

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

G.R. No. 5255. March 15, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

The defendant was convicted, in the Court of First Instance of the Province of Leyte, of the crime of robbery. He was the muchacho of Lieutenant Prueyn, of the United States Army. The house where the robbery occurred was occupied by Lieutenant Prueyn and Captain Taylor, with their muchachos, who were the defendant and another. Lieutenant Prueyn on the 4th day of December, 1908, had in his possession certain funds of his company, which, together with money and jewelry of his own, was on said date kept in a strong box in the house aforesaid. On the night of said December 4th, at about 12 o'clock, said strong box was found broken open and the money and jewelry gone. It was conclusively proved on the trial that the box had been opened by means of a hatchet which was kept in the house. The marks upon said box corresponded with the size of the hatchet's edge and the hatchet upon being examined was found stained with the red paint with which a portion of said strong box was covered at the time it was forcibly opened.

The defendant was convicted upon circumstantial evidence. No one saw the crime committed and none of the property has been discovered. The following facts and circumstances were used by the court below to convict the defendant:

Lieutenant Prueyn left the house on the afternoon of the 4th of December at 5 o'clock and did not return until about 12 o'clock of the same night. When he left the house the strong box was securely locked and he carried with him the only key thereto. Only four persons lived in the house - Lieutenant Prueyn, Captain Taylor, the defendant muchacho of Lieutenant Prueyn, and Agaton, muchacho of Captain Taylor. These two muchachos did not ordinarily remain in the house at night, but at the end of each day, after serving at supper at the residence of the colonel of the regiment, went to their respective homes to pass the night. Before leaving the house on the day in question Lieutenant Prueyn had sent the accused to the village after a horse.

On the morning after the robbery the accused did not return to the house at the usual time, but remained away until 9 o'clock. On arriving at the house he appeared to Lieutenant Prueyn to be very nervous and on entering his room told him that the box had been broken open and that he was very much afraid. Upon being questioned by the lieutenant as to when he returned from the village where he had been sent for the horse, he stated first that he had returned at 7.30 o'clock, then at 7 o'clock, and then at 6 o'clock, and then at 6.30 o'clock. Ordinarily the accused did not appear nervous nor did he prior to the robbery appear to be of a nervous temperament.

The accused knew that the box contained money and jewelry, as he had many times seen Lieutenant Prueyn open it and take out considerable sums of money and had seen him close it up, leaving large sums of money and valuable jewelry therein. The hatchet with which the box was forced was the one usually kept in the house for the ordinary uses of the occupants, particularly the servants, and was always kept in a particular place in the house. So

far as appears from the evidence, nobody knew where the hatchet was kept in the house except the two occupants and their muchachos, one of whom was the accused. After the robbery the hatchet was found in its ordinary place in the room where it was usually kept. Immediately after the discovery of the robbery Captain Taylor and Lieutenant Prueyn, observing that the box had been opened with an instrument resembling a hatchet, got the hatchet and discovered that it had upon its blade and nose marks of the red paint with which the strong box was covered. They observed also that the marks and indentures made upon the box were closely fitted by the various portions of the hatchet. Prior to the commission of the robbery no such paint marks had been observed upon the hatchet.

It was the custom of Captain Taylor and Lieutenant Prueyn to leave the house at about 6 o'clock to go to the colonel's apartments for their supper. Sometimes Agaton closed the house; sometimes the accused. Ordinarily after having served supper the servants, including the accused, did not return to the house but went directly to their own homes. The proofs show that the servants never returned to the house without orders. Upon the night of the robbery there was no order to the servants to return to the house.

The accused knew that Lieutenant Prueyn was going for a walk on this particular night, and he also knew that when he did go for a walk he was usually away about three hours. When not taking his walk the lieutenant was usually absent from the house from one and one-half to three hours. Prior to the robbery the lieutenant had missed from his pocket a P20 bill. This was the only time any of his property had disappeared. The accused usually borrowed money of the lieutenant during the month in anticipation of his salary.

Captain Taylor left the house on the afternoon of the robbery at about 6 o'clock to get his supper at the colonel's. Ordinarily Agaton, who served at the colonel's table, left the lieutenant's house at about 6 o'clock or a little before, while the accused remained at the house until a little later, when he too went to assist with the supper at the colonel's house. On the night of the robbery Captain Taylor arrived at the colonel's house at about 6.30 o'clock and found there Agaton, whom he saw there until a little after 7. When he left the lieutenant's house at about 6 o'clock Agaton had already gone, but there still remained in the house another person, who, while not seen by the captain, was taken by him to be the defendant. The captain returned from his supper to the lieutenant's house at about 7 o'clock. On arriving there he found the accused. It was not usual or customary for the accused to be there at that time of night. The captain seated himself at a table to read. While so seated the accused two or three times entered the room in which the hatchet was kept and passed several times through the room in which the captain was seated, going from one thing to another in the room and appearing to be very nervous. The conduct of the accused being very unusual, the captain ceased reading and observed him, whereupon the accused, noticing that he was observed, stopped and asked him when Lieutenant Prueyn would return. The captain replied that he did not know. The captain remained at the house until twenty minutes past 9, when he went to the house next to the one occupied by him, located about 30 or 35 yards therefrom, returning before 10. While at that house he would have been able to hear very easily the sounds which would necessarily have been made in forcing open the strong box in the manner in which it was found to have been opened. He heard no such sounds while there. He returned to the lieutenant's house before 10. At 11 o'clock he went to bed. While in the room he was about 24 feet from the strong box. He was thus in a position from 7 o'clock until the discovery of the robbery where he would undoubtedly have heard the noise which would necessarily have been made in opening the box. He heard no such noise. The robbery, then, must have been committed before 7 o'clock. The accused was at the house from 6 to 7.

The servant Agaton was continuously at the lieutenant's house until 6 o'clock, when he went to the colonel's house to prepare supper. When he left the house the accused was still there. Captain Taylor was also there. Immediately after supper at the colonel's house Agaton went to his own home to pass the night. He did not return to the lieutenant's house that night.

Miss Nellie H. Weeks, who was a witness on the trial, testified that from about 6.20 to 7 o'clock she was on the balcony of her house, which was located about 100 yards from the house of Lieutenant Prueyn. While seated there she heard sounds of blows coming from the house where the robbery occurred. The sounds lasted five or six minutes. They were frequent and successive. It sounded to her as if someone was trying to knock something to pieces.

From the proofs it thus appears that:

- The accused was one of four who knew that the strong box contained a large sum of money and some jewelry.
- The strong box was broken open with the hatchet belonging to the house.
- The accused was one of four who knew that there was a hatchet in the house and the place where it was located.
- None of the other three committed the crime.
- The robbery must have been committed between 6 and 7.
- The accused was in the house alone from 6 till 7.
- Between 6 and 7 sounds such as would naturally result from forcing the strong box in the manner in which it was found to have been forced were heard to proceed from the place where the robbery occurred.
- The accused did not return to his duties at the usual time on the morning following the robbery.
- The conduct and appearance of the accused at 7 o'clock, when observed by Captain Taylor, and the next morning, when questioned by Lieutenant Prueyn, were unusual and significant.

Upon the whole case we can not say that the court below was wrong in his conclusion as to the defendant's guilt. We accordingly affirm the judgment appealed from, with costs against the appellant. So ordered.

Torres, Johnson, and Carson, JJ., concur.

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