

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NARCISO CAGUIMBAL ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4420. March 26, 1908

Ponente: TORRES, J.

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TORRES, J.:

In the early morning of the 28th of May, 1907, Estanislao Pateña and his wife Alberta Guerra, together with Nicolnaa Rojas who lived with them in their house situated in the barrio of Pangao, town of Ibaan, Batangas, were awakened by the violent opening of the door of the house and the entry of two men, who, after striking a light, seized the owner thereof and tied him by the elbows to a post or upright therein; they then compelled the wife to open her trunk, from which they stole the sum of 3, a pair of earrings, and a coat that was delivered to them by the woman, from whom they further took away two rings that she wore on her fingers. After making a search and turning over the clothes and everything in the house they maltreated Estanislao, who was tied up to the post, by striking and kicking him and scraping his shins with a bolo in order to compel him to disclose the whereabouts of his money. Not being successful in obtaining any, they left the house upon hearing the other thief, who was on watch outside, cry out "pronto, pronto, motar a ese gente" (make haste, kill them).

At the same time that the above-described robbery was being committed in Patella's house, two other individuals, one of them armed with a revolver and the other with a bolo, entered the dwelling of Andres Mendoza, distant about 6 feet from that of Pateña, and after striking a light tied up the owner elbow to elbow and by means of ill treatment tried to force him to deliver up the money in his possession, but as he had nothing to give them they forced the lock of a trunk. After a search, and not find-ing any money, they took away two pairs of trousers, two silk handkerchiefs, and an undershirt, whereupon they left. Mendoza's wife was sick in bed at the time, for which reason she did not notice the thieves.

On complaint being filed by the provincial fiscal charging them with the crime of robbery en cuadrilla, and these proceedings being instituted, the judge? below, on the 18th of October, 1007, entered judgment, sentencing each one of the three accused to the penalty of seven years of presidio correccional to presidio mayor in its medium degree, jointly and severally to pay to Estanislao Pateña the sum of P13 for the money and jewelry stolen from him, and to Andres Mendoza for the goods stolen the sum of PP4,50, to suffer the accessory penalties, and to pay one-third of the costs. From said judgment counsel for the accused has appealed.

The above-stated facts, duly proven in this case, do not constitute the double crime of robbery en cuadrilla, but simple robbery, as defined and punished in articles 502 and 503, paragraph 5, of the Penal Code, inasmuch as several armed thieves, together, and almost at the same time, broke into the houses of Estanislao Pateña and Andres Mendoza, whom they maltreated when demanding money from them, and stole from the former P3 in cash, jewelry and clothing to the value of P13, and from the latter clothing valued at P4.50, in addition to destroying the lock of his trunk

The above attempts against property can not be qualified as robbery en cuadrilla for the reason that each of the

said houses was visited by only two thieves, and near by the house of Pateña there was only one, and as it has not been proven that the five thieves formed one sole band (caudrilla), or whether or not the three who committed the first robbery were the companions of the two who entered and robbed the house of Andres Mendoza the acts should be considered as crimes of robbery committed only by two or three thieves without the qualifying circumstance of cuadrillia inherent to the criminal act.

Notwithstanding the denial and allegations of the accused and the testimony of their witnesses, the record furnishes sufficient evidence of their guilt as the authors of the robbery in question, for in both houses the thieves struck lights on entering, and the owners thereof were able to recognize them thereby; besides, Pateña already knew Caguimbal and Macaraig who used to attend the cockpit of the pueblo of Ibaan, although he did not know their names, so that a few months later—that is, one day in August—upon seeing them in a street of the town of San Jose, Patena. learned their names and denounced them to the justice of the peace. The same occurred to Fortunato Torres who was recognized by Mendoza at the time of the robbery, the latter having found out Torres' name upon seeing him some months later in the market of Batangas, and thereupon denounced him as one of the thieves.

The evidence of the prosecution has not been overcome by the declarations of the witnesses of the defense whose testimony is hardly credible, besides the fact that Fortunato Torres denied that he knew Fausto Macaraig, in contradiction to the statement made by the latter that all three were known to each other for years past, and Fortunato, as declared by himself, had just spent the night in the house of Oaguimbal. And lastly, it has not been shown that the information filed by the complaining parties was due to the instigation of Manuel Hernandez, who, according to the accused, was the person who pointed them out to Sergeant Jose Macatangay, because the latter declared that, when he made the arrest of the accused, it was not Hernandez but Pateña who accompanied him.

In the commission of the crime there should be considered the concurrence of the aggravating circumstances of its execution under cover of the silence and darkness of night, and in the abode of the injured parties without any mitigating circumstance to offset them; therefore, the penalty fixed by the aforesaid paragraph 5 must be applied in its maximum degree.

For the considerations above set forth it is our opinion that the judgment appealed from should be reversed, and that each of the accused should be sentenced to the penalty of ten years of presidio mayor, to suffer the accessory penalties of article 57 of the code, the accused Caguimbal and Macaraig, jointly and severally, to indemnify the married couple Pateña and Guerra in the sum of P16, and Fortunato Torres to indemnify the married couple Mendoza in the sum of P4.50, without subsidiary imprisonment in view of the nature of the personal penalty imposed, and each of the accused to pay one-third of the costs of both instances. So ordered.

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

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