5 Phil. 274

[G.R. No. 2425. November 11, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. THE CHINAMAN UN CHE SAT ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

These defendants were charged with the crime of robbery, were tried by the Court of First Instance of the city of Manila, were found guilty, and each sentenced to be imprisoned for a period of two years four months and one day of *presidio correctional*. From this decision the defendants appealed to this court.

The complaint filed in the court below alleged that the defendants did, with the intent of profiting thereby and without the consent of the owner thereof, willfully, unlawfully, and feloniously, without arms, by making use of false keys, enter and rob an inhabited house, to wit, the dwelling place of Mirafzal Kahn, etc., and did then and there, by the means above specified, take and carry away from said dwelling place certain property of the said Kahn.

The evidence adduced during the trial shows that the defendants maintained a *tienda* in the city of Manila; that said *tienda* was situated adjoining the house in which the said Kahn maintained a sort of game of chance. This game of chance was played by means of silver coins pasted upon a cloth, which silver coins had certain marks upon them. The coins thus pasted upon the cloth amounted to 23 pesos, of different denominations. On the afternoon of the 7th of November, 1904, the said Kahn purchased of the defendants a lock for the purpose of locking the outside door to his place, in which this game of chance

was carried on. On the same day the said Kahn used the said lock in fastening the door to his place of business, he was absent from his place of business for the space of half an hour or more, and upon his return he discovered that the silver coins which were pasted upon the cloth as above indicated had been removed from his place of business; whereupon the said Kahn called a policeman and made an investigation and later, the same day, found in the possession of the defendants silver coins amounting to $1.80, marked in a similar manner as the coins which he (Kahn) had used in his game of chance, as above indicated. The police also found in the possession of the defendants a key that would operate the lock which the said Kahn had purchased of the defendants. The sentence of the court below was passed upon these two circumstances :

First, that the sum of $1.80 of marked coins was found in the possession of the defendants; and Second, that they had in their possession a key which would operate the lock used by the said Kahn.

The defendants allege that they came into possession of said coins through purchasers of articles in their *tienda*,
and during the trial of said cause exhibited other keys which they kept for sale which would also operate the lock sold to the said Kahn, as above indicated. The defendants also introduced proof to show that they had a considerable sum of money invested in their business and that they had been engaged in business at this particular place for several years.

The conviction of the defendants was based solely upon the circumstances mentioned above. These circumstances, in our opinion, are not sufficiently conclusive to show, beyond peradventure of doubt, the guilt of the defendants.

The coins used in the game of chance by the said Kahn *were pasted* upon the cloth simply. He had been engaged in this game of chance for some time, and it would be strange if some of the coins thus used would not be loosened from the said cloth and get into general circulation and be acquired by the defendants in the way they indicated. If the

defendants had stolen all of the money pasted upon the said cloth, amounting to 23 pesos, as charged, it is a very strange fact that only $1.80 of said money was found in the possession of the defendants a few hours after the commission of the offense. It is also a fact worthy of note that the $1.80 was found with the other moneys of the defendants.

We attach no importance to the fact that the defendants were found in possession of a key that would fit the lock sold to the said Kahn. The evidence shows that the lock was of a very cheap kind.

It is true that defendants may be convicted upon circumstantial proof, but when circumstances are relied upon for the purpose of conviction, the circumstances must be as clear and as conclusive as direct and positive testimony. They must be sufficient to overcome the presumption of innocence and show, beyond peradventure of doubt, that the defendants, and no others, committed the crime charged.

For the reasons above set forth the judgment of the inferior court is hereby revoked and the cause against the defendants is hereby dismissed. So ordered.

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

Date created: April 28, 2014