of said crime in order to prevent its discovery. All contrary to the statute."

The case having been tried by virtue of said complaint, the court, in view of the evidence produced, rendered judgment on June 12, 1905, sentencing Domingo Polintan to six years' imprisonment and to the payment of one-third of the costs of the trial, with directions to the accused to return to the California-Manila Lumber Company such articles as have not been restored to its possession, or in lieu thereof to indemnify the said company in the sum of P410.98, and in case of insolvency to suffer the corresponding subsidiary imprisonment. By another judgment of the same date, Juan Bautista and Pedro Pabalan were found guilty as accessories, and each was sentenced to four months at hard labor with one-third of the costs. This latter judgment became final because the defendants sentenced therein did not appeal therefrom. The accused, Domingo Polintan, however, appealed from the judgment rendered against him, and this is the case now before us.

It is clearly proven that early in the morning of Monday, the 8th of May, 1905, on opening the offices and warehouse of the commercial firm California-Manila Lumber Company, located on Calle San Miguel, district of same name, the attention of the employees and the clerk in charge of the hardware department was called to the fact that a robbery had just been committed therein. The employees and clerk noticed the absence from the

warehouse of the articles referred to in the complaint. One of the wooden grates barring the entrance to one of the windows of the warehouse, which faces a neighboring creek, was broken in pieces and had an open space big enough to allow the passage of a person through it. The total value of the missing articles amounted to the sum of P1,306.44. They also surmised that the missing property must have been stolen on Sunday night previous, because on the previous Saturday the warehouse had been closed and had not been opened until the time of the discovery of the crime on the following Monday. Some of the property, valued at P889.46, was recaptured, thus reducing the loss to the value of P416.98, as it appears on the memorandum inserted on page 17 of the record.

The offense in this case, which was fully proven at the trial, constitutes the crime of robbery, perpetrated in an uninhabited place, of property exceeding in value the sum of 1,250 pesetas, and is provided for and punished by article 512 of the Penal Code. There were also in the commission of the robbery the first and second circumstances mentioned in said article, to wit, the wrongful entry and the forcing of the window, through which the robber must have entered the warehouse in order to commit the robbery.

Although the accused, Domingo Polintan, entered a plea of not guilty to the charge, yet his liability as principal is proven beyond a doubt and he was justly convicted of the alleged crime.

Between the hours of 7 and 8 o'clock of Sunday, the 7th of May, Tomas Maravilla, who was then performing his duties as night watchman for the said company, saw the accused coming from a banca lying in the neighboring creek, and going toward the side of the warehouse wherein the property of the company was stored, and recognized him because he remembered having halted him and asked him what was he doing in that place, to which the defendant replied that his presence there meant nothing; the reply caused the witness to stare at the accused.

Pedro Romero, another witness, testified that at about 9 o'clock of the said evening he was at Calle San Miguel to witness the passing of a procession, and found the accused within a lot occupied by the warehouse of said company, going at a fast gait and carrying over his shoulders a box which resembled Very much those used for pack in shoes; that he recognized the accused perfectly well on account of the brightness of the electric light in that place, and for some four months back he had seen the accused working as driver for Mr. Cadwallader, the proprietor of a lumber and sawmill establishment, which is situated by the side of the abovementioned warehouse. Finally, Fernando Zamora, proprietor of the American Carriage Factory, declared that the accused was the man who, appearing under the name of Domingo Reyes, sold to him a number of wheels and other accessories pertaining to the making of vehicles, for which he paid him the sum of P105 by giving him a check to his order on the American Bank. The articles sold by the accused to Zamora were identified afterwards as some of those stolen by the former from the warehouse of the said company.

The testimony above referred to is supported by the statements made by the accused to the two policemen who arrested him and found on him 19 pesos and a key. He confessed to having stolen from the warehouse of the company one box, used for the packing of shoes, containing 36 brushes, which he sold to a painter named Toribio; but the latter denied having purchased the brushes, notwithstanding the fact that the box which contained them was found empty in his house. The accused said that two banca paddlers aided him in the commission of his crime, for which reason they were also arrested.

Within the grounds occupied by the warehouse and the said building, covered by a heap of timber, a big box was found, the lock of which could be opened by the key found on the person of the accused. The latter admitted that said box belonged to him and that he had really sold to the witness, Zamora, the carriage wheels and other accessories for the sum of 105 pesos, receiving from the purchaser a check for the amount, to his own order, under the name of Domingo Reyes, and signed by the said Zamora, all as appears upon the said check which is in

the possession of the American Bank.

The accused did not set forth any excuse in his own behalf nor present any evidence to demonstrate his innocence, but alleged that at the date he committed his crime he was under 18 years, and in support thereof his mother, Pantaleona Flores, testified that as far as she could remember her son was then only about 15 years old, although she was not able to state the age of her son correctly. The trial judge, who had the defendant before him, taking into account his physical appearance and personal characteristics, stated that in his opinion the accused was, in all probability, not under 20 years of age.

In view of the opinion of the trial judge, the statement of the mother of the accused as to her ignorance of the exact age of her son, and the lack of evidence to show that the accused was under the age of 18, we deem it improper to consider in his favor the presence of the mitigating circumstance contained in paragraph 2 of article 9 of the Penal Code. Due weight must, however, be given to the presence of the aggravating circumstance of the commission of the crime at night, for it is evident that the accused purposely, availed himself of the darkness for the consummation of the deed, and for this reason the penalty of presidio correccional, in its medium and maximum grade, should be imposed in its maximum degree.

For the reasons hereinbefore stated and those set forth in the judgment appealed from, we are of the opinion that said judgment should be affirmed, it being understood that the accused, Domingo Polintan, should be sentenced to six years of presidio correccional to the accessories of article 58 of the Penal Code, to the return of such stolen property as has not been recovered, or in lieu thereof, to the payment of its value to the amount of P416.98, and in case of insolvency to the corresponding subsidiary imprisonment not to exceed one year, and to the costs of this instance. So ordered.

Arellano, C J., Johnson, Willard, and Tracey, JJ. concur.

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