

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PAULINO SAN ANDRES ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3933. December 16, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged in the Court of First Instance of the Province of Antique with the crime of robbery, provided for and punished in article 508 of the Penal Code, in the words and figures following:

"That the accused, being members of the municipal police of Dao, with abuse of confidence and of public office, did, at or about midnight on July 18, 1906, willfully, unlawfully, and feloniously break, by means of a ladder, into the office of the municipal treasurer of the said municipality of Dao, Province of Antique, P. I., and, when within the said office, Paulino San Andres, who was provided with a false key, opened the iron safe wherein the treasurer kept money, bank bills, and other property, and with intent of gain took from said safe the sum of one thousand thirty-five pesos and sixty-one and a half cents (P1,035.61½), composed of cash, bank bills, and documentary stamps, after the removal of which, and the same being in the hands of the accused, the latter went together on said night to the house of Basilia Fresco, who, being aware of the robbery and with intent to gain thereby, did receive, keep, and hold the said money and stolen property.

"Mamerto Rubite, municipal treasurer, P. J. Vanden Broeck, provincial treasurer, and Governor Angel Salazar gave information as to the above facts.

"By virtue thereof I respectfully ask that criminal proceedings be instituted against the accused, who are confined in the provincial jail subject to the orders of this court, because the fact complained of constitutes one of such crimes which come within the jurisdiction of this court. The offense committed contrary to law."

These defendants were duly arrested and brought before the court and arraigned. Upon arraignment the said Paulino San Andres and Basilia Fresco pleaded "not guilty" of the crime charged in said complaint. Antonio Laureto and Julian Lauod replied that they did not plead guilty because although they participated in the robbery it was because they were compelled so to do under threats by the said Paulino San Andres.

After the beginning of the trial in the lower court, upon a motion presented by the fiscal of said province, the said Antonio Laureto was dismissed from said cause, in order that the Government might use him as a witness for the prosecution; the motion was granted and the said Laureto was immediately dismissed.

At the close of the trial in the lower court the said court found that Julian Lauod had been compelled by the said Paulino San Andres to participate in the alleged robbery and therefore dismissed the cause as to him and ordered his immediate release" from the custody of the law.

After hearing all of the evidence the lower court found that the said Paulino San Andres was guilty of the crime charged in said complaint and sentenced him to be imprisoned for a period of six years and one day of presidio mayor, with the accessories that pertain to that penalty, and that Basilia Fresco was guilty as an encubidora and sentenced her to pay a fine of 1,000 pesetas, and both to pay, jointly and severally, to the municipal treasurer of

the said municipality, the sum of P1,035.61½, and each to pay one-fourth the costs, and in case of insolvency the said Basilia Fresco was to suffer subsidiary imprisonment at the rate of 12½ pesetas a day, for the period provided for by the law. From this sentence the defendants each appealed.

Later, on the 4th day of January, 1907, Basilia Fresco withdrew her appeal, and the case is pending here therefore upon the appeal of the said Paulino San Andres.

The theory of the prosecution is that the said appellant Paulino San Andres, by virtue of being a policeman and by means of force and violence, compelled the said Antonio Laureto and Julian Lauod, who were also policemen of the municipality of Dao, to commit the crime in the manner and form charged in said complaint.

The theory of the attorney for the defendant in this court is that the municipal treasurer of said pueblo was short in his accounts and that he induced the said Antonio Laureto and Julian Lauod to make the confession which they made concerning the alleged robbery, implicating the said Paulino San Andres, for the purpose of covering up the shortage on the part of the said municipal treasurer.

Upon these two theories we have examined the evidence carefully and we find—

First. That the said Antonio Laureto and Julian Lauod, before any suspicions were cast upon Paulino San Andres, each made a statement to the effect that upon the night of the 18th of July, 1906, the said Paulino San Andres came to them and compelled them to accompany him to the municipal building in said pueblo, and to enter by means of force and violence the office of the municipal treasurer of the said pueblo, and by means of a false key to take out of the cash box in the office of the said treasurer the sum of P1,035.61½. These defendants also confessed that after the robbery they accompanied the said Paulino San Andres to the house of Basilia Fresco, where the said money was left on the night in question.

Second. These two persons, Antonio Laureto and Julian Lauod, later, during the investigation of said crime, made the statement to several persons that their statements implicating the said Paulino San Andres in the commission of the crime charged was untrue and that they had had no participation whatever in the commission of the crime. The statements of these two witnesses was substantially all the testimony that went directly to show the participation of Paulino San Andres in the commission of said crime.

Third. The statements of Antonio Laureto and Julian Lauod concerning the method by which they, together with Paulino San Andres, had entered the office of the said municipal treasurer, were that it was by means of a ladder through a window or opening. There was no other evidence that in any manner supported the statement of these two defendants in this particular.

Fourth. When the said municipal treasurer entered his office on the morning of the 19th of July, 1906, he found his cash box partly open, with an alleged false key still in the lock. He does not state that there was any evidence other than this to show that any person or persons had entered the room by any other than the regular way. Upon an examination of his cash box he found that there had been taken therefrom the sum of P1,035.61½, and that there still remained in the cash box the sum of P392.03½. The fact that the person, if it be a fact, who robbed the treasury should have taken the sum of P1,035.61½, including a one-half-cent piece, and left therein the sum of P392 and more, has, to say the least, a very suspicious bearing upon the guilt of the defendant. The treasurer makes no explanation or showing that the P392.03½ was not open in the box with the other money and equally accessible with the money which had been removed.

Upon a full examination of the evidence adduced during the trial of the cause in the court below, and taking into consideration the contradictory statements made by the said Antonio Laureto and Julian Lauod, which lend much suspicion to their veracity in their first statement, and the fact that there was no other positive proof against the

defendant Paulino San Andres, and the other suspicious circumstances mentioned above, we are convinced that some one other than the said Paulino San Andres took from the cash box of the municipal treasurer of the municipality of Daoi:he sum of money mentioned in the complaint filed in this case, and therefore the sentence of the lower court is hereby reversed, with costs de oficio. So ordered.

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

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