

4 Phil. 291

[G.R. No. 1459. March 17, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOHN MACK, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

The motion for a rehearing in this case is based upon the ground that the complaint filed against this defendant and his codefendants charges that three Americans committed the crime of robbery, while four Americans were actually convicted of the crime.

It is a fact that what is usually regarded as the "title part" or "caption" of the complaint gives the names of four persons, but what is regarded as the "charging part" of the complaint, or, in other words, that part of the complaint which contains the description of the offense, alleges that the offense was committed by but three Americans.

An examination of the record discloses that fact that four Americans were arrested prior to the time of the filing of the complaint in said cause. The name of each of the four was inserted in the "title part" or "caption" of the complaint. The names of the four were, respectively, Joseph Howard, Joe Williams, John Mack, and Charles Nailor. The record discloses the fact also that Charles Nailor was arrested because the officer who made the arrest found in his possession a revolver and a quantity of money at the time of his arrest. Evidently Nailor was arrested upon the belief that he had participated in the fruits of the crime.

Before the commencement of the trial of the cause against the three Americans, John Mack escaped from the custody of the officers and was

not again arrested until after the others, Joseph Howard, Joe Williams, and Charles Nailor, were tried. At the conclusion of the trial of Howard, Williams, and Nailor the court found that the evidence was not sufficient to support the charges against Charles Nailor, and therefore discharged him from the custody of the law. The court found that the evidence was sufficient to show that Joseph Howard and Joe Williams were guilty of the crime charged in the complaint, and sentenced each to be imprisoned for the period of eight years and eleven months of *presidio mayor*, with the accessories provided for in article 57 of the Penal Code, etc. At a later date John Mack was rearrested and placed upon trial alone, and was sentenced by the judge of the Court of First Instance of the Province of Pampanga for a period of eight years and eleven months of *presidio mayor*.

While the four Americans named in the complaint were arrested, and while the complaint charged that the crime was committed by three only, the record in the two causes discloses the fact that but three were convicted. An examination of the evidence in the two causes discloses beyond doubt evidence sufficient to justify the sentence imposed upon the three Americans by the Court of First Instance of the Province of Pampanga. So far as the record discloses, no injustice has been done to the three Americans who have actually been sentenced.

No objection was made in the Court of First Instance to the sufficiency or insufficiency of the complaint. The motion for a new trial here is based upon the fact that the complaint is insufficient. We are of the opinion that the complaint was defective, but inasmuch as no objection was made, before or during the trial in the lower court, and inasmuch as the evidence shows that the three persons who were convicted were clearly guilty of the crime charged, and inasmuch as no injustice has been done in the premises, the motion for a rehearing is denied. The defects in the complaint here complained of under the facts in this case are not sufficient to justify a reopening of the case for a new trial.

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

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