

[G.R. No. 3390. February 21, 1907]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CIRIACO NUECA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

These defendants were charged with the crime of *robo con lesiones* in the Court of First Instance of Albay. At the time of the opening of the trial of said cause in the lower court, at the request of the provincial fiscal, the court dismissed Juan Bete and Santiago Boticario. Ciriaco Nueva was placed on trial and after hearing the evidence the lower court found that he was guilty of the crime of *robo con lesiones*, and sentenced him to be imprisoned for a period of six years ten months and one day of *presidio mayor*, under paragraph 5 of article 503 of the Penal Code, with the accessory penalties of article 57 of the same code, to return the stolen watch or in default of which to indemnify the owner, Serapio Moyo, in the sum of 15 pesos, and also to indemnify Moyo in the sum of 50 pesos, the amount paid to the doctor for treatment of the wounds received at the hand of the defendant. From this decision of the lower court the defendant appealed.

An examination of the evidence adduced during the trial of said cause discloses the following facts:

That for some time prior to the 24th of October, 1905, the accused had been in the employment of the said Serapio Moyo, harvesting hemp; that as such employee he had been in the house of the said Moyo prior to the said 24th day of October; that on the 21st day of October the accused was in the house of the said Moyo for the purpose of receiving pay for his labor; that the said Moyo took the money with which to pay the accused out of a certain trunk then and there in said house; that the accused was in the room where the trunk was from which said money was taken; that late in the night of October 24, 1905, the accused entered the house of Serapio Moyo and his wife, Barbara Nieves; that being in said house

the accused examined the contents of two unlocked trunks which he found there, and threw a third trunk, which was locked, out of the window, which was subsequently found; that the accused took and carried away from said house one watch of the value of 15 pesos, the property of the said Moyo; that while the accused was examining the said trunks in the room of the house of the said Moyo, the said Moyo and his wife were awakened by the noise made by the accused; that Moyo and his wife saw and recognized the accused while he was in the act of searching said trunks; that the said Moyo and his wife thereupon entered the room where the accused was for the purpose of capturing and holding him until a policeman could be called; that the said Moyo took hold of the body of the accused, whereupon the accused drew a pocketknife from his pocket and wounded the said Moyo in the hand to such an extent that he was obliged to release the accused, when the accused attacked the wife of Moyo and also wounded her, and thereafter escaped from the house; that there was a light in the room where the defendant was examining the trunks, by which Moyo and his wife were able to recognize him; that the wound which Moyo received at the hands of the accused disabled him from following his usual occupation for a period of about thirty days; that the wounds which the wife received disabled her from pursuing her usual occupation for a period of about fourteen days; that Moyo and his wife paid 50 pesos for the medical treatment of such wounds.

The foregoing facts are in substance admitted by the attorney for the accused in this court. He contends, however, that these facts do not constitute the crime of robbery, but that of theft only. The essential difference between robbery and theft is the violence, intimidation, or force employed in the commission of the crime. In robbery there must exist violence or intimidation of the person or force with regard to the property taken, while the taking of property without the existence of these facts is theft simply. It is true that the evidence in this case does not disclose the fact that the accused exercised violence on or intimidation of the persons in entering the house robbed; but the evidence does disclose the fact that during the commission of the crime, while he was in the act of appropriating the property stolen and before the termination of the robbery, he did exercise violence and acts of intimidation against the persons robbed, for the purpose of completing the robbery.

We are of the opinion that the foregoing facts constitute the crime of *robo con lesiones*. The crime was committed in the nighttime, the defendant evidently selecting this time that he might the more effectually commit the crime; no extenuating circumstance existed in its commission.

The judgment of the lower court is in accordance with the provisions of the Penal Code. It is

therefore affirmed with the costs of both instance against the defendant.

After expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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