

5 Phil. 565

[G.R. No. 2606. January 22, 1906]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SANTIAGO DE LOS SANTOS, DEFENDANT AND APPELLANT.

D E C I S I O N

CARSON, J.:

The appellant in this case, Santiago de los Santos, was charged with the crime of robbery, as defined and penalized in paragraph 5 of article 503 of the Penal Code, and was convicted of the crime of "robbery in an armed band in a deserted place" (*en cuadrilla y despoblado*), as defined and penalized in article 504 of the Penal Code, and sentenced to eight years' imprisonment (*presidio mayor*) with the accessories prescribed by law, the payment of costs, and the indemnification of the person from whom the property was taken in the sum of P335, Philippine currency.

The evidence adduced at the trial fully sustains the guilt of the accused of the crime of robbery, as charged in the complaint. We are of opinion, however, that the court erred in finding the accused guilty of the crime of "robbery in an armed band in a deserted place" 5 Phil. 565 as defined in article 504 of the Penal Code, that being a higher offense than the crime of simple robbery, with which he was charged, which is defined and penalized in article 503 of the said code. It does not appear from the evidence that there were more than three persons who took part in the commission of the offense, and an armed band (*madrilla*) is defined in article 505 of the Penal Code as one composed of more than three individuals; and while it is true that the offense was committed in a deserted place (*en despoblado*) and that had the accused been charged with the crime of "robbery in a deserted place" he might properly have been convicted of that crime under the provisions of article 504, nevertheless, as he was charged only with simple robbery, the fact that it was proven to have been committed in a deserted place should only have been taken into consideration as an aggravating circumstance of the simple offense of robbery, as defined in article 503 and as

provided for in paragraph 15 of article 10 of said code.

We therefore reverse the judgment and sentence of the trial court, and find said Santiago de los Santos guilty as charged in the complaint of the crime of robbery, as defined and penalized in paragraph 5 of article 503, with the aggravating circumstance that the crime was committed in a deserted place, and sentence him to eight years imprisonment (*presidio mayor*) with the accessory penalties prescribed by law, to the payment to Co-Quico, from whom the property was taken, of the sum of P335, Philippine currency, and to the payment of the costs of both instances. So ordered.

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