

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS, BASILIO CASTRO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6968. August 27, 1912

Ponente: CARSON, J.

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CARSON, J.:

Basilio Castro and Ramon Matic, alias Roman de la Cruz, were charged with the crime of robbery as set forth in the following information:

"That at and between 10 p. m. of March 12, 1911, and 3 a. m. of March 13, 1911, on board the launch Bolinao, which at the aforesaid time and place was anchored between the slaughterhouse and the lighthouse, and within two and one-half miles from the shore of Manila Bay, Philippine Islands, and the jurisdiction of this court, the said Basilio Castro and Ramon Matic, alias Roman de la Cruz, conspiring between themselves and helping each other, together with one Arsenio Salvacion, who has formerly been prosecuted and convicted, did, by employing force upon things, to wit, by breaking open with an oar, against its owner's will and with intent of gain, a trunk locked with a key, steal and carry away the following articles, which were contained in said trunk, to wit; one Chinese trunk containing the sum of P112; one hempen suit of clothes, valued at P4; two straw hats, valued at P3.50; one gold stickpin with a setting of one imitation pearl and six Bera diamonds, P5; two white neckties, P1; two boxes face-powder, one Camia and the other Lexora, P3.40; one bottle of hair tonic, P0.70; one bottle of Florida water, P1; one cedula, in its owner's name, P2; all worth P132.60 Philippine currency, and belonging to one Policarpio Caudal; the said acts being committed to the latter's damage and detriment in the said sum of P132.60, equivalent to 663 pesetas.

"That in the commission of this crime, there is to be considered the aggravating circumstance of a previous conviction as regards the accused Basilio Ca\$tro, and that of nocturnity with respect to both of the accused.

"In violation of law."

The trial court dismissed the case as to Ramon Matic with one-half of the cost in that instance de ofieio; but convicted the appellant Basilio Castro of the crime of robbery with which he was charged, and in view of the fact that the crime was committed at night, and that the record disclosed that the defendant had already been convicted of the crime of robbery on several different occasions, imposed the penalty of four years and two months of presidio correctional, together with the accessory penalties prescribed by law.

It appears from the record that on the night of the 12th day of March 1911, between the hours of 10 and 3, a robbery was committed on board the launch Bolinao, anchored between the matadero and the lighthouse, about two miles and a half from the shore line of the Bay of Manila; that the robbers carried off the various articles mentioned in the complaint, valued at P132.60, in a locked trunk; that this trunk and its contents were the property of one Policarpio Caudal, patron of the launch; that some days after the commission of the crime, part of the stolen property was found by a police officer in the house of the sister of the appellant, who informed the police officer that her brother Basilio was the owner of this property and that she had received part of it from his querida

(paramour); that some of the stolen property was found in the possession of the wife of the accused, and some in the possession of one Arsenio Salvacion, who has heretofore been accused and convicted of the same crime.

One witness, Maximo Guillermo, swore that he saw the stickpin with false pearls and diamonds, which was a part of the stolen property, in the shirt of this appellant on one occasion. This pin was one of the stolen articles which were discovered in the house of the sister of the appellant by the secret service agent Albert E. Axt. A police officer, Fausto Duque, testified that this defendant made a voluntary confession to him while under arrest, in the course of which he admitted that in company with Ramon Matic he went out to the launch Bolinao; that he himself went aboard and stole the trunk in question, which he turned over to Ramon Matic, who was waiting in a boat, while Arsenio Salvacion was in the lighthouse keeping watch; and that later, after breaking open the trunk they three divided the contents among themselves and threw the empty trunk in the sea. It was further established by the testimony of the clerk of the municipal court of the city of Manila that this appellant had been sentenced for theft on the 14th day of May, 1909, and on the 2nd and 11th of October of the same year.

The accused, testifying in his own behalf, denied that he had confessed to the police officer Duque, and disclaimed all knowledge of the robbery. The trial judge evidently believed the testimony of the witnesses for the prosecution, and we are of opinion that if this testimony be accepted as true, there can be no reasonable doubt as to the guilt of the appellant. Without considering whether any value should be given to the fact that part of the stolen property was found in the possession of the wife of the accused and part in the possession of his sister, there can be no question that the testimony of Maximo Guillermo as to the fact that he saw the stickpin in question in the shirt of the appellant was competent and admissible; and that this testimony, unexplained, furnishes strong and convincing evidence as to the guilt of the accused. We are of opinion that his confession made to the policeman Duque, taken together with the evidence as to his possession of the stolen pin, establishes his guilt beyond a reasonable doubt.

Some question is raised as to the truth of the testimony of Duque touching the admissions and confessions of the appellant, and as to the admissibility of his testimony in this regard. It affirmatively appears from the record, however, that the statements were made voluntarily and without the exercise of undue influence. No sufficient reason is suggested in the record which would justify us in believing that the policeman swore falsely in this regard. Much has been made by the appellant of the fact that the police officer to whom these admissions were made testified that another police officer, Albert E. Axt, was present at the time the confessions were made, and that Axt, when testifying, declared that this accused had denied all knowledge of the crime when arrested by him. It is contended that the testimony of these witnesses is in conflict, but we think that the alleged contradictions are more apparent than real, and that the testimony of these witnesses does not disclose an irreconcilable conflict. It would appear that the policeman Axt, when he testified as to the denial of the accused, was referring to the occasions when he made the arrest and the search of the houses of the accused, while the policeman Duque, when he testified as to admissions made by the accused, was referring to conversations had on another occasion.

We are of opinion that the judgment of conviction and the sentence imposed by the trial court should be affirmed, with the costs of this instance against the appellant. So ordered.

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

Trent, J., dissents.

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