

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MANUEL BORROMEO ET AL., DEFENDANTS. MANUEL BORROMEO AND ALFONSO ORTEGA, APPELLANTS.

G. R. No. 41676. October 01, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

Manuel Borromeo, Alfonso Ortega, and Alberto Mallari were charged in the Court of First Instance of Manila with the crime of robbery in an inhabited house, committed as follows:

"That in, about and during the period comprised between December 19 and 20,1933, in the City of Manila, Philippine Islands, the said defendants conspiring together and mutually helping one another and in cooperation with Dominador Salonga, who now stands charged with the commission of said crime under a separate information (criminal case No. 47134 of the Court of First Instance of Manila), did then and there wilfully, unlawfully and feloniously, with intent of gain and by the use of force upon things, to wit: by breaking open its sidewall, enter the dwelling house of one Chua To, inhabited by him and situated at 601 Calle G. Tuason, this city, and once inside, the said accused, without the consent of the owner thereof, willfully, unlawfully and feloniously took, stole and carried away the following personal property:

P20 in cash consisting of bills in different denominations.....

P20.00

P4.47 in cash consisting in small change.....

4.47

Forty-four (44) second-class tickets for streetcar, valued at...

3.52

Seven (7) cases (big size) of Chesterfield cigarettes, valued at...

.98

One (1) box (big size) Piedmont cigarettes.....

.80

Six (6) cases (big size) Camel cigarettes, valued at.....

.84

Ten (10) cases (small size) Piedmont cigarettes, valued at.....

.40

to the damage and prejudice of the said Ghua To in the total sum of thirty-one pesos and one centavo (P31.01), Philippine currency.

"That, at the time of commission of said offense, accused Manuel Borromeo y Lacdan has heretofore been convicted once (1) of the crime of attempted estafa and twice (2) of the crime of theft by virtue of final judgments rendered by competent courts and is, therefore, a habitual delinquent, within the purview of article 62 of the Revised Penal Code, his last date of conviction on the last-named offense, being on January 30, 1933, and date of release, May, 1933."

Alberto Mallari could not be found, and the information was provisionally dismissed as to him. Manuel Borromeo and Alfonso Ortega were tried on a plea of not guilty to the foregoing information.

The trial judge found that said defendants had taken part in the commission of the crime; that the aggravating circumstance of nocturnity should be taken into account; and that Manuel Borromeo had previously been convicted once of estafa and twice of theft, as alleged in the information. The court therefore declared the defendant Manuel Borromeo guilty of robbery in an inhabited house committed with the aggravating circumstance of nocturnity, and sentenced him to suffer three years, six months, and twenty-one days of prison correccional, to indemnify the offended party in the sum of P7.93, and to pay the proportionate part of the costs. The court further found him to be a habitual delinquent and sentenced him to suffer an additional penalty of eight years, eight months, and one day of prison mayor.

In view of the fact that the defendant Alfonso Ortega was only sixteen years old, the trial judge suspended the sentence as to him, and ordered that he be confined in the Philippine Training School for Boys until he is twenty years old, subject to visitation and supervision by the Public Welfare Commissioner or his agents or representatives in accordance with article 80 of the Revised Penal Code.

From the aforesaid decision Manuel Borromeo and Alfonso Ortega appealed to this court, and their attorney de oficio now makes the following assignments of error:

"1. El Juzgado incurrio en error al no declarar que las pruebas de la acusacion no son suficientes para establecer fuera de toda duda racional la culpabilidad del acusado Manuel Borromeo.

"2. Incurrio tambien en error al no apreciar en favor del mencionado Manuel Borromeo y Lacdan la duda racional y al no sobreseer la causa en contra de este acusado."

The evidence shows that the store of the offended party, Chua To, at 601 G. Tuason, in the City of Manila, was robbed on the morning of December 20, 1933, in the manner alleged in the information. A few days after the crime was committed, one Dominador Salonga was arrested. He admitted that he had participated in the robbery, and mentioned the defendants herein as his companions. Manuel Borromeo and Alfonso Ortega were investigated by the police. They both admitted their participation in the robbery. Borromeo admitted to policeman Esteban Buenaventura that he and his companions made a hole in the wall of the offended party's store by removing a stone, and that for that purpose they used Borromeo's dagger, Exhibit B; that once inside he and Mallari took money, street-car tickets, cigarettes, and other articles which he could not remember, Alfonso Ortega related to the police the way in which the crime was committed. His statements were reduced to writing and signed by him.

At the trial Manuel Borromeo denied that he had taken part in the robbery or made any admission to that effect to the policeman Buenaventura.

The principal contention of the attorney for the appellants is that the testimony of Ortega should not be taken into consideration as evidence against Borromeo, and that the testimony of the policeman Buenaventura as to the admissions made to him by Borromeo is not sufficient to sustain the judgment of the lower court.

In our opinion the guilt of the appellants was clearly proved. Borromeo admitted to the policeman Buenaventura his participation in the crime, and Alfonso Ortega, testifying at the trial as a witness for the defense, stated that he accepted the invitation of Alberto Mallari, Dominador Salonga, and Manuel Borromeo to engage in a serenade in 6. Tuason Street; that about two o'clock in the morning, after they had been serenading for a long time, Borromeo and Mallari left him and Salonga, but a little later they called him and Salonga and showed him a hole in a wall and made him enter it; that he did not wish to do so, but Mallari caught him by the neck and Borromeo threatened to Mil him with a dagger if he did not go into the hole; that he went through the hole in the wall and opened the door; that Salonga and Borromeo entered the store and took the money while Mallari was watching outside; that he then ran away and went home; that it was about four o'clock in the morning when he reached home. We identified Exhibit B as the dagger with which Borromeo threatened to kill him.

No valid reason has been advanced for not taking the testimony of Ortega into consideration as evidence against his codefendant Borromeo. The admissions made by Ortega prior to the trial were not admissible as to Borromeo, but when he took the stand and testified, his testimony was part of tile evidence in the case. Although it came from a polluted source, it was admissible for what it might be worth. When a defendant incriminates his codefendant in his testimony, the credibility of his testimony is affected by reason of the fact that the witness is one of the defendants, but its admissibility as evidence against his codefendant is not affected thereby. (U. S. vs. Wayne Shoup, 35 Phil., 56; People vs. Gan Tian Hok, G. R. No. 40841, p. 993, post.)

The lower court found that the civil liability of Manuel Borromeo was limited to one-fourth of the value of the money and merchandise taken by the four participants in the crime. His liability, however, was joint and several with that of his companions. The indemnity to be paid by him is accordingly increased to P31.01.

The lower court ordered Alfonso Ortega to be confined in the Philippine Training School for Boys until he should be twenty years old. We are of the opinion that he should be confined in said institution until he reaches his majority, unless sooner released by competent authority, and it is so ordered.

With the modifications herein above indicated, the decision appealed from is affirmed, with the costs against the appellants.

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

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