

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EUSEBIO BELLO, DEFENDANT AND APPELLANT.

G.R. No. 4441. October 28, 1908

Ponente: MAPA, J.

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MAPA, J.:

The judgment of the Court of First Instance from which the accused herein has appealed holds him guilty of the crime of robbery, defined and punished by article 508 of the Penal Code, and sentences him to the penalty of ten years and one day of presidio mayor, to pay an indemnity of P1,158.60 and costs.

On the night of the 11th of May, 1904, a robbery was committed in the provincial treasury of Abra; the thieves broke open the windows and carried off two boxes which contained the sum of P3,036, out of which P1,877.40 were subsequently recovered. The accused was a Constabulary soldier and on that night formed part of the guard of the provincial jail, and toward 12 o'clock of the night in question, he was on duty as sentry at the jail gate when several prisoners, accompanied by the corporal of the guard, went out. The robbery was discovered on the following day, and from the investigations made it appeared that the robbery was perpetrated by the aforesaid prisoners, or that at least they had taken a direct part in its commission; it also appeared that, owing to the information given by the accused, the place where a portion of the stolen money had been buried was discovered and about P500 were thus found there. Pending the investigation regarding the robbery in question, it seems that the accused, who was under detention at the offices of the Constabulary, made his escape. This, and this alone is all that appears as proven in the case, and as it may easily be seen, there is nothing in it tending to show that the defendant took a direct part in the commission of the said robbery: After considering the evidence the judge below states in his judgment that:

"The accused may not have taken a direct part in the commission of the robbery, but he assisted in such a manner that without his cooperation nothing could have been accomplished; he was on guard at the jail, and if he had not permitted the prisoners to go out at a late hour at night, they would have been unable to commit the robbery in conjunction with the Constabulary soldiers who accompanied them; he afterwards knew who had perpetrated the robbery and the place where the stolen money had been hidden, and later he made his escape and deserted from the Constabulary; these facts place him in a position to be considered as the author of the robbery in question, which is defined and punished by article 508 of the Penal Code, aside from the fact that his liability also appears in case No. 76, from Abra, against Eulalio Molina et al., for this same crime."

Among the elements upon which conviction in this case is based, those involved in the evidence which, according to the opinion of the judge below, appear against the defendant in case No. 76 prosecuted against other persons, must at once be discarded, as such proofs can in no manner prejudice him, for the simple reason that they were adduced in his absence. One of the essential rights of every person charged in a criminal case is that of being present at the trial, hearing the testimony of the witnesses for the prosecution, and cross-examining them (sec. 15, par. 5, General Orders, No. 58), and this right would evidently be violated if the evidence taken in another case, to which he was not a party and in which he has not been heard, were to be considered to his detriment in this case.

The fact that the accused permitted the prisoners, who afterwards committed the robbery, to go out of the jail, would unquestionably involve criminal liability if it had been done with a knowledge, on the part of the said accused, of their intention to commit the robbery. There is no evidence that he had any such knowledge; on the contrary, the accused declares positively, and has not been contradicted, that he was ignorant of the intentions of the prisoners when they left the jail that night. And he further explains the fact in question, stating that he permitted the prisoners to go out because they were accompanied by the corporal commanding the guard who afterwards informed him that the prisoners had gone out for the purpose of getting fire-wood for making coffee. Whether such permission, given under these circumstances, was lawful or not, is not a question that we are called upon to decide in this case; the fact is, as it appears from the evidence, that it was given in good faith and without malice, inasmuch as the accused was unaware of their plan to commit the robbery. The cooperation that the law punishes is the assistance knowingly or intentionally rendered, which can not exist without previous cognizance of the criminal act intended to be executed.

The fact that the accused knew the place where the stolen money had been hidden is also explained by him by his statement that, as he knew that the prisoners who committed the robbery had brothers and queridas, he informed his captain and lieutenant of the fact with the suggestion that inquiries be made of them, and they in effect pointed out the place where the money was buried. The record contains nothing in contradiction of this statement by the accused; rather on the contrary, the same is confirmed by Harry A. Duryea, at the time a commissary lieutenant of the Constabulary in Bangued, Abra, and a witness for the prosecution, who testified that, owing to the information given by the accused, about P500 of the stolen money were recovered. Notwithstanding the fact that this witness does not appear to have been very explicit when describing the manner in which the defendant gave the information, it may however, be deduced from his testimony that it was with the intent and purpose to contribute toward the success of the investigation that was being made by the Constabulary officers, inasmuch as he expressly qualifies the act as assistance rendered therein by the accused, to such an extent that, on account of said assistance, as the said witness testified, the defendant was not imprisoned at the time but simply placed under guard at the offices of the Constabulary, notwithstanding the suspicions of complicity in the robbery at first entertained against him. This fact induces us to believe that the information or the knowledge of the place where the money had been buried, was actually obtained by the accused in the form and manner stated in his testimony. At any rate there is no proof to the contrary, and much less as to the allegation that the accused took any part in the burying of the money. Therefore, there is no foundation for any charge against him in connection with the matter.

As to his escape, the defendant declares that he made it for the purpose of taking his wife to San Juan, "because, as he said, there were fears that we, the members of the jail guard, were to be exiled." Not taking into account the value that such an explanation may have, the defendant's escape, which as a matter of fact took place long after the robbery had occurred, does not constitute conclusive evidence of his culpability, and hence it can not serve as a basis for his conviction.

The judgment appealed from is hereby reversed, and it is ordered that the defendant be immediately released, with the costs of both instances de oficio. So ordered.

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

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