

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANSELMO DIBIS, EUSTAQUIO SIAGA, AND TOMAS OLEA, DEFENDANTS.
ANSELMO DIRIS AND EUSTAQUIO SIAGA, APPELLANTS.**

G.R. No. 8578. November 17, 1913

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from the judgment of the Court of First Instance of Tayabas convicting the defendants of the crime of robbery.

During the pendency of the proceedings in this court the defendant Tomas Olea withdrew his appeal and the judgment of the lower court is therefore final as to him. The only question now presented for our consideration is the appeal of the defendants Anselmo Diris and Eustaquio Siaga

We are of opinion that the evidence of record fully sustains the contentions of the prosecution and the findings of the lower court as to the facts. It will not therefore be necessary to review the evidence in detail.

It appears that Fulgencio Seal, who lived in the pueblo of Calauag, Province of Tayabas, received from the railroad company on July 7, 1912, more than P400 in payment of certain land expropriated by that company, and that the defendant Tomas Olea, a nephew of Fulgencio Seal, was present when the money was counted and paid over to his uncle. The record shows that the money was deposited in a trunk and that this fact was also known to Olea, who had free access to his uncle's house and was accustomed to come and go at will.

On the morning of July 12, following the date of the receipt of the money from the railroad company, Fulgencio Seal left the house between 8 and 9 o'clock in the morning, leaving his wife in charge of their tienda. A short time thereafter the three defendants appeared at the tienda and Eustaquio Siaga engaged the woman in conversation while the other two defendants went upstairs, broke open the trunk, and took the money, amounting to P353, and a receipt for P100. The record shows that at the time of the robbery part of the money received from the railroad company had been paid out and that the balance in the trunk was only P353.

The woman was somewhat deaf and had no knowledge of what was taking place upstairs. She stated that she saw the two defendants go up into the house, but as Tomas Olea was her husband's nephew and accustomed to come to the house she thought nothing of it. Upon the return of Fulgencio Seal later in the morning the robbery was discovered, and when his wife reported who had been there he immediately went in search of his nephew. The nephew when found admitted the theft of the money and promised that if the uncle would not make any trouble about it he would try and recover it from the other defendants. Together with Olea the uncle then went in search of Diris. The uncle was told to wait at a certain place until the nephew should return, and when he failed to come back the uncle went in search of him and later found him and Diris in a barber shop in the municipality of Lopez. The matter was reported to the justice of the peace of that municipality and the two defendants were arrested. On the person of Tomas Olea were found two bank notes of the denomination of P10 each, P3 in half-peso denominations, and P4 in 10 centavo pieces.

Fulgencio Seal testified that the money in the trunk consisted of one bank note of the value of P200, P100 in bank notes of the value of 10 pesos each, and the remainder in currency in W, 50 centavo, and 10-centavo denominations, there being P23 in 10-centavo pieces. It appears that by some error on the part of the justice of the peace the money was returned to Olea; however, there can hardly be any doubt that it was a part of the money which his uncle had in the trunk. At the trial the defendants denied that they were the authors of the crime; Olea and Diris denied that they were present at the house on the morning in question; and Eustaquio Siaga, while admitting that he was at the tienda stated that he went there alone. The presence of the defendants at the house on the morning in question is not only established by the wife of Fulgencio Seal, but her testimony on this point is corroborated by that of Conrado Fernandez, a neighbor. In view of all the facts of record the statements of the defendants cannot be credited. Their guilt is conclusively established.

Olea having withdrawn his appeal and the other evidence of record being sufficient in itself to sustain the conviction of all the appellants, it is not necessary for us to discuss the objections set forth in their brief as to the admission of the alleged confession of guilt of Olea.

It has been suggested by counsel, that the defendant Eustaquio Siaga, who remained below in the tienda and engaged the woman in conversation while the other defendants went up into the house, should only be held as a complice (accessary before the fact) as defined in the Penal Code, and not as a principal. In support of this view we are cited to Viada (Vol. I, p. 370), as follows: "The person who entertains the owner of a house while robbers are assaulting it, so that he will not return thereto until after the robbery has been consummated, is also an accomplice in the crime, inasmuch as he cooperated therein by a simultaneous act, although not an indispensable one for its accomplishment."

It will be seen however that the case supposed by the noted commentator clearly implies that the owner of the house was entertained at some distance from the place where the robbery was committed; it does not appear how far away, but apparently not anywhere in the immediate neighborhood. The present case offers a different situation. The defendant Siaga acted concurrently with the other defendants, and must be held to have been present with them aiding and abetting them in the commission of the crime by remaining below and talking with the woman in order to distract her attention from what was going on upstairs. In doing so he was evidently serving as a guard to warn his companions in case there should arise any necessity for giving an alarm. When the other defendants came down out of the house he went away with them.

This court has repeatedly held that one who shares the guilty purpose and aids and abets the commission of a crime by his presence at the time of its perpetration, even though he may not have taken an active part in its material execution, is guilty as a principal. We have also held that one who stands as guard near the place where a crime is committed to keep others away or to warn his companions and fellow conspirators of danger of discovery, takes a direct part in the commission of the crime and is therefore guilty as a principal under article 13 of the Penal Code. (U. S. vs. Reogilon and Dingle, 22 Phil. Rep., 127; U. S. vs. Balisacan, 4 Phil. Rep., 545; U. S. vs. Ramos, 4 Phil. Rep., 555.)

Under all the circumstances of the case we are satisfied that Siaga was properly convicted as a principal.

It appears that the trial court treated the stolen receipts for P100 as being of that value. The actual money stolen amounted to only P353.

While we have held that checks, warrants and similar instruments, payable to order and evidencing an obligation to pay money, may under certain circumstances be treated as worth their face value in fixing the value of the stolen property for the purpose of grading the crime and the penalty to be imposed on conviction, in cases wherein the penalty prescribed in the Code is made to depend on the value of the property taken (U. S. vs. Raboy, 25 Phil.

Rep., 1; U. S. vs. Wickersham, 20 Phil. Rep., 440), we are of opinion that a mere receipt such as that under consideration, especially in the absence of any proof as to its value, cannot be held to have anything more than a mere nominal value in fixing the penalty and assessing the civil indemnity to be imposed on one convicted of its theft.

The record further shows that Anselmo Diris is a recidivist, having been previously convicted of the crime of robbery by the Court of First Instance of Tayabas in the case of the United States vs. Anselmo Diris, on April 12, 1904, which judgment of conviction was affirmed by this Court on May 9, 1905 (4 Phil. Rep., 498).

The judgment of the trial court should be modified, in so far as it affects these appellants, by reducing the amount of the civil indemnification from P453 to P353 and by substituting the words presidio mayor for the words prision mayor in the dispositive part thereof, and thus modified the judgment convicting and sentencing the appellants Diris and Siaga should be and is hereby affirmed, with a proportionate share of the costs of this instance against each of the appellants.

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

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