

[ G.R. No. 2063. February 24, 1905 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. TOMAS BIRUEDA, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**MAPA, J.:**

The fact that the defendant and appellant, together with his other two codefendants, who did not appeal, took possession, with the intention of profiting thereby, of the amount of 250 pesos while the owner thereof was tied to the wall in his home, together with three other persons, the latter having been tied by the appellant, a corporal in the Constabulary, and his companions, a few hours prior thereto on the supposition that they had concealed and aided a band of robbers whom the Constabulary were endeavoring to capture, does not constitute the crime of robbery, but only that of theft, provided for and punished by article 517 of the Penal Code, as stated by the court below in its judgment.

All the following facts have been clearly proven in the case: That the defendant, as a corporal in the Constabulary, and his companions had captured and tied, in the manner above set forth, the owner of the money taken and his companions, because the latter were suspected of aiding and concealing a band of brigands which the Constabulary were trying to capture; that the taking of the money was carried out without the use of violence toward the thing, since the money was kept in an open drawer and therefore it was not necessary to break the same; that they did not exercise intimidation or violence toward the person. The fact that the owner of the money and his companions were tied at the time can not be considered as violence, because they had been tied for

some hours previously for a reason entirely foreign to the fact of the taking of the money. The idea of taking the money grew, evidently, in the minds of the appellant and his codefendants after the former were captured, as appears from all the evidence adduced in the case.

The penalty of two years of *presidio correccional* imposed by the court below is in accordance with the law. The money taken exceeds the amount of 250 pesetas and is less than 1,250 pesetas and the crime was accompanied by the aggravating circumstances provided for in paragraphs 11 and 20 of article 10 of the Penal Code (par. 3, art. 518, of the code).

As regards the other fact alleged in the complaint, that appellant did, on the day following the commission of the theft, ask from the owner of the money taken the sum of 50 pesos in order to prevent being taken bound to the cuartel of the Constabulary where appellant was detailed, the prosecution should charge same in a separate complaint. This fact constitutes another crime, different from that of the theft of 250 pesos. The commission of the latter crime was already consummated when the 50 pesos were asked by the defendant from the owner of the money. The crime of theft is included, necessarily, in that of robbery and, therefore, the appellant can be sentenced for the former, notwithstanding having been charged with the latter, under the provisions of section 29 of General Orders, No. 58. We therefore affirm the judgment below in all respects, with the costs in this instance against the appellant. So ordered.

*Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.*