

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CIRILO MAGRAMO Y MANLOLO AND TEOFILO GUTIERREZ Y MATUMAN, DEFENDANTS AND APPELLANTS.

G.R. No. 43754. October 15, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The defendants were charged in the Court of First Instance of Manila with the crime of robbery with slight physical injuries. It was alleged in the information;

"That on or about the 21st day of March, 1935, in the City of Manila, Philippine Islands, the said accused confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent to gain and by means of violence upon one Ty Liang Seng, to wit: giving the latter fist blows on the face and other parts of the body from which the latter sustained physical injuries which required and will require medical attendance for a period of more than one but less than ten days, and prevented and will prevent him from engaging in his customary labor for the same length of time, forcibly take and carry away the following describe personal property belonging to the said Ty Liang Seng, viz.:

Money consisting of bills of different denominations and coins amounting to P9.93

to the damage and prejudice of the said Ty Liang Seng in the aforementioned amount of nine pesos and ninety-three centavos (P9.93), Philippine currency.

"That the accused Cirilo Magramo y Manlolo is a habitual delinquent, having already been convicted twice of the crime of theft and once of qualified theft by virtue of final judgments rendered by a competent court, the date of his last conviction being February 8, 1934; and Teofilo Gutierrez y Matuman (alias Young Gutierrez) is a recidivist, having heretofore been convicted twice of slight physical injuries by virtue of final judgments rendered by a competent court"

The trial judge found the defendants guilty as charged, and taking into consideration the fact that Teofilo Gutierrez was a recidivist because he had already been twice convicted of the crime of slight physical injuries condemned him to suffer an indeterminate sentence from six months and one day of prison correctional to ten years of prison mayor; and finding that Cirilo Magramo was a habitual delinquent because he had already been convicted three times of theft the lower court sentenced him to suffer three years, eight months, and one day of prison correctional, and an additional penalty of four years, nine months, and ten days. The defendants were sentenced to indemnify the offended party in the sum of P9.93 with the corresponding subsidiary imprisonment in the case of Cirilo Magramo if he should fail to pay the said indemnity, and to pay the costs.

The attorney for the appellants alleges that the lower court erred;

"In finding and concluding that the guilt of the accused for the crime of robbery with physical injuries has been proven beyond reasonable doubt notwithstanding the inconsistent, contradictory and unbelievable testimony of the offended party and his only supposed ocular witness who is also a Chinaman and housemate, and in not

absolving said appellants from this criminal charge."

The prosecuting witness Ty Liang Seng testified that about eight o'clock in the morning of March 21, 1935 he went to a sari-sari tienda at the corner of Marcelino de Santos and Elcano streets in Manila, and bought a can of milk for seven centavos. He paid for it with a 10-peso bill, and received as change P9.93, consisting of a 5-peso bill, two 2-peso bills, and coins in the sum of ninety-three centavos. When he went out of the tienda and started home with the money in his hand, he met the defendants, who assaulted him. Both of them struck him with their fists. One struck him on the side of the head and the other under the jaw. He became dizzy and leaned against a wall for support. Teofilo Gutierrez, the larger of the two defendants, took the money from the offended party's hand, and then the defendants ran away.

Uy Gao testified that he was drinking a cup of coffee in the sari-sari tienda when Ty Liang Seng, the offended party, came in and bought a can of milk and! went out with the change, composed of paper money and coins, in his hand. Uy Gao then heard cries outside and went out holding his cup of coffee. He saw Ty Liang Seng leaning against a wall, bleeding from the mouth and about to fall. Gutierrez snatched the money from the hand of the wounded man and Magramo knocked him down. Uy Gao went into the tienda to set down the coffee cup and then ran out to help Ty Liang Seng, but the defendants had fled. He took the offended party into a barber shop and sent someone to call a detective.

Pedro Galvez, a detective, testified that upon being notified of what had occurred he and detective Carpio went to see. the offended party and found that his upper lip was swollen and one tooth was loose and his nose was bleeding. They then took him to the hospital where he was treated by Doctor Ordonez. Galvez further testified that he investigated the offended party, and the latter said that he had bought a can of milk in a sari-sari tienda at the corner of Elcano and Marcelino de Santos streets, and that when he went out the defendants assaulted him and Teofilo Gutierrez snatched from him P9.93. The offended party was taken to the secret service office, where he identified Teofilo Gutierrez by his photograph as the assailant who had taken his money. Cirilo Magramo was pointed out by Ty Liang Seng as his other assailant, and when arrested that same day Magramo said it was not he but Teofilo Gutierrez that beat Ty Liang Seng, but he later admitted that he had given the offended party a blow in the abdomen. Teofilo Gutierrez, when arrested five days later, was identified by Ty Liang Seng and Uy Gao as the man who had taken Ty Liang Seng's money after beating him. Teofilo Gutierrez at first denied having had anything to do with the incident in question, alleging that he was in jail at that time, but later he admitted. that he had assaulted Ty Liang Seng, and attempted to explain the assault by saying he had been sent to jail because he had beaten a friend of Ty Liang Seng.

The allegation in the information that the offended party's wounds required medical treatment more than one day but less than ten days was admitted by the defendants. Cirilo Magramo admitted that he had been sentenced three times for theft as shown by Exhibits A, B, and C, and Teofilo Gutierrez admitted he was convicted of alight physical injuries on August 25, 1934 and February 21, 1935 as evidenced by Exhibits E and D.

Testifying in his own behalf, Teofilo Gutierrez admitted that he assaulted Ty Liang Seng on the occasion in question, but stated that on March 17th, when he entered a barber shop after leaving prison, Ty Liang Seng insulted him and told him he must not come inside of that barber shop. He denied having taken any money from Ty Liang Seng. He further testified that the man who caused him to be sent to prison was a cargador in the market and lived in the same house where Ty Liang Seng was living. He did not know the name of the alleged companion of Ty Liang Seng, who was the offended party in the prior case. Gutierrez further testified that the reason why he assaulted this friend of Ty Liang Seng was that he refused to pay him for washing an automobile, and that he was sentenced¹ in that case to pay a fine of P50.

Cirilo Magramo testified that he was not with Teofilo Gutierrez when the incident in question occurred, but was drinking coffee in the shop of a Chinese when he saw Gutierrez and the offended party fighting. He stated on cross-examination that he was a cargador and a fellow worker of Gutierrez in the Divisoria Market.

Ty Liang Seng testified that he was a silversmith. He denied having insulted Gutierrez, and said he had never had any conversation with either of the defendants.

It clearly appears that both the defendants assaulted Ty Liang Seng, and the evidence leaves no doubt in our minds that the motive for the assault was robbery. When the offended party went out of the tienda with the money in his hand, the defendants saw him and attacked him for the purpose of getting possession of his money. The story of Gutierrez as to the alleged insult in the barber shop rests upon his uncorroborated testimony. Not content with that story, he insinuated that he assaulted Ty Liang Seng because the latter's friend had prosecuted him for an assault. That friend of Ty Liang Seng was said to be a rival cargador in the market. That story, however, is spoiled by the testimony of Gutierrez to the effect that the reason for the assault in that case was the refusal of Ty Liang Seng's friend to pay the defendant Gutierrez for washing an automobile. He did not explain why a Chinese cargador should hire him to wash an automobile. Gutierrez testified that he was fined fifty pesos in that case, but it appears that on February 21, 1935 he was sentenced to ten days in jail.

The participation of Cirilo Magramo in the assault is shown not only by the testimony of the offended party and Uy Gao, but also by the admission of this defendant after he was arrested. His motive for joining Teofilo Gutierrez in the attack on Ty Liang Seng was undoubtedly to get possession of the money he saw in Ty Liang Seng's hand. No other motive has been suggested. We admit that the prosecution ought to have called the owner of the tienda to corroborate the testimony of the offended party as to the sale of the can of milk and the change he gave Ty Liang Seng, but the trial judge was satisfied as to the truth of these facts by the testimony of Ty Liang Seng and Uy Gao, and we cannot say that he erred in giving credit to their testimony.

The penalty for the offense committed is prison correctional to prison mayor in its medium period in accordance with No. 5 of article 294 of the Revised Penal Code, and the defendants being recidivists the penalty must be imposed in its maximum period. The defendants are therefore sentenced to suffer six years, ten months, and one day of prison mayor and to indemnify the offended party in the sum of P9.93. Cirilo Magramo being a habitual delinquent is not entitled to the benefits of the Indeterminate Sentence Law. The minimum sentence to be served by Teofilo Gutierrez is fixed at six months of arresto mayor.

The evidence shows that Cirilo Magramo had already been convicted twice of theft and once of qualified theft, but it appears from Exhibits A and B that he was convicted on February 7, 1934 and February 8, 1934. For the purposes of No. 5 of article 62 of the Revised Penal Code relating to habitual delinquency, these two convictions would be counted as only one (People vs. Santiago, 55 Phil., 266; People vs. Ventura, 56 Phil., 1). The present conviction is therefore the third for the purposes of the aforementioned provision, and the appellant Cirilo Magramo is sentenced to suffer an additional penalty of three years, six months, and twenty-one days of prison correctional.

As thus modified, the decision appealed from is affirmed with the costs against the appellants.

Avanceña, C.J., Malcolm, Hull, Imperial, and Goddard, JJ., concur.

DISSENTING
RECTO, J.,

I do not agree with the decision in so far as it declares the evidence as showing the commission of the crime of

robbery by the accused. In my opinion they should be convicted only of physical injuries.

- It is claimed that the aggression and the alleged robbery of which the complainant was the victim took place at about eight o'clock in the morning of the day of the crime near the intersection of Elcano and Marcelino de Santos streets and ten meters from the Divisoria Market, the most crowded in the City. Nobody who knows Manila can ignore the fact that in such place at such time there is a big crowd any day of the week. If the robbery committed, according to the complainant, under the circumstances described by him were true, no disinterested witnesses would be lacking to testify on such fact. However, the prosecution was able to present only Uy Gao, the complainant's housemate. Uy Gao claims that at that time he was drinking coffee inside a store at the corner of the above mentioned streets. He says that having heard cries outside, he went out of the store and saw the accused Gutierrez in the act of taking possession of the money in the hands of the complainant who was lying on the ground. If there were cries outside, they must have come either from the spectators and busybodies or from Ty Liang Seng. Under the first theory, there always would have been some persons among those present who should have endeavored to prevent the robbery on Ty Liang Seng or to pursue the robbers upon seeing them flee. Under the second theory, that is, if the cries came from Ty Liang Seng, it is not explained why Uy Gao, who was inside the store, could have heard them and nobody did among the many passersby who were nearer than he to the scene of the crime which, as already stated, was ten meters from the Divisoria Market. Neither is it explained why the Chinese owner of the store where Uy Gao was drinking coffee, did not go out, as the latter, to see what was going on, taking into consideration the fact that, judging from the cries, he should have imagined the victim of the aggression to be another Chinaman.

- If it was merely by reason of the cries of Ty Liang Seng or of the spectators that Uy Gao went out of the store to see what was going on, it was not possible for him to arrive at the very moment the accused Gutierrez was snatching the money from Ty Liang Seng. For if it were true that Gutierrez hit Ty Liang Seng to rob him, it would have taken just a second or two to deprive him of the money and run away. It is to be assumed that Gutierrez would take less time to snatch the money and escape than for Uy Gao to go out of the store, where he was quietly enjoying his cup of coffee, to see what was going on. In fact Uy Gao testified that he went out of the store bringing his cup of coffee with him and when he saw that the victim was his housemate Ty Liang Seng, he returned to the store to leave the coffee cup before going to Ty Liang Seng's aid.

- There exist serious and important contradictions between the testimony of Ty Liang Seng and that of Uy Gao. (a) Ty Liang Seng says that Gutierrez snatched his money after he had been struck by the two accused; but Uy Gao asserts that Gutierrez snatched the money from Ty Liang Seng and then the accused Magramo struck Ty Liang Seng with his fist. (b) Ty Liang Seng states that he was struck by Gutierrez on the left temple and by Magramo below the cheek, but Uy Gao asserts that Magramo's blow landed on Ty Liang Seng's left temple, (c) Ty Liang Seng says that when Magramo snatched his money he was leaning against the wall from the blow given him by Gutierrez, while Uy Gao states that when this took place Ty Liang Seng was lying on the ground, (d) Ty Liang Seng states that Gutierrez took from him nine pesos in bills and ninety three centavos in coins, while Uy Gao says he saw only bills, one of which was P5, a thing all too unbelievable because if Ty Liang Seng had the bills in his hands, they would have been well folded and tightly held and should not be visible particularly at Uy Gao's distance from Ty Liang Seng.

- The facts disclosed by Ty Liang Seng's testimony are improbable, (a) Ty Liang Seng declares that on the morning in question, when he met the accused, who attacked him, they were coming from an opposite direction. This means that they were not spying on him while he received the change for his alleged ten-peso bill in the store where he bought a small can of milk for seven centavos. If this is true the accused had no occasion to know that he had with him a significant sum for snatching which it would be worth the trouble of going to jail for some years, (b) One must know the Chinaman of the laboring class, as Ty Liang Seng, to understand that he would not carry with him a ten-peso bill to buy something worth seven centavos, knowing full well that pickpockets and rogues abound in such places. If Ty Liang Seng had some money with him on that occasion, it would not be a ten-peso bill, (c) Ty Liang Seng claims that the blows which he received from

the accused rendered him unconscious, inasmuch as he, according to Uy Gao, fell to the ground after leaning against the wall. In such condition Ty Liang Seng could not possibly point precisely at Gutierrez as the one who snatched the money from his hands; and it was likewise impossible for him, upon receiving the blows and falling to the ground to continue holding the money in his hand particularly because he should have instinctively defended himself from the blows given him by the two accused, (d) Neither the complainant nor his witness Uy Gao would tell what became of the can of milk which Ty Liang Seng bought for seven centavos, giving in payment a ten-peso bill and receiving P9.93 as change.

- One of the most important facts which the prosecution should have established in order to substantiate the allegations of the information was whether Ty Liang Seng truly had some money with him that morning. The most competent witness to testify on this point was the owner of the store where Ty Liang Seng claims to have bought a small can of milk for seven centavos, giving in payment a ten-peso bill and receiving as change P9.93. But he was neither presented nor called to testify and no attempt was ever made to explain this omission. It is presumed that the testimony of this witness, if given, would have been adverse to the complainant's claim (section 334, No. 5, Code of Civil Procedure; 22 C. J., 115).

- Another evidence unduly suppressed by the prosecution is Sy Bio Lim's testimony. It was this person who accompanied Ty Liang Seng that morning¹. He could have corroborated Ty Liang Seng's testimony on the money which the latter alleged to have with him, in the absence of that of the owner of the store who changed the alleged ten-peso bill, and he could have testified, with a better motive than Uy Gao, on Gutierrez's alleged act of snatching Ty Liang Seng's money. However, the suppression of this important testimony has not been explained.

- It seems that the circumstance that the accused have criminal antecedents has influenced the mind of the court against them. It is true that Cirilo Magramo had been convicted three times of crimes against property; but as to Teofilo Gutierrez, his former conviction was merely for physical injuries. The theory of the prosecution is precisely that it was Gutierrez, not Magramo, who took the complainant's money. It seems that Gutierrez is a boxer by inclination, if not by profession, as his alias is "Young Gutierrez." If he and Magramo had agreed to rob Ty Liang Seng, they would naturally have apportioned the work between themselves, with Gutierrez taking charge of beating the Chinaman and Magramo of robbing him, so that the task might be more prompt and effective. However, the prosecution claims that things happened differently.

- I am inclined to believe that this aggression was motivated not by robbery but by personal matter between Ty Liang Seng and Gutierrez because the latter had been jailed, having hit a friend of the former. This belief is supported by the fact that in this case Ty Liang Seng was assisted by a private prosecutor. If the true motive of this prosecution was the robbery of P9.93, and not Ty Liang Seng's desire for revenge and hatred for Gutierrez, there was no reason for him to engage the services of a private prosecutor, and he could have entrusted such a simple case to the public prosecutor. The rivalry between Chinese and Filipino laborers in the district of the city where the assault on Ty Liang Seng took place must have something to do with this charge for robbery motivated by the desire of Ty Liang Seng and his friends to obtain a long jail term for these accused, particularly Gutierrez. In fact, if the penalty were only for physical injuries, as those of the offended party only took ten days to heal, it would not exceed one month imprisonment; but being for robbery with physical injuries, the penalty, as seen in the majority opinion, will be from six months of arresto mayor, as the minimum, to seven years, ten months and twenty-one days of prision mayor, as the maximum, for Gutierrez, and the latter penalty and an additional penalty of three years, six months and twenty-one days of prision correccional for Magramo, being a habitual delinquent.

- Upon so flimsy an evidence as that of record, I am of the opinion that it is a risky undertaking to sentence these accused to imprisonment for so long a term. It should be borne in mind that in this case the statement of complaining Chinaman that he had in his possession the sum of P9.93 and the accused snatched it from him, has alone been sufficient to sentence said accused to many years imprisonment. If a judgment of conviction may be based on evidence of such nature, nobody would feel secure in the precious possession of his liberty,

particularly if he has the misfortune of having been formerly convicted by the courts, and in such case the regeneration of the offenders becomes a myth.

VILLA-REAL, J.:

I concur with Justice Recto in his dissent.

ABAD SANTOS, J.:

I concur in the dissenting opinion of Justice Recto.

Judgment modified.

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