

[G.R. No. 1800. April 24, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FERMIN GREGORIO
AND ANTONIO DURAL, DEFENDANTS AND APPELLANTS.**

D E C I S I O N

MAPA, J.:

The evidence leaves no room for doubt as to the commission of the robbery charged. Some of the stolen effects were introduced in evidence as incriminating evidence on the trial of the case. The question is confined to the determination of the guilt of the defendants.

Against Fermin Gregorio there is the statement of the injured party, who affirms having identified him at the time of the robbery, and the fact that the watch of the witness's husband, which was one of the articles stolen, was found in the possession of the accused. These facts are sufficient to prove the guilt of said defendant. He tried to explain the fact of being in possession of the watch by saying that he had bought it from one Marcelo. A witness corroborates this assertion, but his statement does not convince us in any manner. He states that he witnessed the purchase, because Fermin Gregorio asked him to see and identify the watch, but in cross-examination, on being questioned if he did, in fact, recognize it, he answered "No." It seems to us quite doubtful that having witnessed the purchase for the only and solitary purpose of being able to recognize the watch, that he could not have identified it, there appearing no reason why he should not have been able to make such identification. This witness, furthermore, does not say a single word about the price and all the other details of the purchase. These details should necessarily have been known to him had he really witnessed the purchase.

In order to decide the guilt of the defendant Fermin Gregorio we do not take into consideration at all the statement of the inspector of the Constabulary, Lorenzo Ramos, as regards the fact that the defendants told him they were the principals in the robbery which is charged against them. In speaking about this statement, the judge below said:

“The court does not accept this as proof of the confession, because it has not been shown that such confession was made, nor that it had been made voluntarily and spontaneously; the more so, since this statement is not corroborated by the spies, Domingo Arellano and Bastian Lanoso, to whom the witness refers as having been present at the time the confessions were made.”

In accordance with this consideration of the court below, and which is directly in accordance with the facts of the case, we do not give any value to the testimony of the witness Ramos.

As regards the other appellant, Antonio Dural, if we discard, as we do, the testimony of the witness Lorenzo Ramos, for the reasons above stated, there are no other data incriminating the defendants than the affirmation made at the trial by the injured party of having identified him at the time of the robbery. However, that same injured party did not identify, in the preliminary hearing, this defendant. She only identified Fermin Gregorio, notwithstanding the fact that both defendants were presented to her for identification, as appears from the testimony of the injured party in said hearing, which declaration was presented as evidence for the defense on the trial of this case. Furthermore, when she gave her testimony at the trial she was questioned on cross-examination by the attorney for the defendant, in the following terms: “Is it true or not that you told the justice of the peace that you only identified Gregorio?” to which she answered, “Yes, sir; but I used to know both of them.” If this were true, and if she really knew both defendants, we can not understand why she testified in the justice-of-the-peace court under oath that she only identified Fermin Gregorio. Because of this contradiction we can not consider it established beyond reasonable doubt that the injured party identified the defendant Dural at the time of the robbery.

None of the articles stolen were found in the possession of this defendant. The earring which the policeman found in his possession was not identified by the injured party as belonging to her. There is, then, no incriminating evidence to establish this defendant’s guilt and he is, therefore, entitled to be acquitted.

We affirm the judgment appealed from as regards Fermin Gregorio, with one-half the costs against him. We reverse it as regards Antonio Dural, whom we freely acquit, declaring the rest of the costs in both instances corresponding to this defendant *de officio*. So ordered.

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

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