

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GAUDIOSO GAMBOA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 4327. July 29, 1908*

Ponente: TORRES, J.

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At about 1 o'clock in the morning of March 21, 1906, three individuals, armed with cutting weapons, broke into the house of Elpidio Dincong through one of the windows, after cutting the rattan by which the window was secured. They immediately woke the owner of the house and his wife, Lucia Hiponia, and the individuals Kestituto Barbasa and Isidro Deyrit who were staying in the house; by means of threats and ill treatment they compelled the married couple to point out to them the place where the money and a pocketbook belonging to the husband were kept; at the same time they searched the house and came across a money box containing P80 and a trunk that contained P15, a pair of pearl earrings and another pair of plain gold, both valued at P21, a hat, an undershirt, a flannel shirt, and other articles of clothing valued altogether at P21. In the pocket of Elpidio's shirt that was hanging on a screen they found the aforesaid pocketbook which contained P255 in bills. Afterwards, they tied up the three men, and taking the owner of the house downstairs handed him over to four other thieves outside. In addition to the three thieves who entered the house, a fourth, also armed, made his appearance while the robbery was being committed. They also took P2.70 from Isidro Deyrit, and prior to going downstairs one of the band, a short, stout man, approached the bed on which Lucia Hiponia was lying, several times, and tried to lay with her, but he did not achieve his purpose for the reason that the child that she carried in her arms screamed because she was being pinched. On leaving, the thieves took Elpidio with them for a distance of 30 brazas.

For the above reason the provincial fiscal, on the 10th of May, 1906, filed a complaint charging the said Gaudioso Gamboa, Gregorio Gamboa, Manuel Jayane, Roman Aleman, and five others unknown, with the crimes of robbery en cuadrilla and illegal detention, and, proceedings having been instituted, the judge, on the 20th of December of the same year, sentenced each of the said four accused, for the crime of robbery en cuadrilla, to the penalty of six years ten months and one day of presidio mayor, to the accessory penalties, jointly and severally to pay to the married couple the sum of P390, and P2.70 to Isidro Deyrit, each of them to pay one-ninth share of the costs. Counsel for the accused excepted to said judgment and filed a motion for new trial, which was granted. At the second hearing the judge, after considering the new evidence adduced, on the 28th of February, 1907, confirmed his former decision imposing on the four culprits above named the penalty already stated. From said judgment counsel for the four accused has appealed.

According to an official communication from the Director of Prisons, dated June 22, last, Gregorio Gamboa died in prison on the day previous, of tabular pneumonia.

From the particulars of the case it appears that the facts stated above have been duly proven, and that the same constitute the crime of robbery en cuadrilla, carried out by more than three armed thieves, by means of violence upon and intimidation of the dwellers of the house; that they broke into said house, entering it through a window, a crime defined and punished by articles 502 and 503, No. 5, in connection with articles 504 and 505, of the Penal

Code; the proceedings further disclose the preexistence, violent taking, and subsequent disappearance of the sums of money and articles of clothing stolen from the injured persons.

The band was composed of nine thieves, under the leadership of Gregorio Gamboa, of whom only the said Gregorio Gamboa, deceased, and the survivors, Gaudioso Gamboa, Manuel Jayme, and Roman Aleman, were apprehended by the authorities and identified by the injured parties and the witnesses for the prosecution. Notwithstanding their exculpatory allegations and denial of the charge, they are fully convicted, together with the said Gregorio, now deceased, and five others unknown, as being the undoubted authors of the crime of robbery en cuadrilla in question. Four of the said accused were fully recognized by Lucia Hiponia, the wife of the owner of the house, and by Restituto Barbasa and Isidro Deyrit, the other inhabitants thereof, and furthermore, the injured party, Elpidio Dincong, testifies that he saw Manuel Jayme among the thieves, and that one of them, who turned out to be Roman Aleman, returned to the house by direction of another to get the hat of the injured party, and was recognized by the aforesaid Hiponia, Barbasa, and Deyrit, who were upstairs at the time. Besides this, Juana Catala, who also lived in the house of Gregorio and Gaudioso Gamboa, testified at the preliminary investigation, and afterwards repeated in court in the presence of the accused, that the latter left the house between 8 and 9 o'clock on the evening of the 21st of March, the date of the occurrence, and that at a late hour on the same night she was awakened by the voices of some individuals who were standing on a bridge made of trunks of cocoanut trees near by. She got up to look at them and saw that Gregorio Gamboa, Gaudioso Gamboa, Manuel Jayme, and others unknown to her were gathered in conversation; without paying any further attention to them she returned to bed.

To the above-stated facts there must be added that, according to the declaration of Severino Santillan, a resident of the place where the robbery was committed, at about 8 o'clock on said evening, Manuel Jayme left in charge of said witness in his store a white bottle containing vino anisado de Tanduay, saying that he would call for it later on; he did so at about 10 of the same night, accompanied by Gaudioso Gamboa, and when on the following day the witness called at the house where the robbery was committed, the owner thereof, Elpidio Dincong, showed him the bottle, and said that it had been left behind by the thieves who had entered his house on the previous evening, on the ground floor of the same. It is also an incriminating item of importance that when Elpidio, the injured party, was returning from the town of Silay whither he had gone to report the matter to the local authorities, and going toward the barrio of Guinalaran where he lived, he came across the accused Manuel Jayme and Gaudioso Gamboa riding in a quilez drawn by a carabao; upon seeing him they jumped out of the quilez and ran away, abandoning the vehicle and carabao, which were later taken charge of by the justice of the peace. Gaudioso was arrested at once, but Manuel Jayme, who drove and rented out the vehicle, was not captured, the witness Hermogenes Esmallanero; a municipal policeman, who went in pursuit of Jayme by order of the lieutenant of the barrio did not succeed in overtaking him. It is to be noted also that Mariano Guitche, a resident of the place, saw the said vehicle pass at the time in the direction of Silay driven by Manuel Jayme, who was accompanied by Gaudioso Gamboa.

The evidence of the above witnesses is fully convincing of the guilt of the accused as being, together with other persons unknown, the undoubted authors of the robbery in question. The strength and importance of said evidence has not been overcome by the declarations of the witnesses for the defense. The testimony of the wife of Roman Aleman, the only witness in support of the alibi set up by him, does not in the least serve to weaken the declarations of the witnesses who recognized him. Neither is the testimony of Pascuala Capitania, the mistress of Gregorio Gamboa, sufficient to prove that both the latter and his brother Gaudioso did not leave their house until 4 o'clock of the following morning, or that Gregorio was sick, inasmuch as the syphilis from which he was suffering did not prevent his walking; he was walking when arrested and taken to Silay. Several witnesses recognized the accused in the act of committing the robbery, and others who saw them at different places

positively contradict the statement of the defense. Neither can the alibi which Manuel Jayme attempted to establish by means of the declarations of three witnesses be considered as established since he was seen by several persons in the house at the time it was robbed, and later on the road, up to the moment of abandoning his own vehicle upon being seen by the aggrieved party. When it is taken into account that with the exception of the unknown parties, the four accused lived in the same barrio and not far from the robbed house, it is not strange that they were in their respective dwellings shortly before the commission of the robbery, or that they should have returned thereto soon afterwards, pretending not to have left them until the next morning or some hours after the robbery, as did Manuel Jayme and Gaudioso Gamboa, going in a vehicle toward the town of Silay.

In this case there is no mitigating circumstance to be taken into consideration, but there are present aggravating circumstances Nos. 15 and 20 [art. 10] of the Penal Code, as the robbery was committed under cover of night and in the dwelling of the injured parties. Therefore the penalty provided by the said article 503, No. 5, should be imposed upon them, according to article 504, in the maximum term of the maximum degree of said penalty. It should further be taken into account that Gregorio Gamboa, the leader of the band, died while in jail.

After considering the brief of the defense with the errors imputed to the judgment appealed from, and for the reasons above set forth, it is our opinion that the judgment of the court below, in so far as it conforms to this decision, should be, and is hereby, affirmed, and that Gaudioso Gamboa, Manuel Jayme, and Roman Aleman should be, and are hereby, sentenced each of them to ten years of presidio mayor, to suffer the accessory penalties of article 57 of the code, to jointly and severally indemnify the spouses Dincong in the sum of 390, and Isidro Deyrit in the sum of 2.70, and each of them to pay one-fourth of the costs of this instance. The case against Gregorio Gainboa, deceased, is dismissed with one-fourth of the costs declared de oficio. So ordered.

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

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