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[G.R. No. 1000. March 06, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CARLOS SANTIAGO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

COOPER, J.:

Santiago Solitario, Carlos Santiago, and Jacinto Alfonso were charged with the crime of illegal detention stated as committed in the following manner:

On the 29th day of September, 1901, in the barrio of Sacumbaca, pueblo of Talavera, Province of Nueva Ecija, said defendants, armed with guns and bolos, sequestered two youths called Abdon Somera and Modesto Balasigue, depriving them of their liberty, the first named for the period of twenty-nine days and the last named for the period of four days. The defendants and four other individuals constituted an armed band by whom the act was committed.

After the arraignment and after the trial was commenced Santiago Solitario died. The defendants Carlos Santiago and Jacinto Alfonso were tried and found guilty and were condemned to the penalty of six years and one day of *prision mayor* and accessories, and each to pay their part of the costs of the suit. From this judgment the defendants Carlos Santiago and Jacinto Alfonso appeal.

It is contended that the proof was insufficient to sustain the conviction, that such acts as were proven do not constitute illegal detention.

After a careful examination of the record we reach the conclusion that the evidence contained therein is sufficient to support the conviction.

Modesto Balasigue, one of the youths detained, testifies that on the 24th day of September of last year he and Abdon Somera were hunting wild hogs at the place called Sacumbaca,

and that they were sequestered by several individuals; that there were six persons in the band, all armed, some carrying guns and others bolos; that the defendants Carlos Santiago and Jacinto Alfonso carried bolos; that witness was detained by the defendants four days, when he escaped from their custody. At the time he escaped Abdon Somera was still held by them. That he is able to identify the defendants as being the persons who had him in custody, since he was in their company during the time he was held by them.

Three municipal police testified as to the capture of the defendants and as to finding in their possession the boy Abdon Somera and three stolen carabaos.

Meliton Carlos, president of the municipality of San Miguel de Mayumo, testified that these defendants were captured by the police; that he was in company with the police when they captured them, and that the defendants had in their possession Abdon Somera and some carabaos. This witness testifies that upon capturing the defendants they admitted that they had carried off Abdon Somera to San Miguel de Mayumo. The testimony of this witness and that of the police as to the confession made by the defendants is not entirely consistent. The first affirms that the defendants said they carried off Abdon Somera to San Miguel de Mayumo, while the police indicate in their testimony that what was said about the carrying off of Abdon Somera was related by Abdon Somera himself. However, it appears very clear from the statements of these witnesses that Abdon Somera and the carabaos were found in the possession of the defendants.

The testimony of Modesto Balasique is sufficient to support the conviction independent of any confessions that may have been made by the defendants when captured. He clearly identifies the defendants as the parties who carried him and Abdon Somera off, and he states that after four days of detention he made his escape while grazing the carabaos.

No explanation is made why the boy Abdon Somera was not adduced as a witness at the trial. But, as stated, the case is fully proven by Modesto Balasique.

The judge of the Court of First Instance gave the defendants the benefit of article 11 of the Penal Code as an extenuating circumstance and failed to take into consideration the aggravating circumstance of the offense having been committed by an armed band in *cuadrilla*.

We can see no just reason for giving these defendants the benefit of article 11, nor can we see any cause for not taking into consideration the aggravating circumstance of the act having been committed in *cuadrilla*. For this reason we will set aside the judgment of the

lower court and enter the proper judgment, which is, that the defendants Carlos Santiago and Jacinto Alfonso are guilty of the offense of unlawful detention defined and punishable under article 481 of the Penal Code, and we condemn them to the punishment of ten years and one day of *prision mayor* in its maximum degree and accessories, and to the costs of the proceedings.

Arellano, C. J., Torres, Willard, Mapa, and Ladd, JJ., concur.

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