

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DIONISIO BARROGA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6516. January 10, 1912

Ponente: TORRES, J.

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TORRES, J.:

This appeal was taken by the five defendants, from the judgment of conviction rendered in this cause by the Honorable Judge Dionisio Chanco.

Between 7 and 8 o'clock of the evening of March 27, 1910, four men assaulted the house of the spouses Basilio Longino and Leona Fontano, situate in the pueblo of Vigan, the capital of the Province of Ilocos Sur, when the owners of the house were absent and the only occupants thereof were Ruperta Longino, a girl 13 years of age, a daughter of the said couple, and her grandmother, Benita Manuel, who was in the kitchen. On appearing at the house, the robbers asked for some water to drink and when Ruperta gave it to them, one of the men threw it into the fireplace and the others immediately put out the light. As the grandmother Benita Manuel reprehended them for their conduct, they ill-treated her and some of them struck her with a stick while the others choked the girl and blindfolded her. The said men then seized a trunk belonging to Leona Fontano; it was locked and its owner had the key. They carried the trunk outside, where it was afterwards found, on the same night of the robbery, in a vegetable garden at a place east of the said house. It had been broken open and P42 in cash, jewelry and wearing apparel worth about a hundred pesos, were missing. As a result of the ill-treatment to which the old lady, Benita Manuel, was subjected, her left forearm was broken, her chest was bruised and her head swollen. She testified that she was ill for more than a month and was unable to work for thirty days.

Subsequently a complaint was filed in the Court of First Instance of Ilocos Sur, charging the said five defendants with the crime of robo en cuadrilla, and the court, in view of the evidence adduced, sentenced each of the accused to the penalty of eight years and one day of presidio mayor, to the accessory penalties, to pay an indemnity of three pesos to Benita Manuel, to restore the articles recovered, or to pay the value of the property not recovered, and to pay the costs. From that judgment the defendants appealed to this court.

The facts related, fully proved in this case, show the crime to be that of robbery, provided for and penalized in articles 502 and 503, No. 5, of the Penal Code, inasmuch as in the evening of March 27, 1910, five individuals assaulted the house of Basilio Longino and Leona Fontano, during their absence, and, after having maltreated their daughter, Ruperta Longino, and said Ruperta's grandmother, Benita Manuel, seized and carried away a trunk belonging to the said couple, which was afterwards found broken open, at a place some distance from the house and in a vegetable garden, and from which were missing P42 in cash, some jewelry and wearing apparel, the latter valued altogether at about P100.

The criminal act should not be classified as robbery en cuadrilla, for the reason that the record does not show that the four persons who committed the crime were all armed; one of them, only, was seen to carry a stick, and article 505 of the code requires that four or more armed persons unite in the robbery. Neither may the crime be held to be

comprised within paragraph 4 of the said article 503, for the injury inflicted upon Benita Manuel can only be classified as *menos grave*; the physician who attended her from the beginning so classified the wounds and testified that after he had set the fractured bone and had treated her two or three times, she returned home and he did not see her again, though he believed that she could not have engaged in her habitual labors during a period of thirty days. Therefore these wounds must be classified simply as *lesiones menos graves*.

Notwithstanding the denial of the defendants Lucas Villaros, Proceso Ramos and Dionisio Barroga, and that these defendants pleaded not guilty, yet withal the case furnishes decisive and conclusive evidence of their guilt as principals, by direct participation, in the crime of robbery under prosecution. The record shows that Lucas Villaros and Proceso Ramos, while inside the assaulted house, were identified by the girl Ruperta Longino, though Benita Manuel did not succeed in recognizing any of them, for the reason, she said, that on account of old age her sight was very poor. Besides this identification, the said two defendants, Villaros and Ramos, while they were held under arrest as alleged principals in the robbery in question, of their own free will and accord confessed, before the municipal president of the pueblo, Jose Villanueva, and the chief of police, Alejandro Quirolgico, their participation in the said crime, as testified by these latter; and counsel for these defendants did not prove that the confessions, made before the officials mentioned, were obtained by any maltreatment or intimidation on the part of the policeman Jose Parel; the defendant Ramos did not deny nor disprove the testimony of the aforementioned municipal president and chief of police concerning the confessions; it was not shown that Villaros received the slightest injury in consequence of any maltreatment such as the defense alleged was inflicted upon him by the policeman Jose Parel, who denied that he ill-treated this defendant; and, in view of the fact that these defendants neither complained of such maltreatment to the chief of police or to the municipal president, before whom they made the confessions aforementioned, nor reported the same to the justice of the peace during the preliminary investigation in the case, it is concluded that these defendants did confess to the municipal president and the chief of police of the pueblo that they took part in the robbery in question, and that they so confessed voluntarily, there being no coercion, violence, or maltreatment employed, as they afterwards maliciously alleged for the sole purpose of destroying the evidence of the prosecution and saving themselves from conviction. And if to these facts it be added that certain wearing apparel, which was identified by the offended party as being among the articles robbed from the said trunk, was found in the possession of Lucas Villaros, considering the other evidence of the prosecution of record, the mind is convinced of the guilt of the said defendants, Lucas Villaros and Proceso Ramos, as principals in the robbery under prosecution.

With respect to Dionisio Barroga, the evidence shows that he also confessed before the municipal president, Jose Villanueva, and the chief of police, Alejandro Quirolgico, to being one of the malefactors who committed the said robbery and that he had in his possession some of the jewelry; these facts were corroborated by the said president and chief of police, who both testified that Barroga confessed the crime of his own free will and that some jewelry was found in his possession which was afterwards identified by the offended party, Leona Fontano, as belonging to her and being a part of the jewelry taken from her trunk which had been broken open by the robbers.

This defendant's counsel alleged that his client confessed to having taken part in the crime because the said chief of police maltreated and threatened him; but, in the investigation made in this matter, Barroga testified that he had not suffered any injury or bodily harm whatever, which would be incredible were it true that he had been maltreated as he stated. Moreover, on making the said confession before the municipal president, and afterwards in testifying before the justice of the peace, he made no complaint of such maltreatment nor did he report the violence to which he had been subjected for the purpose of compelling him to confess his participation in the crime, were it true that any violence was exercised upon him.

As regards Barroga's allegation that the jewelry found in his possession belonged to his wife Estefania Manzano,

notwithstanding that it was identified as being a part of that taken from the offended party Fontano, the record shows that the defendant's wife denied that a certain ring was hers and she also stated that she doubted whether a pair of earrings belonged to her, both of which were among the articles seized in her house. All this furnishes conclusive proof of the guilt of this defendant as a principal in the said crime, not only by his confession made before the municipal president and the chief of police, but also by the seizure in his possession of some of the jewelry stolen.

Against the other defendants, Pedro Alisas and Lucas Barroga, the record does not contain sufficient evidence, even circumstantial, to show that they participated in the robbery.

Pedro Alisas was arrested because he was under suspicion and was living in the neighborhood of the house robbed, and though, according to the policeman Jose Parel, Alisas confessed the crime to him and said that he had hidden in a sugar-cane field the three pesos that were his share, and told him that his companions were Siso Ramos, Dionisio Barroga and one named Lucas, yet the said Alisas testified that he was led to confess and implicate the parties mentioned by the said policeman, and that the P3 which he pretended to have recovered from the sugar-cane land as being a part of the stolen property, were his own and came from his pocket. If this defendant had taken part in the crime, he would have been identified by the offended parties, especially by the girl Ruperta Longino, who identified two of the malefactors, since Pedro Alisas lived in a house near that in which the crime was perpetrated, frequented the latter and, according to this girl, is a cousin of her mother; this witness, therefore, would have seen him, had he been among the robbers in the house.

The only evidence implicating Lucas Barroga is the testimony of the municipal president, who stated that this defendant, when arrested, confessed to him that he had taken part in the commission of the crime, and although the threats which Barroga averred had been made to him were not proved, yet the record does not show that any of the stolen articles were found in his possession, nor that he was recognized as one of the robbers.

A defendant in a criminal action shall be presumed to be innocent until the contrary is proved, and, in case of a reasonable doubt that his guilt is satisfactorily shown, he shall be entitled to an acquittal. (Sec. 57, General Orders, No. 58.)

In accordance with this legal principle, the two defendants last mentioned, Lucas Barroga and Pedro Alisas, should be acquitted, since the record does not disclose conclusive and satisfactory proof that they took part in the robbery in question, and even were their innocence doubtful, no legal reason exists for their conviction and they must be acquitted.

In the commission of the robbery in question, account must be taken of the attendance of the aggravating circumstances of its having been perpetrated at night and in the dwelling of the offended parties, with no extenuating circumstances to offset the same; therefore, the penalty must be imposed upon the convicted principals in the maximum degree of that specified in paragraph 5 of the aforesaid article 503 of the Penal Code.

With respect to the first of the errors assigned to the judgment appealed from, it was not proven at trial that the confessions made before the local authorities by the three convicted defendants were obtained through intimidation, violence, threats or promises, and therefore it is held that they were freely and voluntarily made and must be accepted as proof of the crime charged and of the guilt of its perpetrators. (Sec. 4, Act No. 619.)

The act of displaying before an offended party, for his identification, articles seized in the possession of the alleged perpetrators of a robbery or theft, is lawful and is not prohibited by the law of procedure, and questions leading to the identification of the said articles may be asked such offended party; therefore the trial court, in proceeding in the manner stated, did not err.

For the foregoing reasons, and concluding that thereby the other errors assigned to the judgment appealed from are refuted, we hereby sentence the defendants Proceso Ramos, Lucas Villaros and Dionisio Barroga to the penalty of eight years and one day of presidio mayor, to the accessory penalties, to restore the unrecovered articles robbed or to pay their value, jointly and severally, in the sum of P42 and also to pay, jointly and severally, the sum of P7.50 as indemnity, to the injured party Benita Manuel, without subsidiary imprisonment in case of insolvency, in view of the nature of the penalty; they shall also each of them pay one-third of the costs of both instances. The other defendants, Pedro Alisias and Lucas Barroga, are acquitted, with their share of the costs de oficio. The judgment appealed from is thus affirmed, in so far as it is consistent with this decision, and in so far as it is not, it is reversed. The defendants Pedro Alisias and Lucas Barroga shall immediately be set at liberty by an order of release addressed to the Director of Prisons, should they not be held for any other cause.

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

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