

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO BLANCO, DEFENDANT AND APPELLANT.*G.R. No. 3811. March 07, 1908*

Ponente: TORRES, J.

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On the morning of March 7, 1906, Juana Clemente wrote to Magdalena Clemente asking her to take to the house of Dominga Gabriel a pawn ticket issued by the Monte de Piedad in favor of Magdalena, for a diamond ring pawned by the latter with the consent of Juana Clemente who was the owner of the jewel. Juana Clemente left the ticket in the possession of the said Magdalena as security for 350 which Juana owed the latter; the pretext for the request was that some person wanted to buy the ticket. As Magdalena Clemente was unable to take the ticket personally, she sent it by her son, Gerardo Nicolas, and when he arrived at the house, Juana Clemente who lived there asked Gerardo to show the ticket to Silvestre Samonte, the person who wished to buy the same. The moment that Gerardo attempted to hand the ticket to Samonte, Francisco Blanco, who was present, grabbed the ticket and put it in his pocket, and showed Gerardo a badge, stating that he was a detective, and asked him if he wanted to go to Bilibid. As Gerardo, notwithstanding his fear, still claimed and tried to recover the ticket that was taken from him, the accused, Blanco, and Juana Clemente promised him that the latter would pay the claim of his mother as soon as the pledged ring was redeemed and sold. Gerardo, being from the provinces and somewhat scared, accepted the promise which, however, was not fulfilled because, after the ring had been redeemed by Blanco with money that Juana Clemente had given him, he kept said ring in order to pay himself the sum of P600 which Juana Clemente owed him for his services.

On the 14th of April, 1906, Juana Clemente filed a complaint charging Francisco Blanco with estafa, but upon request of the assistant prosecuting attorney the court dismissed the complaint

On the 26th of June, 1906, without prejudice to the accused being held in detention to answer a charge of robbery.

On the 26th of said month an information was filed by Gerardo Nicolas charging the said Blanco with the crime of robbery; the proceedings were thereupon instituted. A demurrer was interposed by the defense but was overruled, and the court rendered judgment on the 15th of August, 1906, sentencing the accused to the penalty of three years eight months and one day of imprisonment, to refund to Magdalena Clemente the sum of P200, or suffer subsidiary imprisonment, and to pay the costs. From this judgment counsel for the accused has appealed.

The above related facts, clearly proven by the testimony of eyewitnesses, certainly constitute the crime of robbery, defined and penalized under articles 502 and 503, No. 5, of the Penal Code; the pawn ticket in question was made out in favor of Magdalena Clemente for the sum of P200, for which a ring of greater value had been pledged; the ticket was snatched from the hands of her son and agent, Gerardo Nicolas, and besides the force and violence employed when the bearer of the document tried to recover it from the possession of the person who had forcibly taken it away, the defendant resorted to intimidation in order to prevent the recovery of the stolen document.

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. Finally, since the intent to obtain gain must necessarily exist, and this being the idea that moves the agent to commit the above crimes, premeditation, which is a circumstance inherent in this class of crimes, does not increase the liability of the author thereof.

The accused Francisco Blanco is the only proven principal, liable by direct participation, and fully convicted of the commission of the crime before us, for, notwithstanding his plea of not guilty and exculpatory allegations, the records of the case establish his guilt as the author of the robbery in question.

The record shows that there was not only premeditation but an actual conspiracy to deprive Magdalena Clemente of the pawn ticket representing a jewel of great value. The document in question was delivered to her by Juana Clemente, the owner of the jewel, as security for the sum of P350 which the latter owed her; the creditor, Magdalena, refused to surrender the ticket as long as Juana did not pay the debt and of this fact Francisco Blanco who was the attorney in fact and agent of the debtor, Juana Clemente, was fully aware; Blanco and Juana then acted together, and Juana wrote to Magdalena asking her to produce the ticket at the house where she lived, on the pretext that there was a person who wanted to buy the pledged jewel; for this purpose they induced Silvestre Samonte to appear as the intending buyer, and when everybody was present in the house they invited Gerardo Nicolas, who was sent by his mother with the ticket, to show the same to the supposed buyer; thereupon the accused, Blanco, grabbed it from the messenger's hands, put it into his own pocket immediately, and then intimidated the bearer of the ticket who, notwithstanding his fear, objected and demanded from the accused the return thereof. Gerardo Nicolas, as a native of Malolos, Bulacan, and therefore a stranger in this city, did not persist in his claim fearing that the defendant was really a police agent and that he could send him to Bilibid; he had simply come to Manila to fulfill the request of his mother who, in consequence of the act committed by the accused, with premeditation and in conspiracy with Juana Clemente, the debtor, was unlawfully deprived of the possession of the pawn ticket, which she kept as security for her credit against the owner of the pledged jewel.

On account of the desire to collect a certain sum that Juana Clemente owed him, the accused conceived the criminal intent to secure the pawn ticket, which was in the possession of Magdalena Clemente as security for her credit, and in carrying out the plan, even though he acted with the consent of the owner of the jewel, he violated the penal law and committed the crime of robbery, because he was aware that the creditor, Magdalena Clemente, had refused to deliver the ticket unless Juana Clemente previously paid her the P350; and in order to carry out the attempt he arranged, with premeditation, the stratagem above related, taking advantage of the occasion when Gerardo Nicolas was showing the ticket to Silvestre Samonte; he obtained the ticket forcibly, and furthermore resorted to intimidation when the return of the stolen document was demanded of him.

In the commission of the crime no aggravating nor mitigating circumstance is present, and for this reason the penalty imposed by the court below, in the judgment appealed from, is in accordance with the law.

Therefore, it is our opinion that the judgment appealed from should be affirmed with the costs of this instance, provided, however, that the penalty imposed shall be that of presidio correccional, with the accessory penalties of article 58 of the code. So ordered.

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

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