

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALEJANDRO ALBAO, DEFENDANT AND APPELLANT.

G.R. No. 9369. December 24, 1914

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-9369/>

JOHNSON, J.:

This defendant was charged with the crime of robbery. On the 8th day of July, 1913, the prosecuting attorney of the Province of Cebu presented a complaint in the court of the justice of the peace of the municipality of Cebu. On the same day a warrant for the arrest of the defendant was issued. On the same day the defendant was detained and was admitted to bail upon a bond in the sum of P5,000.

On the 21st day of August, 1913, the prosecuting attorney of the Province of Cebu presented a complaint in the Court of First Instance of said province, charging the defendant with the crime of robbery. The complaint alleged;

"That in or about the last part of the month of June, 1913, within the municipality of Cebu of this province and judicial district the said accused Alejandro Albao did, willfully, maliciously, and criminally, and with intent of gain, through violence and intimidation upon the person of Vicente Lizarraga of the municipality of Cebu, seize a quantity of opium worth P14,000 belonging to the said Vicente Lizarraga; in violation of law."

Upon said complaint the defendant was duly arrested, and pleaded not guilty, was tried, found guilty of the crime of robbery, and was sentenced to be imprisoned for a period of ten years of presidio mayor, and to pay the costs, in accordance with the provisions of article 502, in relation with paragraph 5 of article 503 of the Penal Code. From that sentence the defendant appealed to this court and made the following assignments of error:

"I. The court erred in holding that, on June 25, 1913, 'Vicente Lizarraga was the unlawful possessor of 202 tins of opium, which then had a value of about P14,000.'

"II. The court erred in holding that, on the same night of June 25, 'Vicente Lizarraga took the 202 tins of opium to the house of Francisco Jurado in accordance with the agreement' (with Ciriaco Singson and Anatalio Alviola).

"III. The court erred in holding that 'Albao, on the night of the crime (the aforesaid 25th of June), did, through threats, intimidation, and violence against the person of Vicente Lizarraga,' seize the 202 tins of opium, and appropriate them to himself afterwards, instead of delivering the opium to the authorities.

"IV. The court erred in rendering a judgment of conviction against Alejandro Albao, instead of acquitting him."

With reference to the first assignment of error, the lower court found: "On and before June 25, 1913, Vicente Lizarraga was the unlawful possessor of 202 tins of opium, which then had a value of about P14,000. Testifying as a witness, he stated that he found them by accident on the shore of Mabolo, a suburb of the municipality of Cebu, which statement, it is needless to say, is a falsehood. Neither was he the owner of the said tins of opium, but rather simply an agent for their sale in representation of the owners, whose names he abstained from

revealing, and they are not indicated by other evidence."

From an examination of the record, we find that the following witnesses declared during the trial as follows, relating to the facts charged in the complaint:

First. Vicente Lizarraga, who testified, in part, as follows:

"Q. Where were you about the latter part of June of the present year?—A. On the night of the 25th I was in Calle Legaspi, in the house of a man named Jurado. I went there with 202 tins of opium to sell them to Ciriaco Singson. After the tins had been counted and placed in a valise, Alejandro Albao appeared, accompanied by three others. Alejandro Albao, pointing his revolver at me, told me not to move and commanded me to halt before the police,

"Q. Did you know his companions?—A. No, sir; but if I saw the one who carried the palasan, I could identify him.

"Q. Where are the tins of opium now?—A. I do not know, because Alejandro Albao and his companions took them away with them.

"Q. Did you see them take the tins away?—A. Yes, sir; for I went out of the house after they did; they went out first, for Alejandro Albao told me that they were going to leave first with the tins.

"Q. Describe what happened.—A. Ciriaco Singson, Anatalio Alviola, and I were squatted on the floor and engaged in counting the tins and seeing whether or not they were genuine, for Singson said that he knew them from the way they were soldered. We had already counted all the tins, which numbered 202. I separated from the rest four of them that were crushed. While I was replacing them in the same valise in which I had brought them, we heard someone on the stair say in Visayan 'Good evening,' and Alejandro Albao entered and pointed his revolver at me. The first thing he said was 'Halt before the police. Let no one move.'

"Q. How many were they?—A. Four, with Alejandro Albao. Albao pointed his revolver at me. One of the men who entered had a cane. Albao then asked me to whom those tins belonged! I answered that they were mine. Then he asked me whether they were genuine. I replied to him: 'I think that they are genuine.' Just then while he was there talking, the owner of the house and another man whom I was unable to identify came out.

"Q. Who was the owner of the house?—A. Francisco Jurado. Then Albao asked for a penknife to open a tin and Francisco Jurado fetched a pair of scissors. They opened the tin and then Albao said that that was not very good opium, and they plugged up the hole with paper and Francisco Jurado put the tin under a table. Then Ciriaco Singson said to the policeman that it would be better to arrange the matter amicably, and then I also supported that proposal, saying that it would be better to arrange the matter amicably. After we had been talking a little while Ciriaco Singson disappeared through a back door. When Albao inquired where Singson was, the owner of the house said that he had already left. Then Anatalio Alviola and I made an agreement with the policemen that we would pay P6,000 to each of them, as a bribe, in order that they might release us.

"Q. Who is this man Anatalio?—A. I found him there with Ciriaco Singson. I did not know him until that moment. I told him that I had no money with which to guarantee the P6,000, and Anatalio Alviola said to me that it did not matter, that he would get the tins and would pay the P6,000 to the policemen. Then they came to an agreement, for he said there were two more men waiting below, that P1,000 should be paid to each one of the policemen. Then Albao said to us that they were going to take away the tins, for I had said to him that I would take them with me, as, without those tins, I would have no money with which to pay. They told me that I should not do so, for, if I did, I would be caught again immediately by other policemen and I would not know where to take the tins. Then he told me to wait there a while, that they were going to go down. After a little while Anatalio Alviola and I went down and did not find anybody in the street. I went with Anatalio Alviola and he showed me his store and from there I went home.

"Q. How long since had it been that you had had an understanding with Singson in regard to that opium deal?—A. On the 23d, in the morning, I spoke to Alburo in regard to his finding a purchaser.

"Q. Which Alburo?—A. Isabelo Alburo. Then he took me with him at about 12 o'clock. He took me to the house of Graciano del Mar, on Calle Martinez, and Graciano del Mar told me that he was going to call Ciriaco Singson in order that the latter might have an understanding with me. We made an appointment to meet at Mr. Alburo's house at half past 12, after dinner. Then Isabelo Alburo and I went to his house for dinner. Immediately after dinner Ciriaco Singson came, accompanied by Graciano del Mar, and asked me how many tins I had and whether, he might take as a sample one opened tin and one closed. I took my bicycle, came to Cebu, got two tins and showed them to him. He told me, for I had asked of him P75 for each tin, that he was willing to pay P68. I refused this offer and said that my lowest price was P70. He then replied to me that he was going to look for money; whereupon I left. On the following day Isabelo Alburo came to the store where I was employed and told me that they were looking for money, that he could do nothing. On the morning of the 25th Alburo told me to go to the Plaza de la Independencia, at 6 o'clock, the time of vespers, to confer with Ciriaco Singson, for they now had money. At about half past 6 o'clock I went to the Plaza de la Independencia and met Isabelo Alburo, who told me that Ciriaco Singson had already been there and that it had been arranged that I should meet him at 8 o'clock sharp in the Merchant Caf6 for the purpose of designating a place where the sale was to be made. At 8 o'clock sharp I was in the Merchant Cafe, drinking a lemonade. Five minutes afterwards Ciriaco Singson entered and after he too had drunk a lemonade we left. We walked along until we came in front of the government building where we took a vehicle and went to Calle Logarta and there paid for the vehicle. In Calle Zulueta he showed me a warehouse and told me that the sale could be effected there, but that another house he was going to show me was safer. We then went to Calle Zulueta and he pointed out his house to me: "That is my house; we also could make the sale there, but I am very closely watched/ We even went to Calle Legaspi and there in Calle Legaspi he told me that that was a good place, that I could take the tins there. I told him to wait for me there. I went home to get the tins and took them to him in the said house on Calle Legaspi.

"Q. What time was it when you arrived there with the tins ?—A. A quarter to 9.

"Q. Does a batch of 202 tins of opium weigh much?—A. Yes, sir; they were so heavy that I had to be helped up the stairs between Anatalio Alviola and Ciriaco Singson.

"Q. Since when was Anatalio Alviola concerned in this matter?—A. Right there in Calle Legaspi, in the house of Francisco Jurado. Upon my asking him who he was, he told me that he was another one of the purchasers; that he could not pay for all the opium; that he brought Alviola so that the latter might buy what he could not, and that Alviola carried money.

"Q. What price did you people agree should be paid for your opium?—A. P70 a tin.

"Q. Do you really know now whether or not the opium is in the possession of the Government?—A. No, sir; it is not in the possession of the Government.

"Q. Was it all opium?—A. Yes, sir; all of it.

"Q. Do you know whether or not Albao was a municipal policeman in Cebu ?—A. Yes, sir; because afterwards upon my identifying him I had an inquiry made at the municipal building and they told me that until the 28th.

"Q. How long have you known Ciriaco Singson?

"The Court. We are talking about whether or not he was a policeman. On the night of the crime, was he wearing a uniform like that worn by policeman or agents of the authorities?—A. No, sir; but he carried a regulation revolver.

"The Court. Was he wearing a badge?—A. No, sir.

"Q. Will you please explain to the court why you gave the opium to Albao; why you did not wish to keep the opium?—A. Because he said to me that if I took the tins with me I would not know where to put them, that they would catch me again. Anatalio Alviola told me, besides, that on the following day he would get them back by the payment of a bribe of P6,000.

"Q. Did the accused have his revolver in a holster?—A. It was in the holster. After I had told him not to point it at me, he put it into the holster.

"Q. Did he point it at you ?—A. Yes, sir.

"Q. At whom else did he point it?—A. Only at me.

"Q. Was it at that moment that the opium was seized, or was it long afterwards?—A. At that moment when the four men entered and caught {sic.) for we got away from the tins."

Cross-examination by Mr. Sotto:

"Q. Then do I understand that you gave up the opium to the accused and to his companions under the promise made by Anatalio Alviola that you would pay them P6,000 as a bribe—that is, P1,000 to each one?—A. Yes, sir.

"Q. And did you agree to give the P6,000 when you should have them ?—A. When they should return the opium to me.

"Q. Where was the delivery of the P6,000 to be made? Did you folks make no agreement?—A. On the departure of the policeman, Albao told Anatalio Alviola that on the following day he should go to that place. I do not know what place he meant.

"Q. Who told him?—A. Albao told Anatalio Alviola.

"Q. What I want to know is: Did you folks have an agreement as to when the opium was to be delivered, when it was to be returned, and the delivery of the money was to be made?—A. It was our understanding that Anatalio Alviola was to pay the policemen and keep the opium.

"Q. When?—A. Right there he and I agreed to that. As I had said to him: 'I have not a single centavo with which to pay the policemen;' he replied to me: I have brought money with me. I will attend to paying the policemen and will return to you to-morrow what remains of the price of the opium.'

"Q. Then he obligated himself to deliver the P6,000 to the policemen?—A. Yes, sir.

"Q. So he promised you that he would pay the P6,000 to the policemen, as a bribe; that he would keep the opium; and that he would pay you the remainder of the price of the opium after deducting the payment of the P6,000 to the policemen, did he not?—A. He said that he would, on condition that he recovered the opium.

"Q. How many tins did you folks open for examination ?— A. One.

"Q. Who kept the tin that was opened?—A. The policeman Albao afterwards again asked the owner of the house for the tin which the latter carried in his hand.

"Q. Do you know whether or not Anatalio Alviola gave the accused and his companions the P6,000 agreed upon?—A. The next day he told me that he had not found the opium.

"Q. Answer my question. You are clever enough to know. Do you know whether or not Anatalio Alviola delivered to the accused and his five companions the P6,000?— A. No, sir,

"Q. Do you know whether Anatalio Alviola delivered the P6,000 to the accused and his companions?—A. I do not.

"Q. Do you know whether the accused delivered the opium to Anatalio Alviola?—A. I know nothing of that, either.

"Q. Where did you get that opium?—A. I found that opium there in Mabolo.

"Q. When?—A. That same day, the 23d, in the morning.

"Q. In what place?—A. In front of Mr. Isabelo Alburo's house.

"Q. On dry land, or in the sea?—A. In the sea.

"Q. Why were you there on the 23d?—A. Because for the past month I had been in the habit of bathing every morning in Mabolo.

"Q. And were you bathing on that day?—A. Yes, sir.

"Q. In what condition did you find that opium? I mean: Where was it placed?—A. Those tins were placed in another large tin which I found in the mud.

"Q. Where did you afterwards carry it?—A. I carried it afterwards to the house where I live on Calle Magallanes, to the upper floor of the furniture store.

"Q. How did you carry it?—A. In a tartanilla (carriage).

"Q. Are you sure that it was on the 23d?—A. I think so. It was that very day.

"Q. The 23d of June of this year?—A. Yes, sir.

"Q. Do you know why Anatalio Alviola was in the house on Calle Legaspi on the night of the occurrence?—A. According to what Ciriaco Singson told me, it was because he, also, wished to buy the tins that might be left over.

"Q. Do you know Francisco Jurado by sight, the owner of the house?—A. Yes, sir.

"Q. Who personally carried the opium after it had been taken away from you?—A. It was carried by two men.

"Q. Who?—A. I was unable to observe who were the two that carried the opium, but they carried it by the order of Albao and of the other man who had the palasan.

"Q. When did the interview take place that was had between you and Isabelo Alburo, relative to finding purchasers for the opium?—A. On the 23d, at about 9 or 10 o'clock in the morning."

Examination by the fiscal:

"Q. You said this morning, in reply to the cross-questions of the attorney for the accused, that a bribe was offered to the policemen who were there. Who offered the bribe?—A. Anatalio Alviola and I. It was rather Ciriaco Singson who first made the proposal." Second. Isabelo Alburo, who testified, in part, as follows:

"Q. Where were you on the 23d of June of this year?—A. In Cebu.

"Q. Do you know Mr. Vicente Lizarraga?—A. Yes, sir.

"Q. Did something happen between you and Lizarraga on that 23d day of June of this year?—A. On that day, at a little after 11 o'clock, I went to the furniture store to collect from Mr. Solsiaga a bill of P43.10, the amount due for 100 pieces of bamboo which he obtained from me for the purpose of repairing his house and for several cartloads of stone. After the account had been settled, I inquired of Mr. Lizarraga whether he had any objection to going to my house, because, a week before that day, as the furniture store sold on installments, my wife had taken a combination wardrobe and mirror, to be paid for at the rate of P10 a month; and as the wardrobe that was

delivered at the house had a bad lock, I begged Mr. Lizarraga to go to the house to fix it, if he had no objection. On that day Mr. Lizarraga had no objection in accompanying me to the house. We went, both on bicycles, at a little after 11 o'clock. We passed along Calles Magallanes and Martires. While traveling on Calle Magallanes Mr. Lizarraga inquired of me: 'Do you know of anybody who wishes to take a lot of opium?' I replied, saying: 'It is publicly known that there is a good Filipino buyer here, who is Mr. Ciriaco Singson. I was present at the hearing of the case against the engineer of the Rubi, Ben Rice, and it appears that everybody knows that Ciriaco Singson buys opium.' Mr. Lizarraga then said to me: 'Have you no objection to introducing me to Mr. Singson?' I told him that I could not introduce him; that though it was true that he (Singson) was an acquaintance of mine, there was no intimacy between us. During our passage through Calle Magallanes we came in front of the market and the house of Mr. Graciano del Mar. I said to him (Lizarraga); 'This gentleman is one of Mr. Singson's friends and I am very intimate with him. Sunday before last he was at my house with Duterte's family to take a bath in the sea. This gentleman can, if you wish, introduce you to Mr. Singson.' Mr. Lizarraga said to me: 'See if you can introduce me to that gentleman (Del Mar).' I got off my bicycle and said to Graciano del Mar, who was at the window: 'This gentleman, it seems, desires to talk with you.' Graciano invited us upstairs. Upon going up he requested us to be seated, and I said to Lizarraga: 'Here is Mr. Del Mar.' They both engaged in conversation, and I heard one of them say: 'I have a lot of opium. If you can find a purchaser, I shall be very glad to dispose of that lot.' Mr. Del Mar said that he had no objection to speaking to Mr. Singson. After it had been agreed upon that he should speak to Mr. Singson, as it was a quarter to 12, we took leave of Mr. Del Mar and departed. While we were on the last step of the stair Del Mar inquired of us: 'Where are you going now?' and I said: 'The gentleman is going to my house to fix the wardrobe.' Del Mar inquired: 'Have you any objection, in case I should meet Mr. Singson, to our going to your house?' I said to him: 'Anyone may enter our house any time that we are there.' Thereupon Lizarraga and I both left on our bicycles. When we arrived at the house we set to work to fix the wardrobe. As the clock was striking 12, just for courtesy's sake I invited Mr. Lizarraga to have dinner and partake of such food as there was in the house. Mr. Lizarraga accepted and remained for dinner. At about half past 1 o'clock the little girl, my daughter, said: 'Papa, there are two gentlemen on the stairs.' I said that they might come up. Mr. Graciano del Mar and Mr. Ciriaco Singson came up. As master of the house, I introduced Mr. Singson to Mr. Lizarraga, saying: 'This is Mr. Singson.' They seated themselves and Graciano and I withdrew to one side out of politeness. I said to Graciano del Mar: 'The Sunday that you folks were here to bathe, did you have a bath robe with you?' Ciriaco Singson and Lizarraga were talking. After a little while, two friends of mine entered. We were talking at the other side of the balcony. While I was talking with those friends, Ciriaco Singson and Mr. Lizarraga were talking and Graciano del Mar approached. A short while afterwards Mr. Lizarraga went out. He rode away on his bicycle. About twenty minutes afterwards he returned. Upon Lizarraga's return his pocket was full. I was still talking with my friends. Pretty soon he took out a paper and showed some tins. I saw them at a distance. I saw that there was a broken tin and that the paper was stained black, I immediately approached and on seeing that it was opium immediately said: 'Gentlemen, please go out. Indeed this is a strange thing. An agent of the authorities may come and you folks may cause harm to the owner of the house. You may go down, for I can not allow you to make this deal here in the house.' Mr. Lizarraga picked up the paper bundle and went down. Shortly afterwards Graciano del Mar and Ciriaco Singson also went down.

"Q. On the following day, the 24th, what happened in connection with that opium?—A. Some few minutes after 2 o'clock while I was sleeping Mr. Singson came in, awoke me, and merely charged me to tell Mr. Lizarraga that up to that time the whole of the money was not secured.

"Q. The next day, the 25th?—A. I do not know if it was Graciano del Mar who was at the house in behalf of Mr. Singson. He charged me to tell Mr. Lizarraga that he wanted him to wait here in the Plaza de la Independencia.

"Q. Did you transmit the message?—A. Yea, sir; because as an employee of Mr. Bustillo, I happened to be at the

customhouse, and when I came out of the building they were playing a serenade in the plaza. I was listening there. Pretty soon Mr. Singson came up and inquired for Mr. Lizarraga and I told him that he had not yet come. When Mr. Lizarraga arrived I told him that Mr. Singson had been waiting for him and as he had arrived late he charged me merely to tell him that he (Singson) would wait for him in the Merchant Caf 6 at 8 o'clock in the evening. Immediately thereafter Mr. Lizarraga and I separated."

Cross-examination by Mr. Sotto:

"Q. You spoke of an open tin, the contents of which, the opium, had run out on the paper. Where was that tin opened?—A. I do not know if those tins were broken, but when Mr. Lizarraga opened (the paper) there was a stain, the tin was leaking.

"Q. Did they not open the tin there?—A. No, sir.

"Q. Were there two tins?—A. Two tins.

"Q. Two opened?—A. One closed tin and another tin which was a little damaged and its contents were leaking out.

"Q. Was this your first knowledge of Lizarraga's having opium?—A. Yes, sir.

"Q. Did Lizarraga actually come to see you in the Plaza Libertad, and did you transmit to him Ciriaco Singson's message?—A. Yes, sir.

"Q. At what time did you transmit to Lizarraga Singson's message?—A. At half past 5, I think, when I came out of the customhouse. When Ciriaco Singson saw me he inquired of me whether Lizarraga was upstairs. I told him that he was not. He said to me: 'Please tell Lizarraga that at 8 o'clock this evening I will wait for him in the Merchant Café.'

"Q. Do you know whether or not that opium which Lizarraga wished to sell to or place with Singson, was sold by Lizarraga some days subsequent to the 25th? —A. I learned from Lizarraga the next day that the police had taken it from him."

Third. Miguel Batoto, who testified, in part, as follows :

"Q. Are you acquainted with Alejandro Albao?—A. Yes, sir.

"Q. With Ciriaco Singson?—A. Yes, sir.

"Q. Do you know where Mr. Ciriaco Singson was about the 23d of last July, very late in the evening?—A. In his house.

"Q. Where were you?—A. In my house also. On the afternoon of the 23d, at about 3 o'clock, he sent the little boy Juan, a younger brother of Candoy's wife, Pia, to call me.

"The Court. What is the name of that Candoy?—A. I do not know his surname. They call him Candoy.

"Q. What else?—A. Juan told me that Ciriaco needed me; I did not know for what. I went over at about 3 o'clock in the afternoon. When I arrived at Ciriaco Singson's house, the latter told me that there was a good chance to do business in opium in view of the fact that a person had offered 200 tins for sale. I inquired whether he had money. Ciriaco Singson replied to me that there was no need of money, that an arrangement could be made to get the opium by a swindle, since it was an article of contraband. Ciriaco suggested to me that I find a policeman who would seize the opium, and that, in case it could not be obtained in this manner, we should have the officer arrest the man, in which event we would receive a certain amount from the Government, as a reward. I said in reply: 'Yes, sir; right way.' At 5 o'clock in the afternoon I met Albao and told him that Ciriaco Singson needed him, and we went to Singson's house. I met Albao in Calle Magallanes,

in David Sommer's store. From David Sommer's store, where I met Albao, we, Albao and I, went to Singson's house. We found the latter in the corridor of his house, near the stair. Thereupon Albao asked Ciriaco Singson what he desired. Singson told him that a certain person had offered to sell him 200 tins of opium and that he desired to have them seized from him. Ciriaco Singson said: 'Do we agree, Albao?,' and Albao said: 'Yes.' When we were near the porch that faces the street, I asked Albao: 'What do you think of it?' and he said to me that if there really was opium he would arrest the person who had it."

Fourth. Graciano del Mar, who testified, in part, as follows:

"Q. Are you acquainted with Vicente Lizarraga?—A. I have known him only recently. I got acquainted with him on June 24, for the first time, at my house,

"Q. How did he come to enter there? Did he go up there into your house?—A. Yes. One morning while I was at the window Vicente Lizarraga passed by, in the company of Mr. Isabelo Alburo; and when Mr. Alburo saw me at the window he asked me whether he might come up. I told him that he might. Then Mr. Alburo came up alone and Mr. Lizarraga remained below. After Mr. Alburo had come up he proposed to me the purchase of 325 tins of opium. I told him that I could not buy them as I had no money, and that, besides, I was not dealing in that drug. He said: "Well, you have acquaintances there who buy the drug. You can tell me who can buy it.' I said to him: 'I do not know whether Ciriaco Singson can buy it from you;' and Isabelo said to me: 'Go and tell that to Ciriaco.' Then Isabelo Alburo said 'The owner of the drug is the man who is downstairs. Do you wish him to come up? I will call him.' I said to him: 'There is no objection. He may come up.' And Vicente Lizarraga came up into the house and then Mr. Isabelo Alburo introduced him to me as Mr. Vicente Lizarraga. Alburo then said to me that I might eat in his house with Ciriaco Singson, in order to make the deal. I replied that I could not eat there, but that after dinner I would immediately go to look for Ciriaco Singson and tell him about the affair. I went to the house of Ciriaco Singson and told the latter that there was a lot of opium which Isabelo Alburo told me he wished to sell. After Ciriaco Singson had finished his dinner, for he was eating when I came in, he dressed and accompanied me to Mabolo. There in Mabolo we found Vicente Lizarraga and Isabelo Alburo waiting¹ for us in his (Alburo's) house. Then the three men, Ciriaco Singson, Isabelo Alburo, and Lizarraga, engaged in a conversation there. After a little while Vicente Lizarraga went out and we three remained in Isabelo Alburo's house, waiting for Lizarraga, for Isabelo Alburo said that Lizarraga would return. We had waited about half an hour when Lizarraga came, bringing two tins of opium which he showed to Ciriaco Singson. I could not well hear the agreement they were making, because I was very near the window that faces the street, watching to see whether anyone might come to surprise us. Then, after that, I don't know whether or not they came to an agreement; Vicente Lizarraga went down carrying the two tins with him. We two, Ciriaco Singson and I, returned here to the city and in the street I asked Singson whether they had agreed upon the purchase. Ciriaco told me that they had not, for the reason that he had not enough money to buy all the tins which Mr. Lizarraga had for sale, for what Mr. Lizarraga wanted was to sell all the tins and Singson did not have sufficient money. Furthermore, he said that he was afraid that sale of opium involved some deceit, that the article was not really opium. After that, we returned to our houses. I remained in ours and he went to his.

"Q. Did you see the opium? Was it really opium?—A. I saw there two tins of opium, one well closed and another half opened.

"Q. Did you hear Ciriaco Singson say anything about that opium?—A. I asked him about that and he told me that the samples were good, but I do not know whether the other tins that were there were the same as these."

Cross-examination by Mr. Sotto:

"Q. How were Isabelo Alburo and Vicente Lizarraga traveling when you saw them from the window of your house?—A. On bicycles, both of them,

"Q. Then when Isabelo Alburo went up into your house and Lizarraga waited below, Isabelo Alburo did not know

what persons could buy the opium, and asked you?—A. He asked me whether I wished to buy it. I afterwards told him that I could not, and he himself mentioned the name of Ciriaco Singson, who is a friend of mine, as one who could buy this opium. I told him that I knew nothing of it, but could speak to Singson about it, if he wished me to. He said that he did, and added: 'Go there soon and we will wait for you at the house for dinner.' I said that I could not take dinner at his house."

Fifth. Dionisio Jakosalem, who testified, in part, as follows:

"As provincial fiscal I declare under oath that no municipal policeman or other person has presented in my office, nor directly to me nor to my assistant, Mr. Miguel Raffinan, the 200 tins of opium seized from Vicente Lizarraga. As provincial fiscal I also declare under oath that I have ascertained from the justice of the peace court of Cebu—the only court after that of First Instance that can initiate proceedings in the matter of the unlawful possession of opium—I have there ascertained, I repeat, that the seizure of 200 tins of opium from Vicente Lizarraga in or about the month of last June was not the subject matter of any consideration or action on the part of the said justice of the peace court. And, as provincial fiscal, I also declare under oath that the tins of opium referred to in the present case have not yet been the subject matter of any prosecution."

The defendant presented five witnesses to support his defense. The first was Ciriaco Singson. He attempted to deny any relation whatever with Vicente Lizarraga, in relation to the opium in question. After repeated denials of that alleged fact, however, he finally admitted that Vicente Lizarraga offered him two "latas de opio," but says that the opium was offered to him during the daytime, and not at night. Such a denial is in effect an admission. He admitted that in relation with one Ben Rice and others, he had attempted to import opium (pp. 91, 92); that he was "un agente de importar opio." In Exhibit A (p. 10) he also, in a confession before the prosecuting attorney of the Province of Cebu, admitted the existence of the opium and that Vicente Lizarraga tried to sell the same to him.

The second witness, Francisco Jurado, also denied that the parties were in his house on the day in question (June 23, 24, or 25). He admitted, however, that he had been condemned twice for smoking opium (pp. 100, 101), and that at the very time he was testifying, another action was pending against him for the same crime (p. 101).

Anatolio Alviola testified. He also, on direct examination, denied any relation with Vicente Lizarraga, in relation to the opium in question, but on cross-examination, testified as follows:

"Q. Do you know whether Vicente Lizarraga had opium in or about the month of June?—A. Yes.

"Q. Since when have you known it?—A. The 26th.

"Q. Who told you so?—A. Ciriaco Singson.

"Q. So that Ciriaco Singson had negotiated with Vicente Lizarraga in regard to that opium?—A. Ciriaco Singson invited me to pay for 300 tins of opium belonging to Vicente Lizarraga.

"Q. On about the 26th?—A. Yes, sir.

"Q. What conversation did you and Ciriaco Singson have in regard to Lizarraga's opium?—A. Ciriaco Singson came to my house on the 26th, at about 3 o'clock in the afternoon, to invite me to buy Vicente Lizarraga's opium. That opium belonged to Vicente Lizarraga, but it was Isabelo Alburo who invited Ciriaco Singson to buy it. So I asked Ciriaco Singson whether it was good opium. Ciriaco Singson told me that it was, because Isabelo Alburo had shown him a tin as a sample. Then I told Ciriaco Singson not to trust Alburo, as he was an unreliable man."

Emiliano Fernandez, a policeman of the city of Cebu, also testified on behalf of the defendant, for the purpose of showing an alibi. He testified that he had seen the defendant, Alejandro Albao, in the public plaza, in the city of Cebu, at or about 5 o'clock on the afternoon of the day in question. Admitting that fact to be true, the defendant

still had time, after this witness saw him, to go to the place where the alleged robbery was committed.

Alejandro Albao testified in his own behalf. He denied positively that he had had any relation whatever with the opium in question and that he was not at the house of Francisco Jurado on the night in question.

Dionisio Jakosalem, prosecuting attorney of the Province of Cebu, was recalled as a witness, and related the circumstances under which the confession of Ciriaco Singson was made, as appears in Exhibit A (p. 10).

We think the proof adduced during the trial of the cause, the important parts of which we have set out above, not only shows that the lower court did not commit the error complained of in the first assignment of error, but that he did not commit the other errors complained of.

During the pendency of the appeal in this court, the appellant presented a motion for a new trial. As a part of said motion he annexed the decision of the Court of First Instance of the Province of Cebu, rendered in the case of United States vs. Ciriaco Singson (No. 3132, Court of First Instance), as well as a certificate of the stenographer, to the effect that the witnesses who testified in the case of United States vs. Ciriaco Singson were the same witnesses who testified in the original case of United States vs. Alejandro Albao (No. 2999). It appears from the decision rendered in said case (U. S. vs. Singson, No. 3132) that the said Singson had been, after the conclusion of the case against Albao, prosecuted for a violation of the Opium Law. In the decision in that case the judge of the lower court commented in extenso upon the credibility of the witnesses who had been presented against the defendant. He stated that he did not believe their testimony and for that reason acquitted the defendant (Singson) while it does not clearly appear from the decision (in the case against Singson) yet, it would seem that the theory of the prosecution was that Singson was an accomplice of the defendant Albao, in relation with the opium in question. It will be remembered, however, that while there is an intimation in the proof presented in the case of United States vs. Albao that Ciriaco Singson operated with Albao, in an indefinite way, in relation with the opium in question, yet there is no positive proof of that fact. While it is a fact that the lower court did not believe the witnesses in the case against Singson (No. 3132), yet, nevertheless, he reaffirms his findings of fact in the case of United States vs. Albao, in the following language:

"Aside from this question, it is evident that on the night of the crime the accused was at the house of Francisco; that, in accordance with the agreement, the of party Vicente Lizarraga arrived at the house, bringing with him 202 tins of opium; that while they were in the act of effecting the sale and were recounting the tins of opium, there appeared at the door a man by the name of Albao, armed with a revolver and accompanied by other persons; and that Albao, declaring himself to be a policeman and in the name of the law, seized the opium and took all the tins away with him; that these tins have not been returned or delivered to any authority and assuredly have been divided between Albao and his accomplices and asiates in the crime. The said Albao has been sentenced by this court to ten years of prison mayor for his participation on in this robbery."

In view of the foregoing, we do not believe that the mere fact that the lower court did not believe the witnesses in one case but did believe them in another, is sufficient ground upon which to grant a new trial. Therefore the motion for a new trial is hereby denied.

From a careful examination of the record we are of the opinion that the following facts are proved, beyond a reasonable doubt:

First. That on or about the 25th day of June, 1913, Vicente Lizarraga was in the possession of 202 "latas de opio," which were of the value of about P14,000.

Second. That on the day in question, after repeated efforts to sell the said opium, Vicente Lizarraga met Ciriaco Singson together with others, in the house of one Francisco Jurado, for the purpose of consummating the sale of the 202 "latas de opio."

Third. That on the night in question (25th of June, 1913),¹ while Vicente Lizarraga and Ciriaco Singson, in the house of Francisco Jurado, were negotiating for the sale of said opium, the defendant Alejandro Albao, together with others unknown, appeared at the house of Francisco Jurado and demanded that the opium be turned over to him, by means of threats and violence, using a revolver and pointing the same at Vicente Lizarraga.

Fourth. That by reason of said threats, intimidation and demands, by using his revolver, the defendant, Alejandro Albao, took possession of said 202 "latas de opio," against the will and consent of Vicente Lizarraga.

Fifth. That after the said opium had been delivered in the manner above indicated to Alejandro Albao, he promised to return the same upon the payment to him and his unknown associates of the sum of P6,000.

Sixth. That the defendant, Alejandro Albao, had been and was a policeman in the city of Cebu at the time; that he makes no pretense or claim that he was acting in his capacity as a policeman at the time he took forcible possession of the opium in question.

Seventh. That the opium in question was never returned to Vicente Lizarraga, nor to any public authority.

Eighth. That the defendant, Alejandro Albao, took possession of the said 202 "latas de opio" by the use of violence and intimidation against the person of Vicente Lizarraga, with the intent, then and there, to appropriate the same to his own use. (U. S. vs. Smith, 3 Phil. Rep., 20; U. S. vs. Ginete, 3 Phil. Rep., 641; decision of the supreme court of Spain, June 24, 1875; 3 Viada, 341; U. S. vs. Howard, 4 Phil. Rep., 238; U. S. vs. Barot, 15 Phil. Rep., 463; U. S. vs. Navarro, 18 Phil. Rep., 357; U. S. vs. Flores, 19 Phil. Rep., 178; U. S. vs. Osorio, 21 Phil. Rep., 237; U. S. vs. Recio, 21 Phil. Rep., 511; U. S. vs. Martin, 23 Phil. Rep., 58; U. S. vs. Sanchez, 26 Phil. Rep., 83; U. S. vs. Sana Lim, 28 Phil. Rep., 404).

In the case of United States vs. Navarro (18 Phil. Rep., 357), it appears that the accused, with certain other companions, entered the store of a Chinaman by night, displayed a badge and pretended to be revenue officers. The accused made a search of the premises and then pretended that they had found a small amount of opium. Two of them drew their revolvers and ordered said Chinaman to follow them; whereupon the accused offered to release him if he would pay them P400. After compelling the Chinaman to follow them in the direction of the municipality, they finally succeeded in obtaining from him the sum of P260. It was held that these acts of the defendant constituted the crime of robbery.

In the case of United States vs. Recio (21 Phil. Rep., 511), the defendant, by means of intimidation and threats of arrest for the violation of the Opium Law, obtained from the offended person the sum of P1,000. This court held, following the decisions of United States vs. Smith (3 Phil. Rep., 20); 3 Viada 341; decision of the supreme court of Spain of June 24, 1875; and United States vs. Flores (19 Phil. Rep., 178), that the defendant was guilty of the crime of robbery, punishable under paragraph 5 of article 503 of the Penal Code.

During the trial of the cause there was an effort made to show that Vicente Eizarraga was not the owner of the opium and that said opium was contraband goods, and that, therefore the crime of robbery could not have been committed with reference to said property. In the commission of the crime of robbery, it is not necessary that the person from whom the property is taken, by means of threats and violence, shall be the owner. It is sufficient if the property is taken from him by means of threats and violence, for the purpose of gain, on the part of the person appropriating it. (Art. 502, Penal Code.) The possession of the property is sufficient. Ownership is not necessary. (Stegar vs. State, 39 Ga., 583; People vs. Durand, 47 Michigan, 332; Commonwealth vs. Clifford, 8 Cushing (Mass.), 215; Rex vs. Bramley, Russ. and R., 478; Reg. vs. Webster, 9 Cox's Criminal Cases, 13; Kennedy vs. State, 12 Southern Reporter (Fla.), 858; States vs. McRae, 111 N. C., 665; State vs. Allen, 103 N. C., 433.)

Robbery may be committed from a bailee (Rex vs. Brainley, Russ. and R., 478) or from a person who himself has

stolen it (*Commonwealth vs. Finn*, 108 Mass., 466; *Ward vs. People*, 3 Hill (N. Y.), 396) and it has even been held that the taking of clothing from the body of a dead person constitutes robbery, as the property of the executor. (*Hayne's*, 12 Coke, 113.) Even the owner of property may be guilty of robbery when, for instance, he takes it from the possession of a bailee, with the intent to charge the bailee with its value. (*Palmer vs. People*, 10 Wendell (N. Y.), 166; *People vs. Thompson*, 34 Cal., 671; *Commonwealth vs. Greene*, 111 Mass., 392; *People vs. Long*, 50 Michigan, 249; *State vs. Rivers*, 60 Iowa, 381.)

In our opinion, in view of the foregoing discussion, it is unnecessary to discuss particularly the other assignments of error.

After a careful examination of the record, we are fully persuaded that the defendant is guilty of the crime charged in the complaint, beyond a reasonable doubt. The lower court imposed the penalty provided by law in its maximum degree, holding that there existed the aggravating circumstance of nocturnity. In our opinion, there is nothing in the record which indicates that the defendant took advantage of the nighttime for the purpose of committing the crime in question. There being neither aggravating nor extenuating circumstances, the defendant should be punished in accordance with the provisions of paragraph 5 of article 503, in relation with article 502 of the Penal Code, or in the medium grade of presidio correccional to presidio mayor in its medium grade. In our opinion, the defendant should be sentenced to be imprisoned for a period of six years and one day of presidio mayor, and to pay the costs.

Therefore the judgment of the lower court is hereby modified, and it is hereby ordered and decreed that the defendant be sentenced to be imprisoned for a period of six years and one day of presidio mayor, and to pay the costs.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

DISSENTING

MORELAND, J.

I do not agree to the conviction for robbery.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.