

5 Phil. 429

[G.R. No. 2364. December 15, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ARCADIO HERNANDEZ ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MAPA, J.:

Of the three defendants only Panganiban was convicted in the first instance and appealed to this court. His two codefendants were acquitted. The sentence imposed upon Panganiban is ten years' imprisonment, he having been convicted of the crime of brigandage defined and punished in section 1 of Act No. 518 of the Philippine Commission.

We agree with the opinion of the fiscal that the facts proved in the trial are constitutive of the crime of robbery in a gang, and not of brigandage as qualified in the judgement appealed from. There is no evidence that the five individuals who perpetrated the robbery are members of a band of brigands as defined in the said law of the Commission.

The appellant did not participate in the execution of the robbery, either as principal or as accomplice. His participation (intervention) was after the act and with the sole purpose of profiting from the effects of the robbery, receiving from the owner of the stolen carabaos the sum of 100 pesos as a ransom demanded by him as a necessary (indispensable) condition to the return of the said carabaos. This act, committed as it was with a knowledge of the perpetration of the robbery, as we consider proved in the trial, makes the appellant responsible as accessory of the robbery, in accordance with article 15

of the Penal Code, and there should be imposed upon him the penalty two degrees below that fixed by the law for the crime (article 68), which in the present case is the fine of 325 to 6,250 pesetas.

The defense of the appellant in this instance asks for the reopening of the trial on the ground of newly discovered evidence that in his judgment conclusively demonstrates the innocence of the defendant. The alleged newly discovered evidence tends only and exclusively to impeach the testimony of the witness for the prosecution, Ciriaco Lanting. The defense considers this witness as the only important one in the case. He is not so, however, nor even is said witness the most important one presented by the prosecution, as he was only brought in in rebuttal. Even if the testimony of Lanting should be totally disregarded there would still remain that of the Chinaman Leandro Uy-Changco and of Januario Rocamora, who had an understanding with the appellant in regard to the ransoming of the stolen carabaos and paid him the 100 pesos demanded by him for said purpose. The most important evidence is that given by these two witnesses rather than that adduced by Lanting to prove the guilt of the appellant; hence the new evidence offered by the defense lacks decisive influence in the trial, the reopening of which is therefore useless and wrong in accordance with law.

With reversal of the sentence appealed from, we sentence the appellant, as accessory to the crime of robbery by a gang, to pay the fine of 300 pesos, Philippine currency, and to restore the amount of 100 pesos to the Chinaman Leandro Uy-Changco, or in case of his inability to pay the said amounts to suffer subsidiary imprisonment at the rate of one day for each 12 pesetas which remains unpaid with the costs of this instance *de officio*. So ordered.

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

CONCURRING

WILLARD, J.:

Based on the judgment rendered in the case of the United States vs. Pedro Abaya,^[1] No. 1821, I concur with the decision in this case.

^[1] Not published.

Date created: April 28, 2014