

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN RECIO, DEFENDANT AND APPELLANT.

G.R. No. 7286. February 17, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendant was charged with the crime of robbery in the following complaint:

"That on or about January 2 [4], 1910, in the municipality of Cebu, of this province and judicial district, the said accused did intentionally and feloniously, and for the sake of gain, by means of violence and intimidation employed against the person of the Chinaman, Lim Chungque, of the municipality of Cebu, take possession of the sum of P1,000, the property of the said Chinaman; contrary to law."

After hearing the evidence adduced during the trial, the Honorable Adolph Wislizenus, judge, found the defendant guilty of the crime charged in the complaint, and sentenced him to be imprisoned for a period of six years and one day of presidio mayor, to indemnify Lim Chungque in the sum of P1,000, with the accessories of the law, and to pay the costs.

From that sentence of the lower court the defendant appealed.

The lower court made the following findings of fact:

"On the afternoon of January 3, 1910, in the municipality of Cebu, of this province and judicial district, said Chinaman was visited in his store, situated in the said municipality of Cebu, by a Filipino, an agent sent by the defendant, who exhibited to the said Chinaman a letter that appeared to be signed by another Chinaman, named Diaoco, residing in the neighboring municipality of Toledo and known to the said Lim Chungque. In this letter it appeared that Diaoco requested Lim Chungque to sell him three cans of opium, said letter being accompanied by the sum of P120 as the price of the opium. Not having the opium at his disposal just then, the Chinaman Lim Chungque told the agent to come back early the next day to get it, and said agent did in fact visit the store of Lim Chungque about 5 a. m. and the latter delivered to him three cans of opium which he had secured from another source, and he received from the agent the said sum of P120, the price of the opium. The agent then went away with the three cans of opium, but two hours later returned carrying the same three cans and accompanied by the defendant, who immediately told Lim Chungque that he was an inspector to search for contraband goods and denounced the said Chinaman for having unlawfully sold the three cans of opium, telling him that the crime is punished with many years of imprisonment, besides a fine, and threatening him with arrest and indictment for the crime he had committed. The Chinaman Lim Chungque at once asserted his innocence and invited the defendant to make a search of his store, but the latter merely said that the Chinaman had unlawfully sold the opium and that it was his intention to take the said Lim Chungque before the authorities under arrest and charge him with a violation of the Opium Law, but told him if he wished to get out of 'this fix' he had to pay the defendant the sum of P2,000. The Chinaman Lim Chungque replied that he did not have that sum, and, after some talk, the defendant agreed not to take him before the authorities and not to charge him with a violation of the Opium Law, provided that he give up the sum of P1,000, and because of this intimidation, through fear of arrest and trial as a violator of the Opium Law, the Chinaman Lim Chungque

delivered to the defendant the sum of P1,000, which the defendant accepted. He then went away without arresting Lim Chungque or afterwards denouncing him for an alleged violation of the law."

After a careful examination of the evidence adduced during the trial of the cause, we find that the findings of fact made by the lower court are a true and correct resume of such evidence and that the same shows that the defendant is guilty of the crime of robbery beyond peradventure of doubt. (U. S. vs. Flores, 19 Phil. Rep., 178; decision of the supreme court of Spain of the 24th of June, 1875; U. S. vs. Smith, 3 Phil. Rep., 20; 3 Viada, 341.)

One who obtains money by pretending to be an officer of the law and by threats of arrest and imprisonment is guilty of the crime of robbery by intimidation. (Art. 502, Penal Code.)

The crime in the present case was committed in the house of the offended party; there existed, therefore, the aggravating circumstance of morada. (Par. 2, art. 510, Penal Code.) There were no mitigating circumstances. The penalty imposed should therefore be in the maximum degree, in accordance with the provisions of paragraph 5 of article 503 of the Penal Code. The maximum penalty imposed by law is imprisonment from six years ten months and one day to ten years of presidio mayor. Therefore the judgment of the lower court is hereby modified, and the defendant is hereby sentenced to be imprisoned for a period of six years ten months and one day of presidio mayor, to indemnify Lim Chungque in the sum of P1,000, the amount of money robbed, with the accessory penalties of the law, and to pay the costs.

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

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