

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANDRES HERRERA, DEFENDANT AND APPELLANT.

G.R. No. 9022. December 13, 1913

Ponente: CARSON, J.

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CARSON, J.:

The defendant and appellant was convicted in the court below, of the robbery of P60 which it was alleged he snatched from the hands of a Chinaman named Sityar on the morning of January 23, 1913.

The complaining witness Sityar testified that on the morning in question he, in company with another Chinaman named Diak, left the town of Balanga and went to the town of Pilar for the purpose of buying empty bottles, old brass, and the like; that while standing on the street in Pilar, at the foot of the stairs of a house the owner of which had gone inside to collect some bottles, he had in his hand his pocketbook containing twelve 5-peso bills, preparatory to his anticipated purchase; that at that moment the accused, in company with a short-haired Chinaman dressed like an American, approached him and snatched from his hand the pocketbook together with its contents; that immediately thereafter they ran away and together entered a carromata which was standing a little distance down the street and drove rapidly in the direction of Balanga.

The other Chinaman, his companion Diak, substantially corroborated his story, and the testimony of these two witnesses is the only evidence in the record bearing directly upon the commission of the alleged robbery.

The accused, testifying in his own behalf, admitted that on the morning of January 23, 1913, he had gone from the town of Balanga to the town of Pilar in company with a short-haired Chinaman dressed like an American, but he swore that he did not snatch the money from the hands of the complaining witness as alleged in the information, and that the truth of the matter was that he, together with his Chinese companion and some other Filipinos had taken part in a game of cards in the house of a woman named Inocencia Garcia, and that the complaining witness and his companion also took part in the game, in the course of which they lost some P50 or P60 to his companion, the short-haired Chinaman.

Several witnesses were called for the defense, who corroborated the statement of the accused as to the game in the house of Inocencia Garcia and as to the participation therein of the complaining witness and his companion. Some of these witnesses entered into details as to the manner in which the complaining witness lost his money. They said that the party was engaged in playing monte; that the short-haired Chinaman dressed in American clothes dealt the game; that while the game was in progress the dealer arose from the table, and excusing himself left the room for a few moments; that during his absence the complaining witness turned over the cards which were about to be dealt, and upon the return of the dealer bet P50 on the next play; that notwithstanding the apparent certainty of the bet he lost his money, the card upon which he had placed his money not turning up as he had expected.

The theory of the defense is, of course, that the two Chinamen who lost their money in the game of monte had falsely charged the accused, who was present at the game in company with the dexterous dealer, with the crime of robbery in the manner and form set out in the information, either by way of vengeance or in the hope of recouping

their losses by way of civil indemnity upon the conviction of the accused of the offense with which they charged him.

The trial judge accepted as true the story told by the complaining witness and his companion, and refused to believe the testimony of the witnesses for the defense, and we would be strongly inclined to accept the findings of the trial judge, who saw and heard the witnesses testify, but for the fact that he manifestly overlooked certain contradictions and inconsistent statements which appear in the testimony of the witnesses for the prosecution, and failed to give due weight to the inherent improbability of the story of the commission of the crime as related by the witnesses for the prosecution.

The trial judge says in his findings: "The testimony of the driver of the carromata used by the defendant on the day of the occurrence corroborates the statements of the two Chinese, Sityar and Diak, and the court therefore accepts it as the truthful statement of the occurrence."

Examining the testimony of this cochero we find that he stated that on the morning of the day in question he brought the accused together with the short-haired Chinaman dressed in American clothes (whose identity is not disclosed in the record, but to whom reference has already been made several times), from the town of Balanga to the town of Pilar; that they left him standing at a corner of the street; that when the short-haired Chinaman returned to the vehicle he had with him another Filipino, not the accused, and that these two, having gotten into his carromata, drove down the street some little distance to another corner, where they picked up the accused, and that thereafter the whole party returned to Pilar. It will be seen that the evidence of this cochero corroborates the testimony of the complaining witnesses only in so far as that testimony is not denied by the accused himself, that is to say, as to the fact that the accused was in the town of Pilar on the morning in question, together with the short-haired Chinaman dressed as an American; and that so far from corroborating the testimony of the complaining witnesses as to the commission of the crime charged, it is in direct contradiction to the statements of the complaining witnesses who testified that the accused, together with the short-haired Chinaman, ran away after snatching the pocketbook, and together got into the carromata and drove away.

The complaining witness and his companion on cross-examination said that when the accused made away with the money they made no outcry and were unable to catch lip with him or his companion because they were elderly men and could not run fast enough. As counsel for appellant well says, it would seem to be inherently improbable that two Chinamen would permit F60 to be snatched from the hands of one of them and carried away in broad daylight on the street of a village with houses near by without raising any outcry or attempting to secure the assistance of the people in the neighborhood in capturing the thieves.

Counsel for appellant point to a number of other contradictions and inconsistencies in the statements of the principal witnesses for the prosecution, but we do not think it necessary to review them in detail. Suffice it to say that taken in connection with what has already been said with regard to their testimony, they are sufficient to raise in our minds a reasonable doubt as to the truth of the story told by the principal witnesses for the prosecution.

The trial judge appears to have given no credence whatever to the testimony of the witnesses called for the defense, and based his action in this regard upon the ground that in his opinion "self-confessed gamblers who apparently thought it even right to defraud and cheat at cards" are not to be greatly relied upon as witnesses. We are inclined to think that the trial judge was hardly justified in wholly disregarding the testimony of these witnesses on the ground stated by him. It would be going far to say that the testimony of any man who admits that he ever played a game of cards for money is unworthy of credence on that ground alone, and the witnesses in this case who described what occurred at the game in regard to which they testified, and who told how the complaining witness and his companion lost their money, merely related the incident as they saw it and evidently

had no part in the trick by which the Chinamen who sought to take an unfair advantage of the dealer of the game were themselves brought to grief. To our minds the story told by the witnesses for the defense bears all the earmarks of truth, and in the light of their testimony we are strongly inclined to believe that the charge set forth in the information has no other basis than the desire of the Chinamen who lost their money at the game of monte to revenge themselves upon the accused and if possible to recoup their losses from him.

The judgment of the court below convicting and sentencing the defendant should be and is hereby reversed, with the costs in both instances de officio, and the defendant and appellant is acquitted of the offense with which he was charged,

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

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