

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARCIANO MEDINA Y DIOKNO (ALIAS MARIANO MEDINA, ALIAS ALEJANDRO DOLA), DEFENDANT AND APPELLANT.

G.R. No. 38434. December 23, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal from a decision of Judge Anacleto Diaz in the Court of First Instance of Manila, finding the defendant guilty of robbery in an inhabited house and of being a habitual delinquent, and sentencing him to suffer a principal penalty of ten years and one day of prision mayor and an additional penalty of ten years of prision mayor because of being four times a recidivist, to indemnify James C. Rockwell in the sum of P320, and to pay the costs.

Appellant's attorney makes the following assignments of error:

- "1. The trial court erred in finding and concluding that the finger prints which were found impressed on the small silver box of the complainant James C. Rockwell were identical to the finger prints of the accused.
- "2. The trial court erred in finding and concluding that it was the accused-appellant who took away the said small silver box from the room of Mrs. Rockwell and the valuables worth P320 belonging to James C. Rockwell.
- "3. The trial court erred in finding and concluding that the accused-appellant is guilty of the crime of robbery as defined in article 299, No. 3 of the Revised Penal Code for which the trial court sentenced the accused to imprisonment of ten years and one day plus an additional imprisonment of ten years of prision mayor as recidivist and to indemnify the said James C. Rockwell in the amount of P320 and to pay the costs of the action."

The defendant was tried on a plea of not guilty to the following information:

"The undersigned accuses Marciano Medina y Diokno alias Mariano Medina alias Alejandro Dola of the crime of robbery in an inhabited house, committed as follows:

"That on or about the 12th day of February, 1932, during the nighttime which was purposely sought, in the municipality of Pasay, Province of Rizal, Philippine Islands, within two and one-half miles from the limits of the City of Manila, Philippine Islands and within the jurisdiction of this court, the said Marciano Medina y Diokno alias Mariano Medina alias Alejandro Dola did then and there willfully, unlawfully, and feloniously, and with intent of gain, break into and enter through the window by tearing the wire screen thereof, an opening not intended for entrance or egress, of house No. 1155 F. B. Harrison Street, in said municipality of Pasay, the dwelling house of James C. Rockwell, and, once inside said premises, take, steal, and carry away without the consent of the owner thereof the following personal property, to wit:

One (1) watch 'Howard', gold, with an outside monogram containing the initials "JCR" valued at

P200.00

One (1) 'Green' wrist watch with a leather strap, valued at

120.00

Total

320.00

belonging to James C. Rockwell, to the damage and prejudice of the said owner thereof in the afore-mentioned sum of P320, Philippine currency.

"That, at the time of the commission of this offense, the said accused Marciano Medina y Diokno alias Mariano Medina alias Alejandro Dola has already been convicted three (3) times of the crime of theft by virtue of final judgments rendered by competent courts and is, therefore, a habitual delinquent, his last date of conviction being on October 23, 1924 and his date of release being on October 26, 1927."

At the trial the defendant admitted that Mr. Rockwell's house was robbed on the night of February 12, 1932, as alleged in the information, but denied that he was the author of the crime; admitted that a silver box, which had been taken from the room of Mrs. Rockwell on the night of the robbery, was found in the garden the next morning, and that when it was examined in the Intelligence Division of the Constabulary it showed a finger print on the top. The defendant further admitted the competency of the witness, Agripino Ruiz, as a finger print expert; and lastly the defendant admitted that he had been convicted three times of theft, his last conviction being on October 23, 1924 and his release on October 26, 1927.

It appears from the evidence that while Agripino Ruiz, a Constabulary agent and finger print expert, was investigating the robbery in question he went to see the accused, who was under arrest for breaking into the house of Capt. Davidson in Parañaque. Ruiz took the finger prints of the accused, and found when he compared them with his records that the accused had served three terms in Bilibid prison for theft. Ruiz then compared a photograph of the impression of the middle finger of defendant's right hand with a photograph of the finger print on the top of the silver box stolen from the bedroom of Mrs. Rockwell, and found that they coincided in ten points. He concluded that the two impressions were from the same person, and that the finger print on the box was that of the defendant.

The defense of the accused was an alibi. He asserted that on the night of the robbery in question he was at home with a sore foot. This contention of the defendant rests on his uncorroborated testimony.

It is now well settled that evidence as to the correspondence of finger prints is admissible for the purpose of proving identity (Moon vs. State, Arizona Supreme Court, June 7, 1921, 198 Pac., 288; 16 A. L. R., 362, and the authorities there cited). The history of the finger print system of identification is stated in one of the leading cases, People vs. Sallow (165 N. Y. Supp., 915, 918), as follows:

"Scientific authority declares that finger prints are reliable as a means of identification. (10 Ency. Brit. [11th ed.], 376.) The first recorded finger prints were used as a manual seal, to give a personal mark of authenticity to documents. Such prints are found in the Assyrian clay tablets in the British Museum. Finger prints were first used to record the identity of individuals officially by Sir William Herschel, in Bengal, to check forgeries by natives in India in 1858. (C. Ainsworth Mitchell, in 'Science and the Criminal,' 1911, p. 51.) Finger print records have been constantly used as a basis of information for the courts since Sir Francis Galton proved that the papillary ridges which cover the inner surface of the hands and the soles of the feet form patterns, the main details of which remain the same from the sixth month of the embryonic period until decomposition sets in after death, and Sir Edward Henry, the head of the Metropolitan Police Force of London, formulated a practical system of classification, subsequently simplified by an Argentine named Vucetich. The system has been in general use in the criminal courts in England since 1891. It is claimed that by means of finger prints the metropolitan police force of London during the 13 years from 1901 to 1914 have made over 103,000 identifications, and the Magistrates' Court of New York City during the 4 years from 1911 to 1915 have made 31,000 identifications, without error. (Report of Alfred H. Hart, Supervisor, Fingerprint Bureau, Ann. Rep., N. Y. City Magistrates' Courts, 1915.) Their value has been recognized by banks and other corporations, passport bureaus of foreign governments, and civil service commissions as a certain protection against impersonation.

"It was held in 1909 by the Lord Chief Justice of England that the court may accept the evidence of finger prints, though it be the sole ground of identification. (Castleton's Case, 3 Crim. App. C, 74.)"

In the case at bar the principal contentions of appellant's attorney are that the identification was incomplete and unreliable because the imprint of only one finger was found on the box, and that was blurred, and could not serve as a basis of comparison. There is little merit in this argument. Although a portion of the impression on the box was somewhat blurred, it did not seriously interfere with the comparison of the two finger prints. It would of course have been more satisfactory for the purpose of comparison if there had been an impression of all the fingers of the thief on the box, but we are not justified in rejecting the evidence of record merely because it might be more complete.

Referring to the care necessary in photographing accidental imprints, Wentworth and Wilder in their work, "Personal Identification" (1932), say that these imprints at best will be poor; that one will never find an accidental imprint that is absolutely perfect; that it is seldom, indeed, that a very good one is found (p. 260).

The only important question is whether or not the evidence identifies the accused beyond a reasonable doubt as the person whose finger print appears on the box, because the box was taken from the bedroom of Mrs. Rockwell on the night of the robbery, and the finger print thereon, if that of the accused, could have been made only on the occasion when the robbery was committed.

It might be here stated that the finger prints of the persons living in Mr. Rockwell's house were taken, but that they did not correspond to the impression in question.

A photograph showing an enlargement of the finger print found on the box was marked at the trial Exhibit A. Further enlargements of it are shown in Exhibits A-1 and A-2. Exhibit B is an enlargement of a photograph of the impression of the middle finger of defendant's right hand, taken while he was a prisoner in Bilibid.

When asked which were the ten points of agreement between the two impressions in question, the finger print expert replied that there were three classes of characteristics, namely: the endings of the ridges, the bifurcation of the ridges, and the core. The ten points of identity, which were marked on the photographs, are as follows:

- Upward end of a ridge,
- Core,

- Both ends of a short ridge,
- Both ends of a short ridge,
- Downward end of a ridge,
- Upward end of a ridge,
- Bifurcation,
- Upward end of a ridge,
- Upward end of a ridge,
- Bifurcation.

The witness stated that in his opinion eight characteristics are sufficient to identify a person. According to Frederick Kuhn of the Bureau of Criminal Identification, Police Department of the City of New York, in the "Finger Print Instructor", p. 12, "characteristics" are the peculiarities of the ridges, such as abrupt endings, bifurcations, the formation of what is termed an island, short ridge lines, ridge dots, some peculiarity as to the formation of the delta or core; in fact any peculiarity out of the ordinary may be considered a characteristic point, and serve as a positive means of identification.

The Galton details, the ends, forks, islands and so on, are so numerous and so variable that even in a small area a duplication is impossible; so far as we know all the infinite possibilities in the formation of the ridges are widely open in each individual case, so that it is quite safe to say that no two people in the world can have, even over a small area, the same set of details, similarly related to the individual units; the only possible confusion might result from an area so small and so featureless as to show nothing but complete and parallel ridges, and without details, and could never occur in connection with the formation of a pattern, where the ridges are called upon to make eccentric turns, and to fill up spaces of irregular shape (Wentworth & Wilder, p. 126).

Explaining the ten points of identity, the expert witness in the case at bar testified that he found four endings of ascending ridges in Exhibit B that corresponded exactly to those of Exhibit A; that as to the number and location with respect to the core, which he marked 2 in both photographs, he found that they agreed; that he found in Exhibit B two bifurcations or forks that corresponded exactly to those in Exhibit A as to number and location; that he found in Exhibit B a short ridge, the two ends of which he marked 3 and 4, that was identical with the corresponding short ridge in Exhibit A, which he also marked 3 and 4.

The attorney for the appellant calls attention to the fact that there was the impression of another finger on the box that was not identified. That is true, but as it was the impression of only a small part of the ball of a finger and was blurred, the expert did not make any particular study of it. It may have been made by the person who picked up the box in the garden. In any event it does not alter the fact that a finger print identical with that of the defendant in ten homologous points of comparison was found on the box.

Although there is some difference of opinion among the authorities as to what constitutes proof of identity, the older writers regarding twelve points as necessary to prove certain identity, and more than that for absolute identification, the more recent writers think that six or eight homologous points of comparison leave no room for reasonable doubt. "In the end it is the microscopic identity of the ridge characteristics (Galton's minutiae) that settles the question." (Personal Identification, p. 263.)

In the present case the qualifications of the expert witness were admitted. He stated under oath that in his opinion the finger print in question is that of the defendant, and gave the reasons for his conclusion, which seem to us to

be reasonable and to be sustained by the best authorities available. No reason has been adduced that would justify us in rejecting his findings and conclusion. We wish to add, however, that the prosecuting attorney ought to have addressed further questions to the expert witness to show how he arrived at his findings, that is, his method of examination and comparison, his measurements, and other pertinent facts. Another competent and experienced specialist might well have been called to verify the findings of the Constabulary expert.

The only evidence for the defendant was his uncorroborated testimony that on the night in question he was at home in San Luis, Batangas. In weighing the testimony of the defendant it is proper to take into account the fact that he has already been convicted three times of theft.

Robbery in an inhabited house is punished by prision mayor in its medium period to reclusion temporal in its minimum period, if the value of the property taken exceeds P250, if the malefactor entered the house by breaking a window, as in the present case, but when the offender does not carry arms, as in this case, the penalty next lower in degree shall be imposed (article 299 of the Revised Penal Code). The penalty next lower in degree is prision correccional in its medium period to prision mayor in its minimum period, or from two years, four months, and one day of prision correccional to eight years of prision mayor. In the present case in fixing the principal penalty, we must take into account the aggravating circumstances of recidivism and nocturnity. The principal penalty imposed on the accused is therefore reduced to six years and one day of prision mayor.

The additional penalty of ten years imposed by the lower court is the maximum of the maximum for a fourth conviction. We think that under the circumstances of this case the minimum authorized by law would be sufficient, and the additional penalty of the appellant is accordingly reduced to six years and one day.

Modified as hereinabove stated, the decision appealed from is affirmed, with the costs against the appellant.

Avanceña, C. J., Street, Abad Santos, and Butte, JJ., concur.

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