

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EMILIO H. DOMONDON, DEFENDANT AND APPELLANT.

G. R. No. 41523. October 11, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

Emilio H. Domondon who was a postmaster and aspirant to the post of municipal treasurer assigned to the municipal district of Kabugao, subprovince of Apayao, Mountain Province, was charged with the crime of robbery, convicted and sentenced by the Court of First Instance of said province to an indeterminate penalty of from four years, two months and one day of prison correccional to ten years and one day of prison mayor with the corresponding accessories of the law, and to indemnify the Government of the Philippine Island's in the sum of P1,889.67, with costs. Notwithstanding the fact that he had not presented any evidence favorable to himself at the trial, because the affidavit (Exhibit 1) which he attempted to present as such was rejected by the court, declaring it to be incompetent, and the testimony of the person who made it proved to be more damaging to him than anything else, he appealed from the sentence imposed upon him, seeking the review of his case, and assigns the four alleged errors relied upon in his brief as committed by the lower court.

The facts proven without dispute at the trial may be summarized as follows: After office hours on the afternoon of October 31, 1933, that is, at 5.05 p. m., in spite of the objections of William Uliwac, the chief clerk in the treasurer's office in said municipal district, who told him that it was already after office hours, the appellant insisted upon delivering to him for deposit some funds which he had in his office as postmaster and which amounted to P2,062.70, consisting of checks in the amount of P187.15, several bundles of bills of various denominations from P1 to P20, amounting to P1,774, and silver and other fractional coins amounting to P101.55. The reason then given by the appellant which induced said clerk Uliwac to accede to his wishes was that, as it was the last day of the month and he was expecting the mail that night or on the following day, he would have no time to deliver said funds to the municipal treasury. After attending to two igorots who had gone to his office that afternoon for the purpose of legalizing the transfer of certain large cattle, giving as a pretext that they were in a hurry to return to their barrio, Uliwac went to the appellant's office to receive and take charge of the money which the latter was going to deliver to him. The municipal treasurer's office and the post office under the appellant's charge occupied two adjoining rooms on the ground floor of the municipal building of Kabugao and were separated only by a wall with a door the key to which was in the possession of the appellant. Said door could be opened only from inside the post office. While the money which the appellant delivered to Uliwac and which consisted, as above stated, of checks, bills and coins, was being counted, it was arranged in bundles or rolls according to its nature and value, and Uliwac noted on each bundle the amount thereof. As he had no available paper for said purpose, he made his notations on the back of one of the paper bills of each bundle, and among the notations made by him on one of said bills was one reading: "39 X 20 = 780" which meant that the bundle to which said bill belonged was composed of 39 twenty-peso bills amounting to P780.

After all the money had been counted and Uliwac had issued the corresponding receipt to the appellant, the former took it to his office, passing through the main door thereof, and then put the money in a wooden box which he later placed in a brass box 12 inches long, 8 inches wide and 4 inches deep. In addition to the money which he received from the appellant, Uliwac kept in the said brass box some collections for that afternoon amounting to P15 plus P3 road tax which a policeman delivered to him for safekeeping. He afterwards locked said brass box with a key which he had in his possession and policeman Gawang, who was then present, carried said box thus locked to the storeroom inside the same room occupied by the municipal treasury, the door of which he later closed with a padlock ordinarily used for that purpose in the presence of Uliwac. The two immediately left the municipal treasury, Uliwac locking the main door thereof with the key in his possession. Said main door could only be opened by municipal treasurer Enciso, who was then in another town, and by clerk Florentino A. Tapiru who was charged jointly with the appellant in this case but was later released from the information by dropping the case against him for lack of evidence before the trial actually began.

It was likewise proven at the trial that when policeman Gawang took the brass box containing the money in question and the other sums above stated to the storeroom and placed it on top of the safe therein, the appellant had already left the municipal building, and that the brass box where said money was kept could not be placed in the safe because as night had already fallen, it was naturally dark in the storeroom and the numbers on the dial of the combination safe could not be seen.

After Uliwac had closed the main door of the municipal treasury, he went home leaving policeman Gawang, who was later joined by the chief of police Vicente Daoang, in the municipal building.

At about 6 o'clock on that same evening, the appellant returned to the municipal building with no other apparent purpose than to request the chief of police to buy him two packages of a certain brand of cigarettes from the store of one Marques. As soon as the chief of police was gone, he requested policeman Gawang, who was the only one left to guard the building, to buy him a package of another kind of cigarettes at the store of one Guzman. When Gawang stated that he could not leave because the municipal building would then be left unguarded, the appellant told him not to worry as he would take care of it while he was away. Both policemen were out on said errand for about 30 or 40 minutes and upon their return and after they had delivered to the appellant the cigarettes which he had requested them to buy for him, he left them. On the following day, the first to arrive at the municipal building long before office hours was the appellant, but then the boy Benigno Gorio, who was under detention at the municipal building, had already cleaned the employees' toilet which is situated behind said building, and, on that occasion he had neither seen nor noticed any brass box or any other object that might have attracted his attention inside or around said toilet. However, at about 7.30 o'clock on that same morning when Florentino A. Tapiru went to the toilet, he found there the same brass box where the money which the appellant had delivered to Uliwac the afternoon before had been kept, which evidently had been forced open, containing then only the checks for said amount of P187.15 together with the envelope which contained P3 and some stubs of certain Bureau of Internal Revenue forms. Notwithstanding the fact that the appellant was the first to arrive at the municipal building that morning, he was not seen in his office on that occasion. When Uliwac became aware of the disappearance of the money which he received for safekeeping, he immediately informed Enciso, who had already returned, and" the latter official reported the matter to the proper authorities for investigation. Lieutenant W. A. Johnson of the Constabulary was the first to reach Kabugao to conduct the necessary investigation and among the first to be questioned by him was Uliwac, from whose testimony he learned the fact that he (Uliwac) had made some notations on each of the several bundles of bills representing the money which the appellant delivered to him for safekeeping, showing the amount of money in each bundle.

After Uliwac, Lieutenant Johnson questioned the appellant in the latter's office where the former, accompanied by

municipal treasurer Enciso, went to examine the appellant's accounts and books and at the same time to find out how much money he actually had in his possession. In one of the drawers in said appellant's office, the two found the twenty-peso bill (Exhibit D), with the following numbers: "39 X 20 = 780", in Uliwac's handwriting written thereon. Uliwac, who was called by the municipal treasurer and Lieutenant Johnson while they were investigating the appellant, recognized and identified said bill (Exhibit D) as one of those which the appellant had delivered to him on the afternoon in question by means of the notation in his own handwriting appearing thereon, saying that it formed part of the bundle of 39 twenty-peso bills. Considering his suspicion still unfounded, Lieutenant Johnson requested the appellant in an almost commanding tone to keep said bill in his safe. After two days however, it was found that the bill in question had disappeared from the appellant's possession and upon being asked to explain the matter, he merely gave the excuse that he did not know what had happened to it. Luckily enough, said bill was later discovered in the municipal treasury, having been found among the bills received in said office. Lieutenant Johnson's explanation thereof, in the absence of another, seems reasonable to this court. In answer to one of the questions asked him for the purpose of learning from him how the marked bill came into the possession of the municipal treasury, said officer said:

"He might have paid any voucher to somebody outsider and paid him this twenty-peso bill and because the town of Kabugao is very small and hard to make some change, especially a twenty-peso bill, and he might have exchanged it in the office of the treasurer. That is the only possibility why this bill was found in the safe of the treasurer."

The proven facts constitute a real complete chain of circumstances that necessarily lead us to the conclusion that the appellant was the author of the crime charged in the information; and the force thereof is all the more insuperable because the appellant dared not even testify in order to explain said facts or some of them, at least. Said circumstances are: the appellant's insistence in leaving the lost money in Uliwac's possession after office hours on the afternoon in question, which he had never done before, when he could have made delivery thereof during office hours; his returning to the municipal building at 6 o'clock in the evening of the same day for no other than the childish purpose of requesting the chief of police Daoang and policeman Gawang to buy him three packages of cigarettes at two different stores, as there was no necessity of sending both of them, one after another, for the same purpose; his offer to policeman Gawang to take care of the municipal building while the latter was away when said policeman told him that he could not go out and leave the municipal building unguarded; his failure to explain why he did not personally go to buy said cigarettes inasmuch as he himself could have done so; he alone had the key to the door connecting his office with that of the municipal treasury, it being a fact that said door could be open only from the inside of his office; his presence in the municipal building long before the opening hour for his office situated therein on the morning of November 1, 1933, the day after he delivered his funds to clerk Uliwac; the unexplained finding in his possession of one of the twenty-peso bills belonging to the bundle of bills of said denomination which formed part of the money which he delivered to clerk Uliwac for safekeeping on the afternoon of October 31, 1933; and finally his having disposed of the bill (Exhibit D) against Lieutenant Johnson's express request to keep it in his safe. Considered together, these circumstances lead whomsoever considers them to the same conclusion arrived at by this court.

There is no doubt but that the crime committed is robbery on the ground that it took place under the circumstances provided in article 299 (subsection 2), of the Revised Penal Code.

It is true that the evidence shows that when policeman Gawang took the brass box containing the lost money to the storeroom of the municipal treasury, and placed it on top of the safe therein, the appellant was already out of the municipal building; but it is also true that the appellant's unexplained presence in the building at the time he requested the chief of police and policeman Gawang to buy him some cigarettes, gives rise to the belief that it was during the absence of said two policemen that he entered his office and opened the door connecting it with the

municipal treasury with the key in his possession in order to find out in the latter office where Uliwac kept the money which he had just delivered to him a few moments ago. He neither denied that he had the key to said door nor that he had opened it. Therefore, it must be taken for granted that he opened it

It is likewise true that the evidence fails to show that when the appellant left the chief of police and policeman Gawang on the afternoon in question, after the two had delivered the cigarettes which he had requested them to buy for him, he carried something which might have attracted their attention; but it is a fact proven by the testimony of the boy Benigno Gorio, who had slept in the municipal building that night and who was presented as a witness by the same appellant, that at about 8 o'clock on that same night he saw a man, whom he said he could not recognize due to the darkness of the night, arrive at the municipal building. Said man must have been the accused who went there to take away the brass box with the contents in order to open it in the manner shown by its condition when it was presented as evidence, that is, by means of force. The appellant failed to explain where he was on that night or to state that he could not have been the individual who had visited the municipal building at the hour stated by said boy. It could not have been policeman Gawang and his companion because they were asleep then.

Under the circumstances in which the appellant was found, after the evidence for the prosecution had been taken, he should have given some explanation of his acts or omissions on the night in question, and having failed to do so, this court cannot consider in his favor any fact more or less probable, which cannot be logically inferred from the proven facts. Although the evidence against an accused may be circumstantial in nature, it is sufficient to warrant a judgment of conviction if the circumstances of which it consists are complete and convincing and lead to no other rational conclusion than that he is the author of the crime with which he is charged; and this is all the more true in the case of the appellant because the proven facts and his very conduct both prior to and immediately after the commission of the crime are incompatible with his innocence. (U. S. vs. him Sip, 10 Phil., 627; U. S. vs. Monteli, 15 Phil, 452; U. S. vs. Levente, 18 Phil., 439; U. S. vs. Rivera, 23 Phil., 383; U. S. vs. Aquino, 27 Phil., 462.)

For the foregoing reasons and considerations, it is clear that the appellant is guilty of the crime with which he is charged, although his civil liability should be understood to be reduced to that of paying an indemnity of only P1,389.67, on the ground that of the amount taken from it this is the only sum which the Government did not recover.

As to the penalty which should be imposed, it should be stated that the lower court committed an error. The same should be prison correccional in its medium period to prison mayor in its minimum period, that is, from two years, four months and one day to eight years, because this is the penalty next lower in degree to that prescribed for the first case of robbery provided in article 299 of the Revised Penal Code, it being clear that the crime committed by the appellant is of the nature of that provided in the second case of said article.

The lower court failed to consider two aggravating circumstances which had been clearly proven at the trial, to wit: nocturnity and the appellant taking advantage of his public position as postmaster. The reason given by said court was that said circumstances were not alleged in the information. Said requisite is not essential. In the case of United States vs. Campo (23 Phil., 368), and in that of People vs. Collado (p. 610, ante), this court stated, and reiterates herein, that although it is not stated in a complaint or information that generic aggravating circumstances of any kind have been present in the commission of the crime, said circumstances may be proven at the trial and, if proven, must necessarily be taken into consideration in imposing the corresponding penalty. Therefore, said two circumstances (subsections 1 and 6 of article 14 of the Revised Penal Code), which are not qualifying circumstances but merely generic, should be taken into consideration.

The appealed judgment is hereby modified by sentencing the appellant to six years and one day of prision mayor, and in conformity with the provisions of Act No. 4103, the minimum of said penalty is fixed at two years, affirming said judgment in all other respects, with costs against the appellant. So ordered.

Avancena, C. J., Abad Santos, Hull, and Vickers, JJ., concur.

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