

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TEOFILO OSORIO, DEFENDANT AND APPELLANT.*G.R. No. 6660. January 17, 1912*

Ponente: TORRES, J.

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Appeal by Teofilo Osorio from a judgment rendered by the Honorable Adolph Wislizenus.

On February 14, 1910, in the town of Dalaguete, Cebu, Teofilo Osorio, clerk of the Cebu police force, entered into a scheme with Mateo Navarro, municipal policeman of Cebu, and Bartolome Dicdiquin, municipal policeman of Dalaguete, for the purpose of getting money by intimidation from a Chinaman, Yap Buyco or Yap Buya. To do this, the defendant arranged that his younger brother, Simplicio Osorio, should put a can, with some opium in it, in the said Chinaman's store. After this had been done, Teofilo Osorio at once repaired to said store with the two policemen, Navarro and Dicdiquin, pretending that he was the chief of police. Navarro was at the time carrying a revolver. They proceeded immediately to search said store, without being provided with the necessary search warrant or warrant of arrest. After having moved and examined various articles and boxes in said store, they found the can of opium, previously placed therein, and Teofilo Osorio, aided by Navarro, began to intimidate the Chinaman who owned the store by telling him that he would be arrested, charged with illegal possession of opium and taken to jail, unless he produced the sum of P1,000. But later, through the mediation or intercession of other Chinamen, friends of Yap Buyco, Osorio finally consented to reduce the sum demanded to P300, and it was forthwith paid by the Chinaman to the sham officers, Osorio and Navarro. Osorio then told Yap Buyco not to worry about the opium found in his store, because he himself would be responsible, and they went away. Osorio kept the P300, merely giving P10 to the other policeman, Bartolome Dicdiquin, who had stood guard at the door of the store during the search.

An information was accordingly filed by the provincial fiscal against Teofilo Osorio and Mateo Navarro, charging them with the crime of robbery; but later, at the fiscal's request, the court dismissed the case against Mateo Navarro and tried only the case against Teofilo Osorio. Judgment therein was rendered on September 2, 1910, sentencing the defendant to the penalty of three years, eight months and one day of prision correccional, with costs. From this judgment the defendant appealed.

The facts stated, and duly proven in this case, point to the crime of robbery, committed by means of intimidation of the person of the Chinaman Yap Buyco, which is provided for and punished by articles 502 and 503, No. 5, of the Penal Code; for by threatening the person of the injured party the thief succeeded in securing the sum of P300, delivered through the former's fear that if he did not do so, he would be arrested and turned over to the courts as a smuggler and possessor of opium, which the defendant claimed to have found in his store.

The crime prosecuted is not estafa, but, as has been said, robbery with intimidation of the person of the injured party. The facts are analogous to those which led to a case wherein judgment was rendered on appeal, dated June 24, 1875, as follows: An individual presented himself in the houses of various residents and demanded money on

the pretext that it was for a gang of outlaws in the neighboring hills, for which he had been commissioned by the gang; and he accordingly received various sums of money from those people. The supreme court of Spain declared that the facts related constitute the crime of robbery with intimidation of the persons, and stated that: The essential element in the crime of estafa is the artful cunning employed by a person who is endeavoring thereby to deceive his intended victim, and accordingly such astuteness or cunning excludes all idea of intimidation, violence or other means of like nature which restricts or hinders the exercise of the will, as it remains free and independent, however it may be unsettled and confused by suggestions, circumstances which also concur in the frauds provided for by the Penal Code.

"The defendant, in demanding the sums he succeeded in securing from different parties, whether or not the existence of such a gang was a fact, accomplished his purpose by means of threats of the injury the outlaws might cause the persons to whom he applied if they did not contribute what he asked."

Intimidation was present, and the acts he performed can not legally be held to constitute estafa or fraud.

In another judgment, November 3, 1882, the same supreme court held that: According to article 515 of the Penal Code of Spain, identical with 502 for the Philippines, robbery is committed by persons who, for the sake of gain, take possession of the personal property of others with violence or intimidation of the persons. Intimidation, which characterizes as robbery the seizure of the personal property of another, is present whenever to obtain the same acts are performed which, either in their own nature or by reason of the circumstances under which they are executed, inspire fear in the persons against whom they are directed.

The Chinaman Yap Buyco or Yap Buya was startled by the finding of a quantity of opium in his store, when he knew that he did not have any such article therein, and it is natural that he was overcome with fright, foreseeing that as a prisoner charged with smuggling he would, after the trouble incident to a trial of greater or less length, incur the personal and pecuniary penalties provided by law. So it is not strange that he was seized with dread that he would be tried, sent to prison, ruined in his business and finally punished as a smuggler, in spite of the fact that the opium found by the individuals, who appeared in his store and searched it with the character and appearance of officers of the law, was not his; and so he felt obliged to accede to their demands by delivering to them the sum which would induce them to agree that he should not be arrested and that the mock arrest for possession of opium be not reported to the proper authorities. The Chinaman was therefore placed in the same position as the persons who had to give money through fear of the injury that might be done them by outlaws, in whose name the demand for the money was made.

With reference to the influence exerted upon and the intense fear produced in the mind of the victim, no great distinction can be made between the procedure of sham officers of the law and outlaws who commit a robbery; the latter jeopardize life by their attempt, while the former by their acts deprive the injured parties of their property and commit the crime through the respect inspired by the belief that they represent the law.

Neither can the crime in question be characterized as threats, because such crime depends upon the moral pressure which threat of future injury exerts upon a person to obtain, at some future time, the end sought. When the crime consists in materially taking possession of or securing, on the spot, the delivery of the money or other personal property, through the effect of fear or fright which imminence of the injury threatened produces in the mind of the person intimidated, the nature of the penal act is altered and constitutes, not threats but the crime of robbery with intimidation defined by article 515 of the Penal Code of Spain, identical with 502 for the Philippines; and the facts should be so characterized. Such is the principle established by the supreme court of Spain in a judgment of June 16, 1900.

Robbery then is unquestionably the proper classification for the crime committed against said Chinaman, from

whom sham officers of the law succeeded in securing the sum of P300, under pressure and menace of arrest, indictment and trial for violation of the opium law, for such procedure constitutes intimidation.

In spite of the defendant's denial and his plea of not guilty, the case affords decisive and conclusive evidence of his guilt as principal, and he is fully convicted of the crime of robbery under consideration. He was unable to refute such conclusive and satisfactory evidence as appears in the case, and his statements in his own defense are absolutely groundless. He confesses to have gone with others into the injured party's store in order to make a search for opium. Although he imputes the whole operation to Mateo Navarro, with the admission that they all pretended that they were policemen, yet none of them was authorized to make a search of said store, and he took the part of leader in performing the penal act. Mateo Navarro avers that upon going with another person to said store the defendant Osorio represented himself to be the chief of police; that it was Osorio who took charge of the P300 delivered by the Chinaman and that he gave P10 to the policeman of Dalaguete, Bartolome Dicdiquin, who had stood guard at the door of the store during the search, and adds that, after committing the deed, Osorio told him in the road that he would give him a part of said sum in Cebu, as it was dangerous to do so in that town, and that he also had to give another share to his brother Simplicio. From all this it appears that the principal part which the defendant Osorio took in the crime of robbery at bar is beyond all doubt.

The presence of the aggravating circumstance, that the crime was committed in the dwelling of the injured party, must be admitted, without any mitigating circumstance to counteract its effect, and the penalty prescribed by No. 5 of article 503 of the Penal Code must be imposed in its maximum degree.

For the foregoing reasons, whereby the errors assigned are refuted, it is our opinion that the judgment should be modified so as to sentence and we hereby sentence Teofilo Osorio to the penalty of seven years of presidio mayor, with the accessories prescribed by article 57 of the code, to restitution of the sum of P300 to the injured Chinaman, Yap Buyco or Yap Buya, without subsidiary imprisonment in case of insolvency, owing to the nature of the penalty, and to the costs in both instances.

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

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