

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. AGAPITO FERNANDEZ, DEFENDANT AND APPELLANT.

G.R. No. 39408. October 31, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

The defendant was charged in the Court of First Instance of Cagayan with the crime of robbery in an inhabited house, committed as follows:

"El que suscribe acusa a Agapito Fernandez, alias Epifanio Victa, alias Luis Cuadrante, alias Juan Marasigan, del delito de robo, previsto y castigado en el articulo 293 en relacion con el articulo 299 No. 2 y (b) 1 del Codigo Penal Revisado, cometido como sigue:

"Que en o hacia la noche del 5 de enero de 1933, en el Municipio de Iguig, Provincia de Cagayan, Islas Filipinas, y dentro de la jurisdiccion de este Juzgado, el referido acusado Agapito Fernandez, alias Epifanio Victa, alias Luis Cuadrante, alias Juan Marasigan, voluntaria, ilegal y criminalmente entro en la tienda del chino Uy Chio Song, alias Uy Chay Hing, empleando fuerza en las cosas, esto es, alzo la hoja de la puerta hacia el sur de dicha tienda del chino Uy Chio Song, alias Uy Chay Hing, habitada por este, y acto seguido se introdujo dentro de la tienda y despues mediante el uso de una Have falsa abrid el caj6n de una mesa donde estaba entonces guardada la cantidad de P1,963.74 y una vez abierta, con ammo de lucro se apoderd de dicha cantidad de P1,963.74 consistentes en billetes de banco de a P50; de a P20; de P10; de P5; de P2; y de P1 y un billete de banco de \$20 de ajena pertenencia y contra la voluntad de su dueño el mencionado chino Uy Chay Song, alias Uy Chay Hing, habiendose incautado en poder del acusado los siguientes: un billete de banco de a P50; un billete de dollar de \$20; seis billetes de banco de a P10; siete billetes de a P5; ocho billetes de a P2; 5 billetes de a P1; 9 monedas de Plata de a P1; una de P0.50; 12 de a P0.20; 4 de a P0.10 y cuatro de a P0.05 que en total suman P218.50, en perjuicio del mencionado Uy Chay Song.

"Que el acusado es un delincuente habitual segun las disposiciones de la Ley No. 3397 y reincidente por cuanto que con anterioridad a esta fecha, o sea, el marzo 6, 1918, febrero 26, 1919, ya ha sido acusado y condenado en dos causas por el delito de hurto en el Juzgado de Paz de Calapan, Mindoro; en el Juzgado de Primera Instancia de Batangas por robo y hurto el agosto 23, 1922; por robo en el Juzgado de Primera Instancia de Mindoro, el marzo 24, 1924; y por hurto en el Juzgado de Primera Instancia de Tarlac, el junio 25, 1932."

Upon the termination of the trial, Judge Felix Samson found the defendant guilty as charged, and sentenced him to suffer eight years of prision mayor, to indemnify the offended party in the sum of P1,963.74, to suffer an additional penalty of thirteen years, one month, and eleven days of reclusion temporal for being a habitual delinquent, and to pay the costs.

The defendant appealed to this court. His attorney de oficio concurred in the findings of the trial judge, and advised the defendant to withdraw his appeal, but the defendant refused to follow this advice. Defendant's attorney then filed a motion, wherein he set forth the facts of the case and discussed them, and prayed that he be

relieved from filing a brief for the appellant. Thereupon this court ordered the Solicitor-General to file the brief for the Government.

It appears from the evidence that Uy Chay Hing was doing business as a merchant in the municipality of Iguig, Cagayan Province, and that he slept in the same building. On the morning of January 6, 1933, he found that one of the doors of the store which he had closed the night before was open and also three drawers in a showcase. These three drawers contained P100 in small coins. The drawers were not locked. The money had disappeared. Before retiring the night before Uy Chay Hing had counted and placed in the drawer of a table in the room where he was accustomed to sleep the sum of P1,963.74 consisting of bank notes and coins. He locked this drawer and left the key in a pocket of his trousers. Next morning Uy Chay Hing found that this drawer had been opened with his key and that the money had disappeared. Among the bank notes placed in this drawer there was one for \$20. Uy Chay Hing had made a note of the number of this American bank note in a memorandum book, and when he reported to the authorities that his store had been robbed he gave the number of this twenty-dollar bank note.

The defendant had been in the offended party's store for an hour on the night of January 5th. Next day he was seen in Tuguegarao buying goods in the store of an Indian merchant, and from there he went to Aparri. He was arrested and searched in pursuance of a search warrant, and the sum of P218.50 consisting of bank notes and coins was found in his possession, and among this money was the twenty-dollar bank note which had been stolen from Uy Chay Hing. The defendant denied any participation in the crime in question, and attempted to show that the money found in his possession had been won by him by playing monte, but it clearly appears that this defense of the accused was a mere fabrication, and it was rightly rejected by the trial judge. As P218.50 or a part of the stolen money was found in the possession of the defendant, and as he was unable to give any satisfactory explanation as to how he came into possession of it, the trial court was justified in finding that he had stolen not only the sum found in his possession, but the total sum lost by Uy Chay Hing amounting to P2,063.74.

It appears that the defendant entered the store of Uy Chay Hing by prying the door out of the groove in which the lower extremity of it was placed, and then pushing it inward. Signs of the instrument used by the defendant were found on the door. As we have already stated, the three drawers containing a total of P100 were not locked, and the other drawer containing P1,963.74 was locked, but it was opened by the defendant with the key which the offended party had left in the room. The question then is whether the crime committed by the defendant under those circumstances was robbery or theft.

The defendant opened the drawer containing most of the money by making use of the owner's key which the defendant had stolen, but the defendant had already entered the house when he stole this key, and the fact that he opened the money drawer by using this stolen key did not convert the crime into robbery.

Did the prying open of the door in the manner hereinabove indicated convert the taking of the money into robbery?

Article 299 of the Revised Penal Code reads, as follows:

"Art. 299. Robbery in an inhabited house or public building or edifice devoted to worship.—Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by prison mayor in its medium period to reclusion temporal in its minimum period, of the value of the property taken shall exceed 250 pesos, and if—

"(a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:

"1. Through an opening not intended for entrance or egress;

"2. By breaking any wall, roof, or floor or breaking any door or window;

"3. By using false keys, picklocks or similar tools;

"4. By using any fictitious name or pretending the exercise of public authority;

"Or if,

"(b) The robbery be committed under any of the following circumstances:

"1. By the breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle;

"2. By taking such furniture or objects away to be broken or forced open outside the place of the robbery.

"When the offenders do not carry arms, and the value of the property taken exceeds 250 pesos, the penalty next lower in degree shall be imposed.

"The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed 250 pesos.

"When said offenders do not carry arms and the value of the property taken does not exceed 250 pesos, they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period.

"If the robbery be committed in one of the dependencies of an inhabited house, public building, or building dedicated to religious worship, the penalties next lower in degree than those prescribed in this article shall be imposed."

The accused was charged with a violation of (a) 2 and (b) 1 of article 299 of the Revised Penal Code.

(b) 1 refers to the breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle within the house, and does not relate to the means made use of in entering the house. It is not applicable in the present case.

The Spanish text of (a) 2 is as follows: "Por rompimiento de pared, techo o suelo, o fractura de puerta o ventana." The words "fractura de puerta o ventana" clearly mean "the breaking of a door or window", and imply more than the mere forcing open of a door or window. If the defendant had forced open a window and entered in that way, he would of course be guilty of robbery because of having entered the house through an opening not intended for entrance; but in the case at bar the defendant entered by forcing open the door by means of some instrument. It was neither alleged nor proved that the door was broken. The accused did not enter the store by any of the means specified in article 299, and we are therefore of the opinion that the crime committed by him was theft.

The aggravating circumstances of dwelling and nocturnity were present in the commission of the crime. It being alleged and proved that the defendant was a habitual delinquent, his prior convictions should not be taken into account for the purpose of increasing the principal penalty. The penalty applicable to the defendant is therefore the maximum degree of prision correccional in its minimum and medium periods, and the defendant is sentenced to suffer four years and two months of prision correccional, and to indemnify the offended party in the sum of P1,845.24, the value of the money not recovered, with subsidiary imprisonment in case of insolvency, which shall not exceed one-third of the principal penalty, and to pay the costs, and to suffer the additional penalty of thirteen years, one month, and eleven days of reclusion temporal for being a habitual delinquent, as imposed by the trial court. As thus modified, the decision appealed from is affirmed, with the costs of this instance against the appellant.

Street, Villa-Real, Abad Santos, and Butte, JJ., concur.

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