

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MELECIO MABILING, DEFENDANT AND APPELLANT.

G.R. No. 4978. March 01, 1909

Ponente: CARSON, J.

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CARSON, J.:

The accused was convicted of the crime of robbery with force and violence, as defined and penalized in paragraph 4 of article 503 of the Penal Code, and sentenced to twelve years and one day of presidio mayor, with the accessory penalties prescribed by law.

On the night of Sunday, the 29th day of June, 1908, two unknown persons entered the house of the complaining witness, Vicente Llorin, in the barrio of San Pedro, of the municipality of Pagbilao, in the Province of Tayabas. They were accompanied by a third person who remained at or near the door of the house, at the head of the steps which led up to the door. The only occupants of the house were Llorin and his wife. After having lighted a lamp, which they found in the house, the robbers awakened Llorin and his wife, one of them placing the point of his bolo against Llorin's breast; Llorin succeeded in wresting this bolo from the hands of his assailant, but he was overcome in the fight which ensued, and with his arms tied behind his back was thrown helpless upon the ground. In the course of the fight he received ten wounds on his hands, arms, and body. The robbers demanded money, and took by force from a belt around the woman's body the sum of one peso, which was all the money in the house, and immediately thereafter took their departure.

The third person who accompanied the two who entered the house took no active part in the commission of the crime, but stood awaiting his companions, at or near the door. Llorin and his wife both testified that they saw and recognized this person by the light of the lamp, and that he was the accused, Melecio Mabiling, a neighbor with whom they had been acquainted for many years. The husband stated that at the time of the robbery the accused wore the same clothes which he had on at the time of the trial; that he did not have on a hat; and that the only thing he said or did was to ask his companions if he, Vicente Llorin, had yet been tied, to which he received an affirmative answer. The husband also stated that the accused stood at the side of the door above the steps while his companions were within the house, and that he recognized him por su traje, su cara y la forma de su cuerpo. The wife testified, among other things, that the accused wore a hat, and that at the time of the robbery he was standing on the steps listening to what was going on, with his body half through the door, and that the only thing the accused said was to ask his companions why they did not throw the man on the ground "with his mouth downwards."

The accused, Melecio Mabiling, is a laborer, whose house is not more than a quarter of a mile from the house in which the crime was committed. In the month of March, a few months prior to the robbery, he was seriously wounded in a fight, and was under medical attention until the 15th of April, at which time, according to the testimony of the doctor, his wounds had not yet healed. At the time of the commission of the crime he was able to walk, but with difficulty and with the aid of a cane. He testified that he spent the night during which the crime was committed in the house of a neighbor, Mateo Cabrera, where he had gone to borrow a rope, and that he had not

returned to his own house on that night because of the inclemency of the weather, to which he did not dare expose himself as his wounds had not yet completely healed. Cabrera and his wife positively and definitely corroborated his testimony in this regard, the wife adding that having been awakened by her child about midnight, she saw the accused who was at that time asleep; and that the following morning he left the house with the rope which he had come to borrow the night before.

There can be no reasonable doubt that the crime of robbery was committed substantially as described by the complaining witnesses. The only question is as to the accuracy of their identification of the accused as the person who was standing at the door at the time of its commission. The house or cabin where the crime was committed consisted of but one room, so that the light of the lamp should have rendered it easy for the complaining witnesses to identify the accused if it be true that he exposed himself, while he was standing at the door at the time when the robbery was being committed, and yet the contradictions which we find in the very simple story which they related, and the clear and positive testimony of the witnesses to the alibi set up by the accused, are such that we do not think we can hold that the testimony of record established the guilt of the accused beyond a reasonable doubt.

The husband and wife differed in their account of what was said by the accused; the husband testified that the accused did not wear a hat, and that he was standing above the stairs and beside the door, while the wife testified that the accused did wear a hat which she described, and that, while his companions were within the house, he was standing on the stairs with his body halfway through the door. It is not impossible or perhaps improbable that the witnesses were testifying truly as to their recollection of what occurred and what they saw, for it might well be that in the struggle within the house, their attention was not directed to the person standing at the door and to what he said, at the same time; but we are inclined to think that these apparent contradictions are sufficient to raise some doubt as to whether both of the witnesses did in fact see the person standing at the door and identify him as the accused. Both testified that the person who was standing at the door took no direct part whatever in the commission of the crime, and no satisfactory reason is suggested, which could have induced the accused, who knew that he was well known to his neighbor whose house was being robbed, to expose himself to identification with his hat off, as testified by the husband, or to push his body through the door in the full light of the lamp, as testified by the wife. That the accused at the time of the robbery was still suffering from the severe wound he had received some months before, was conclusively established, and there would appear to be a certain element of improbability in the contention of the prosecution that he accompanied the robbers on that occasion to the very door of the house; for, while he might have gone with them, either as a guide, or to aid and assist them by watching on the outside, on neither supposition would it appear advisable or necessary for him to mount the steps and expose himself to identification at the very door of his victims, especially in view of his physical condition, which forced him to walk with the aid of a cane.

The witnesses for the defense were definite and positive in their testimony as to the whereabouts of the accused on the night of the robbery, and their evidence is in nowise impeached save only by the contradiction of the complaining witnesses involved in their identification of the accused as one of those who took part in the robbery. In view of all the testimony, and taking into consideration the possibility of mistake on the part of the complaining witnesses, and the possibility of malice, which is suggested by the statement of the accused that he received the wounds from which he suffered in a fight with a relative of the woman who was robbed (a fact which was contradicted but not satisfactorily proven or disproven), we feel ourselves compelled to give the accused the benefit of the doubt and to find him not guilty of the crime with which he was charged.

The judgment and sentence of the trial court are reversed with the costs of both instances de oficio and the accused will be set at liberty forthwith.

Arellano, C. J., Torres, Mapa, Johnson, and Willard, JJ., concur.

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