

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALEJANDRO CAS, DEFENDANT AND APPELLANT.

G.R. No. 5071. August 18, 1909

Ponente: CARSON, J.

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CARSON, J.:

The information in this case charges the commission of the crime of robbery, as follows:

"That the said accused, on or about the 18th day of July, 1908, in the municipality of Oas, Province of Albay, P. I., did maliciously, intentionally, and feloniously, with intent of gain and abuse of confidence, by means of force in an inhabited house, burst open and break a wooden box, and take, steal, and appropriate therefrom, in addition to other important papers, the sum of two hundred and fifty pesos (P250) that were kept therein, all of which belonged to Padre Antonio Elia, who has been prejudiced in the said amount; all contrary to law."

The trial court found the defendant guilty of the crime of robbery, marked with the single aggravating circumstance that the offense was committed in the house of the complaining witness, and sentenced the defendant to three years, six months, and twenty-one days of presidio correccional, together with the accessory penalties prescribed by law.

The evidence of record fully sustains the findings of fact by the trial court, and from those findings it appears that the crime was committed at night in the manner and form set out in the information, the defendant, at the time of the commission of the offense, being a guest in the house of the complaining witness, with free access to the sleeping room wherein the box containing money was kept, as a result of the friendly and confidential relations existing between the guest and his host.

These facts clearly sustain the allegation of the information that the commission of the crime was marked with the aggravating circumstance of abuse of confidence, set out in subsection 10 of article 10 of the Penal Code; and further that advantage was taken of the darkness of the night as an aid to the successful execution of the acts constituting the crime; but the fact that the crime was committed in the house of the offended person should not in our opinion be taken into consideration as an aggravating circumstance in fixing the penalty to be imposed, because the commission of the offense in an inhabited house is an essential element of the crime, defined and penalized in article 508 of the Penal Code, of which the defendant was charged and convicted, and it would not be proper to take into consideration the fact that it was committed in an inhabited house so as to bring it under the comparatively severe penalties prescribed by that article, and then to take into consideration a second time the fact that it was committed in an inhabited house, to wit, that of the owner of the stolen property, to still further increase the penalty.

Counsel for the accused in the trial court contended that since it does not appear that the accused (in the language of article 508 of the Penal Code) "introduced himself" into the house for the purpose of committing the robbery, there is no authority for the imposition upon him of the penalty prescribed in that article. This interesting contention deserves some consideration, for it will be seen that the article in question, if we consider only the

form in which it is cast, affords some basis for the claim that the "entering" the house for the purpose of committing robbery is an essential element of the crime.

The article is as follows;

"ART. 508. Those who should with arms rob an inhabited house or public building, or one dedicated to religious worship, shall be punished with the penalty of presidio mayor in its medium degree to cadena temporal in its minimum degree, if the value of the articles stolen should exceed one thousand two hundred and fifty pesetas, and the male-factors should have entered the house or building where the robbery was committed, or any of its dependencies, by one of the following means:

"1. By wrongful entry.

"2. By breaking through a wall, ceiling, or floor, or by forcing a door or window.

"3. By making use of false keys, picklocks, or other similar instruments.

"4. By breaking open doors, wardrobes, etc., coffers, or any other kind of furniture or locked or sealed objects, or by taking the same away to be broken or forced open outside the place of robbery.

"5. By making use of fictitious names or simulation of authority.

"If the malefactors should not carry arms and the extent of the robbery should exceed one thousand two hundred and fifty pesetas, the penalty next lower shall be imposed.

"The same rule shall be observed if the malefactors shall carry arms but the extent of the robbery does not exceed one thousand two hundred and fifty pesetas.

"If they do not carry arms, nor does the extent of the robbery exceed one thousand two hundred and fifty pesetas, the penalty prescribed in the two preceding paragraphs shall be imposed on the culprits in its minimum degree."

It will be seen that, in form, subsection 4 appears to be dependent on the last provision of the first paragraph of the article in precisely the same manner as are subsections 1, 2, and 3; but upon consideration of the true sense of the various provisions of the article, it becomes clear that subsection 4 touching the breaking open of doors, wardrobes, coffers, etc., within the house, could not have been intended, as are the other subsections, to specify means whereby a house may be entered; and is not, therefore, controlled by those provisions of the introductory paragraph in regard to the mode of entry into the house wherein the robbery is committed.

The following citations from decisions of the supreme court of Spain fully and satisfactorily dispose of this contention of counsel for the accused, and render further discussion at this time unnecessary:

"Whereas, under the provisions of article 515 of the Penal Code, those who with intent of gain shall take possession of personal property belonging to another, employing violence or intimidation of the persons, or force with regard to the things, are guilty of the crime of robbery; it being understood that force has been employed in taking possession of a thing when doors, wardrobes, coffers, or other kinds of furniture or objects, closed or sealed, are burst open, or stolen for the purpose of being broken open or forced outside of the place where the robbery was committed; whereas the crimes committed by the accused, Manuel Bouzan Gallo, deserve this legal qualification, and not that of theft as classified and punished by the audiencia provincial de San Sebastian, because the acts performed by him and which appear in the verdict of the jury, consist of having forced, by means of a small lever or nail, the top of the poor box in the church of Irun, appropriating to himself the money therein contained, determine the employment of force which characterizes the crime of robbery, which acts having been carried out on three different occasions constitute as many separate crimes; whereas the conditional phraseology of article 521 of the Penal Code is not a bar to the qualification as robbery of the

deeds that gave rise to the appeal, because said provision does not refer to No. 4 of said article in view of the incongruence of both precepts, inasmuch as the former deals with robberies perpetrated in buildings forcibly entered by the guilty parties in the manner stated therein, and the latter refers to those where the crime is committed by forcing or breaking open the furniture, methods distinct from those used to enter a place as has been held by this tribunal; whereas, by virtue thereof, the audiencia that rendered the decision has committed an error of law and violated the legal provision invoked by the Attorney-General in his appeal, etc." (Judgment of March 6, 1897, published in the Gazette of the 27th of the same month and year, p. 212.)

"Whereas the methods employed in entering the place where the robbery was committed, described in article 521 of the Penal Code, are not precise elements and conditions for all such cases as are defined in No. 4 thereof, inasmuch as some of them from their nature exclude said circumstance, and therefore, when an act that is expressly defined in said number is performed, the crime of robbery exists even though the guilty person may not have entered the place of the crime by the possible means that are named therein; whereas the deed committed by Paulino Jimeno is comprised within those enumerated in said No. 4, and that consequently an error of law was committed in the classification, and the articles cited as the basis for the appeal have been violated, etc." (Judgment of February 5, 1896, published in the Gazette of the 19th of November, p. 294.)

"The same principle is established in another subsequent decision: Whereas this last circumstance is present in the case at bar, because the jury held in answer to the first question that the accused did steal from the house of Nicanor Lozano several articles of clothing that were in a trunk owned by the latter, employing force in order to do so by breaking the lock thereof, it is unquestionable that the act so executed should be classified as robbery as coming under No. 4 of article 521 of said code, which case does not require that entry into the place of the robbery shall be effected by any of the means described in the other numbers of said article; whereas in view of the fact that the trial sala did not so consider it and that it classified the crime as theft, not as robbery, it committed an error of law, or violated the legal provisions invoked by the Attorney-General in the appeal interposed, etc." (Judgment of July 2, 1896, published in the Gazette of the 17th of January, 1897.)

In this connection, it is worthy of observation that the somewhat imperfect form in which the article is drawn may perhaps be accounted for by the fact that the sub-section under consideration was not found in the Spanish Code of 1850 and was originally introduced by the reformers of 1870.

The penalty prescribed in article 508 for the crime committed by the defendant is the minimum degree of the penalty immediately inferior to that prescribed for those who, with arms, rob an inhabited house of property the value of which exceeds 1,250 pesetas, that is to say, presidio correccional in its medium degree; and the commission of the offense being marked with the aggravating circumstances of nocturnity and abuse of confidence, with no extenuating circumstances, this penalty should be imposed in its maximum degree, that is to say, from three years, six months, and twenty-one days to four years and two months of presidio correccional.

The sentence imposed by the trial court is within the limits prescribed by the code, and the findings as to aggravating circumstances having been modified by substituting those of nocturnity and abuse of confidence for that of the commission of the crime in the house of the offended party, the judgment and sentence thus modified should be and are hereby affirmed, with the costs against the appellant.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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