

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LUCIO BAJET
ALEJANDRO PERALTA, DEFENDANTS AND APPELLANTS.***G.R. No. 8460. August 21, 1913*

Ponente: TORRES, J.

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Appeal raised by the defendants, Bajet and Peralta, from the judgment of November 2, 1912, whereby the Honorable Dionisio Chanco, judge, sentenced each of them to the penalty of two months and one day of arresto mayor, to the accessories, and to the payment of the costs in equal shares, and ordered that the recovered trunk and shoes be delivered to the offended party, Apolinario Bello.

Some time prior to February 24, 1912, Apolinario Bello stored eight trunks in the house of Meliton Prudencio, situated in the pueblo of Santa, Ilocos Sur. These had been closed and locked and were placed one above the other in two stacks. On the date above mentioned Bello was notified through a messenger sent by Ildefonso Buenavista that the window on the south side of the house, which was in his charge, was open. He therefore immediately went to the place and on examining the premises discovered that two of the trunks were missing. One of them contained sheets, a P50 bank note, and a pair of shoes, and the other was filled with cotton and linen, containers and contents having a total value of 1,210 pesetas. Two panels of the said window were found beside the wall of the house and had been torn out of place by unnauling the wooden strip that, attached to their upper part, had held them fast. Marks on this strip indicated that a small crowbar must have been used to pry it off of the wall, by which means the window was opened despite the fastening on each of its panels. The outside door of the house was closed with a padlock. No one had remained in the house during the previous night and before it was left and the door locked all the windows were closed and barred.

One day in the month of May of the same year Alejandro Peralta sold to his aunt, Petrona Coronel, for P5 a trunk which was afterwards recognized and identified by its owner, Apolinario Bello. The latter, on the 7th of the same month, met Peralta in the street and saw that he was wearing the shoes that had disappeared with the two trunks. Upon Bello's visit to Peralta's house, this defendant told him that he had found the shoes, also the trunk sold to the woman. Coronel, on a piece of land covered with reed grass (the trunk bore the address "A. Bello, Santa") and that he thereupon called to the place Lucio Bajet, the other defendant, who learned about the find. As soon as the trunk was discovered both defendants confessed their commission of the robbery, insistently begged the offended party to pardon them and offered to pay for the stolen articles.

In view of the foregoing facts, the provincial fiscal filed a complaint in the Court of First Instance of Ilocos Sur, charging the defendants with the crime of robbery; and, upon the evidence adduced at trial, the judgment aforementioned was rendered.

The facts above related, which were duly proved, certainly constitute the crime of robbery perpetrated in an inhabited house, though it was not shown that the robbers were carrying arms at the time of its commission., nor that the stolen articles exceeded, all together, the value of 1,250 pesetas. This crime is provided for and punished

by articles 502 and 508, last paragraph, of the Penal Code, and, in the case at bar, may not be classified as one of theft, as was done by the lower court in the judgment appealed from, inasmuch as the record shows it to have been perfectly proved that, in order to remove the trunks containing the bank note and other stolen effects from the house where they among others were stored, the robbers unnailed the strip that held fast the two panels of the window and removed them for the purpose of taking the offended party's two aforesaid trunks. The robbers were unable to enter the building by going up the stairs and passing through the common door, for the reason that it was closed and fastened with a padlock.

Although the offended party used to sleep at night in the said house as the caretaker of its owner, Meliton Prudencio, he had not done so the previous night on account of his absence in another pueblo. Nothing unusual had happened on the other occasions when he had not slept there.

The crime is classified as one of robbery of an inhabited house, since the building was used as a dwelling, although there was no one actually present in the house at the time of the robbery, and such casual absence cannot bring the crime within the classification of robbery in an uninhabited place, for the reason that the building was ordinarily inhabited and intended as a dwelling, the inhabitants of which might have suffered bodily harm during the commission of the crime, and it is on this account that the penal law punishes more severely the robbery of a house used as a dwelling than that committed in an uninhabited place.

Despite the denial of the defendants and their plea of not guilty, the record discloses decisive and conclusive proof of their guilt as the proved perpetrators by direct participation of the robbery under prosecution. The defendant Bajet did not testify, and no weight can be given to the allegation of his codefendant, Peralta, that he found one of the stolen trunks and the pair of shoes on some land covered with reed grass or in a ricefield, inasmuch as, after the defendants learned that the offended party, Apolinario Bello, the owner of the missing trunks, had discovered that Peralta had sold one of these to his aunt, Petrona Coronel, for P5, and when, several days afterwards, Bello recognized the pair of shoes which this same defendant was wearing about the streets of the pueblo of Santa, they visited the house of the aggrieved party, on several occasions, to ask his pardon and beg him not to prosecute them, offering to pay him P32 to indemnify him for the articles stolen, though he refused to accept this amount as it did not cover their value. The defendants confessed several times that it was Peralta who climbed into the house after tearing off the two panels of the window, while Lucio Bajet remained outside below the window to receive the stolen articles. Cornelio Peralta, in whose house the offended party was when the defendants came accompanied by Antonio Burgos, the latter, and Roberto Bello, all heard these statements and so testified and that they were present when they were made and when the defendants asked the offended party's pardon and begged him not to prosecute them. Juan Peralta Baldiviso, another witness, also testified that he was present in the house of the offended party when the defendants, who were likewise there, begged the former to withdraw his complaint and offered to pay him the value of what had been stolen, Petrona Coronel testified that she had bought one of the said trunks, some time in the month of May, and that it was sold to her by the defendant, Alejandro Peralta, for P5.

So, it is not true that the defendants found the recovered trunk on some land covered with reed grass, as Alejandro Peralta stated that he had in his testimony and tried to prove by his witnesses, because this allegation was believed by his own statements made before the offended party and several witnesses in whose presence he confessed the crime in question and that he stole the trunks in company with Lucio Bajet. It is not to be believed that the robbers, were they other than the defendants, would have abandoned the trunk alleged to have been found by the defendant Peralta and would not have carried it away with them, together with its contents, including the pair of shoes, and it is common sense to presume that the possessor of a thing stolen wrongfully took it, unless it be satisfactory proven that the crime was committed by another. As against the unproven allegation of the defendant

Peralta, his codefendant Lucio Bajet not having testified in his own behalf, the record shows convincing proof that they both committed the robbery of the two trunks in the manner disclosed by the evidence.

It is not to be held that the crime was attended by any extenuating or aggravating circumstance, nor by that of nocturnity, inasmuch as the fact that the neighbor, Ildefonso Buenavista, saw the window of the house open and its panels leaning against the wall of the building, notice of which he sent to the offended party in charge of the premises, does not prove that the robbery was committed the previous night and during the darkness, for the crime might have been perpetrated on the preceding day, before nightfall, as there was no one in the house at that time. For this reason the circumstance of nocturnity should not be taken into consideration in applying the penalty provided by law, and the crime having been, committed with neither extenuating nor aggravating circumstances, the punishment prescribed in the Penal Code must be imposed upon the defendants in its medium degree.

For the foregoing reasons, we hereby reverse the judgment appealed from and sentence the defendants, Alejandro Peralta and Lucio Bajet, as the perpetrators of the crime of robbery of an inhabited house, and in accordance with the last paragraph of article 508 of the Penal Code, each to the penalty of two years eleven months and eleven days of presidio correccional, to the accessories of article 58 of the same code, to make restitution jointly and severally of the stolen effects, excepting the trunk and pair of shoes already recovered, or to pay as the value thereof 1,170 pesetas, and, in case of insolvency, to the corresponding subsidiary imprisonment, which, according to article 50 of the code, shall not exceed one-third of the principal penalty, and to the payment in equal shares of the costs of both instances? So ordered.

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

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