

[G.R. No. 1193. March 04, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOSEPH HOWARD,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

In a complaint dated November 10, 1902, Joseph Howard, Joe Williams, John Mack, and Charles Nailor were charged by the provincial fiscal of Pampanga with the crime of robbery. The complaint stated that while Bernardino de Jesus, an employee of the railway, and his servant, Segundo Meneses, were in the station of said railway at Angeles, at about 7 o'clock in the evening of the 2d of November, three Americans entered the same; that they were armed with revolvers; that two of the defendants aimed their revolvers at said employee and his servant while the other went to the place where the safe was located and took the same, with the money contained therein, amounting to 165.47 pesos, Mexican; that they then left immediately, carrying said sum away, and in order to facilitate their exit they broke the door which opens upon the platform facing the town of Mabalacat; all contrary to law. The case having come on to be tried, one of the defendants, John Mack, having escaped (folio 15), the court, at the request of the defense, ordered the case to proceed as to the other three defendants present, separating the trial as to the absent defendant. As a result of the trial, judgment was rendered on the 2d day of December, 1902, in which Joseph Howard and Joe Williams were sentenced as principals in the crime of robbery to eight years and eleven months of *presidio mayor*, with the accessories provided for in article 57, to return, jointly and severally, the amount taken, to wit, 143.52 pesos, Mexican, without subsidiary imprisonment in case of their failure to pay said sum, on

account of the nature of the principal penalty imposed, and to each pay one-third of the costs. Charles Nailor was acquitted, with the remaining costs *de officio*. The judgment also provided that the sum of 21.91 pesos deposited with the clerk should be returned to the employee of the railway station at Angeles. This judgment became final as regards Williams and Nailor, and was appealed from by Howard. This court, by resolution taken July 13, 1903 (folio 32), suspended the sentence and returned the case to the court below for a new trial.

From the evidence adduced in the trial it appears that on the evening of the 2d of November of said year three Americans came to the said station; that these Americans were Joseph Howard, Joe Williams, and John Mack; that they came there under the pretext of changing some bank notes which they did not show; that immediately one of them threatened said Bernardino de Jesus, pointing his revolver at him, and another of them did likewise toward Segundo Meneses, while the third went immediately to where the safe was located and took it, with all the money contained therein, amounting to 165.47 $\frac{4}{8}$ pesos, Mexican, and then immediately left in the direction of the town of Mabalacat. These acts characterize the crime as that of robbery with intimidation of person as provided for and punished in article 502 and paragraph 5 of article 503 of the Penal Code. The three defendants, with the intention of profiting thereby, took possession of the money belonging to another by means of intimidation and contrary to the will of the employee of said station in charge of the collection of money, whom they threatened with their revolvers. These facts constitute the crime of robbery punished by paragraph 5 of article 503 of the Penal Code with *presidio correccional* to *presidio mayor* in its medium degree. Having come up here on the appeal of the defendant Howard only, this court can not take into consideration in rendering its decision anything regarding Williams and Charles Nailor, of whom the former has been sentenced and the latter acquitted by final judgment. The court will not take into consideration anything regarding John Mack, against whom there is a separate case.

The liability of Joseph Howard is fully proven. The two eyewitnesses of the crime of robbery, Bernardino de Jesus and Segundo Meneses, in

their testimony corroborate each other, that Howard was the third party who took the safe containing the money while the other two were aiming their arms at said two witnesses; they pointed at him several times during the trial and gave many details as to how they identified him, in spite of the surprise and fright they had at the time the robbery took place, and notwithstanding also the fact that the defendant had grown a beard. They identified him because the defendant, together with his codefendants, used to come to the station and sit on some pieces of lumber in the rear of same. It is true that the persons who came in answer to the cries for help of the two injured parties did not find the robbers, but they saw them running at a great distance; they did not try to follow, because they knew the robbers were armed, but three or four days afterwards the latter were captured, together with Nailor, near the San Fernando station, and the sum of 21.91 pesos, Mexican, was found in their possession and also two revolvers. There is, therefore, sufficient evidence in the case to justify the penalty imposed upon the defendants. In the commission of the crime we must consider the existence of the aggravating circumstance of nocturnity, without any extenuating circumstance present to offset the effects of the former, and therefore the penalty which the defendant has incurred should be imposed in its maximum degree.

As for the rest, the complaint is valid and there is no defect tending to prejudice the rights of the defendant. Section 5 of General Orders, No. 58, does not require the complaint to be sworn to by the prosecuting attorney. In that complaint Joseph Howard and others were charged with the crime for which he is now prosecuted, and if the trial developed the respective participation which each of the defendants took in the robbery, failure to express these details in the complaint does not prejudice the rights of this defendant, who, being one of the accused persons in said robbery, came in and presented his defense and declared in his own behalf without having taken exception to said complaint. Therefore, in this court he can not raise any question whatever as to the validity of the complaint.

Therefore, by virtue of the reasons above stated, and also those stated by the court below in its judgment of October 5, 1903, we are of

the opinion that the judgment below should be affirmed and the defendant, Joseph Howard, sentenced to eight years and eleven months of *presidio mayor*, with the accessories provided in article 57 of the Penal Code, to return, jointly and severally with his codefendants, Joe Williams and John Mack, to the employee of the station of Angeles the amount of 143.52 pesos, Mexican, unrecovered, without having to suffer subsidiary imprisonment in case of insolvency on account of the nature of the principal penalty, and to pay one-third of the costs; and that delivery be made to the employee of the railway of the sum of 21.91 pesos, Mexican, deposited with the clerk. This case to be remanded to the court below with a certified copy of this decision and of the judgment which shall be rendered in accordance herewith. So ordered.

Arellano, C.J., Mapa, Johnson, and Carson, JJ., concur.
