

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JACINTO PAGUIA ET AL., DEFENDANTS, V LIM TICO AND UY SIA, APPELLANTS.*G.R. No. 3906. February 05, 1908*

Ponente: TORRES, J.

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On the night of the 27th of October, 1906, or early on the following morning, the accused destroyed the lock and padlock of the door of the warehouse where Lutz & Co. had general merchandise in store, situated in Calle Barraca 3 and 9, district of Binondo. Thereby entering the place, they opened some cases of merchandise and took therefrom socks, pieces of sateen, gold or silver tissue, wool, white drill, undershirts, and other articles valued at P3,406.25, and placing the stolen goods in four large sacks they then took them in a carretela to a house in Calle Pundidor; returning with the carretela to the place where the robbery was committed they loaded it again with three more sacks of stolen property and took the same to Calle Leinery or Ilaya; they then paid the driver of the vehicle asking him not to tell anybody of what he had seen, but the latter, whose name is Anastasio Sunauan, informed one of his relatives of what had taken place, and the relative reported the affair to the police. A number of detectives went to Calle Ilaya, and found in a house occupied by Chinamen a portion of the stolen goods and arrested the accused, Julian Regade, Go Tan, Uy Sia, Vicente Lim Tico, and later on some others on suspicion.

A complaint was presented to the Court of First Instance charging Jacinto Paguia, Julian Regade, Hilario de la Cruz, Eugenio de la Cruz, Vicente Lim Tico, Chinamen Go Tan and Uy Sia, and one named Prudencio whose surname is not known, with the crime of robbery of commercial goods, valued at 3,406.25, the property of Lutz & Co. The corresponding proceedings were instituted, and the judge by his decision rendered on the 19th of December, 1906, separately sentenced Vicente Lim Tico and Chinaman Uy Sia to the penalty of five years and nine months each of presidio correccional, to be served in Bilibid Prison. From these judgments they have, respectively, appealed.

The other accused persons, Jacinto Paguia, Julian Regade, and Chinaman Go Tan, submitted to the sentences respectively passed against them, although the latter, Go Tan, attempted to appeal many months after the judgment had been rendered. As to Hilario and Eugenio de la Cruz, their cases were dismissed, and Prudencio was never found. Therefore, the decision of this court will only deal with the appellants Lim Tico and Uy Sia.

The facts stated herein, which appear to be fully proven, are characteristic of the crime of robbery, committed at nighttime and under cover of darkness, in an uninhabited warehouse situated in Calle Tiarraca, district of Binondo, where merchandise belonging to Lutz & Co. was stored. The total value of the property stolen exceeds 1,250 pesetas, for which reason this crime comes within the definition of article 512 of the Penal Code, inasmuch as, through the breaking off of the lock and padlock that secured the door of the warehouse, and by opening closed cases containing merchandise, the thieves were enabled to steal therefrom articles of considerable value. A portion of the property was seized a few hours later by the police in a house situated between Calles Ilaya and Lemery in Tondo, where the same had been concealed, Avhich house was inhabited by Chinaman Uy Sia. The discovery of the robbery was due to the information given to an agent of the authorities by Anastasio Sunauan, the

driver of the vehicle which the thieves used for removing the stolen property from the warehouse to the aforesaid house in Tondo.

Notwithstanding the denial of the accused, the particulars and merits of the case are sufficient to demonstrate, in a convincing manner, the culpability of the appellants Vicente Lim Tico and Uy Sia as the duly convicted coprincipals of the robbery, and as members of the gang that committed the crime. They were recognized as the actual thieves by Sunauan, the driver of the carretela that was twice used to carry the stolen goods to two different places in town at the request of the thieves, who were also recognized by the policeman who surprised them just as they were packing the merchandise into boxes which they had in readiness at the ground floor of the house, at which time Vicente Lim Tico offered the policeman a bribe so as to let him go free.

Neither the alibi alleged by the latter nor the testimony of his witnesses, by whom he tried to prove it, deserve to be taken into consideration, inasmuch as these declarations could not destroy the probatory force of the testimony of the witnesses for the prosecution, nor the important fact that they were all surprised with the stolen goods in the place where they had concealed the same and were packing them for safe-keeping. Nor can any consideration be given to the testimony of Uy Sia, the person in charge of the house, who, notwithstanding the fact that he had taken a part in the robbery, testified that the said goods were brought to his house by Lim Tico and other persons. No proof was offered to show that the property had been lawfully acquired. Therefore the culpability of Vicente Lim Tico and Uy Sia, as the principals of the robbery, committed in company with other persons already sentenced, is unquestionable.

In the commission of the crime, the aggravating circumstance of nocturnity must be considered, for the reason that the thieves availed themselves of the silence and darkness of night: to effect the robbery, and no mitigating circumstance is present to lessen its effects; therefore, the penalty should be applied to them in its maximum degree.

In view of the facts above set forth, and of the further fact that the penalty imposed on the appellants is in accordance with the law, it is our opinion that the judgment appealed from should be affirmed; provided, however, that the accused shall be further sentenced to the accessory penalties of article 58 of the code, to return the stolen property not recovered, or the value of the same, to the owners thereof, and in case of insolvency to suffer subsidiary imprisonment which shall not exceed one year, each to pay one-seventh of the costs of the first instance and one-half of the costs of this second instance. So ordered.

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

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