

2 Phil. 452

[ G.R. No. 1173. August 27, 1903 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. BONIFACIO FULGENCIO, DEFENDANT AND APPELLANT.**

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

**WILLARD, J.:**

Eulogio La Orinario and Gregorio Eivera both testified that the defendant, a Manila policeman, demanded of Eulogio 20 pesos. The testimony of these witnesses, as it appears in the record, is somewhat confused, but in view of the fact that the defendant presented no evidence, and that the statements of these two witnesses are therefore uncontradicted, we consider them sufficient to establish the fact of this demand.

Eulogio, telling the defendant and his companions that he would get the money, reported the matter to the authorities, and by them was furnished with two marked bills of 5 pesos each, which he in the afternoon of the same day gave to the defendant. The latter was arrested almost in the act, with the marked bills in his pocket.

Eulogio and his companions had overturned a barrel from a carreton and scattered its contents in the street. The defendant and his companions had, on this account, either arrested the witness or threatened to do so unless money was paid to them.

The offense falls within article 383 of the Penal Code.

The court below, without appreciating any aggravating circumstances, sentenced the defendant in the maximum degree. This was error. We fix the penalty at the maximum of the medium degree.

Before the trial commenced the case was dismissed as to the defendants Medina and Pinon. Why this was done does not appear. But, whatever the reason may have been, such dismissal can not be alleged by the defendant, as a ground for acquitting him of an offense

of which he has been proven guilty.

The judgment below is reversed, and the defendant sentenced to four months and twenty days of arresto mayor, and a fine of 30 pesos, with the costs of both instances against him.

*Arellano, C. J., Torres, Cooper, Mapa, and McDonough, JJ., concur.*

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Date created: April 15, 2014