

[G. R. No. 2730. August 07, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BASILIO MORALES, JOSE TALAOC, AND CRISPIN VILLANUEVA, DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

These defendants were accused of the crime of robbery, in the Court of First Instance of the Province of Capiz. The complaint stated that on the night of the 7th of November, 1903, the defendant, Basilio Morales, being a justice of the peace of the municipality of Pangalan, ordered the other two defendants, Jose Talaoc and Crispin Villanueva, to rob two prisoners, Jose Muriel and Clemente Seraspe, who were detained in the municipal jail Of the said *pueblo*; that the two defendants, Jose Talaoc and Crispin Villanueva, in compliance with the order of the said Basilio Morales, by means of threats and with intention to deprive the owners of their property, did take from the said two prisoners two bundles of clothes, which contained the sum of P400 in silver and two gold rings set with stones. These defendants were arrested and brought to trial in the Court of First Instance of the said province on' the 22d of September, 1904.

After hearing the evidence adduced during the trial of said cause, the court below found that each of the defendants was guilty of the crime of robbery, beyond reasonable doubt; that Jose Talao and Crispin Villanueva had committed the robbery under the direction and command of the said Basilio Morales; that there existed the aggravating circumstance of nocturnity, for the reason that the defendants had evidently taken advantage of the nighttime for the execution of the crime. The lower court also found that there existed an aggravating circumstance against the said defendant, Morales, on account of his being a public official. The court sentenced the said Morales to be imprisoned for a period of eight years of *presidio mayor*, and the defendants, Jose Talaoc and Crispin Villanueva, to be imprisoned for a period of six years ten months and one day of *presidio mayor*, each to suffer the accessory penalties of. the law and to indemnify Clemente Seraspe in the sum of

P500, the value of the property stolen, and to pay the costs of the suit From this judgment the defendants each appealed to this court.

The defendant Basilio Morales assigned as one of the errors committed by the court below the fact that the lower court overruled his motion, made during the trial in said lower court for a separate trial. The record shows (p. 263) that after the prosecuting attorney had presented all of his witnesses in the lower court, the said defendant, Basilio Morales, then for the first time demanded a separate trial. This motion the lower court denied upon the ground that the defendant was not entitled to a separate trial under section 33 of General Orders, No. 58, unless the request for the same was made at the beginning of the trial. Said section 33 provides :

“When two or more defendants are jointly charged with a felony, any one of the defendants demanding it must be tried separately.”

We are of the opinion, and so hold, that it is the duty of a defendant, jointly charged with a crime, to demand a separate trial, if he desires it, before the commencement of the trial; that he can not wait until after the prosecuting attorney has closed his proof and then, for the first time, demand a separate trial.

The appellant Basilio Morales alleges that the lower court committed an error in finding that he and his co-accused were guilty of stealing from Clemente Seraspe and Jose Muriel, during the night of November 7,1902, the sum of P400 and two gold rings set with stones.

During the trial of said cause the defendants, Jose Talaoc and Crispin Villanueva, admitted that they had by force compelled the said Clemente Seraspe and Jose .Muriel to deliver to them the two bundles described in the complaint; that they had done this by reason of an order of Basilio Morales, and that they had delivered said bundles to the said Morales. The confessions of these two defendants, in our opinion, are sufficient to justify the conclusion of the lower court to wit, that they were guilty of the crime of robbery.

Both of these defendants also testified that at the time of the alleged robbery the said Morales, the president of the *pueblo*, as well as the vice-president of the *pueblo*, were present at the time the said Morales ordered them to take away from the two prisoners the packages described in the complaint. It does not seem reasonable to us that the said Morales, being then a justice of the peace of the *pueblo*, would have attempted to commit

the crime described by the .said defendants, Jose and Crispin, in the presence of both the president and vice-president of his *pueblo*. The improbability of the truth of the statements of Jose and Crispin, considered in connection with the testimony of the witnesses for the said Morales, adduced during the trial of said cause, is sufficient to convince us that the said Basilio Morales was not guilty of the crime charged. It is our judgment, therefore, that the said Basilio Morales should be absolved from any liability under the complaint. He is, therefore, hereby ordered to be discharged from the custody of the law and the complaint against him is hereby ordered to be dismissed.

With reference¹ to the defendants Jose Talaoc and Crispin Villanueva, we are convinced, after a careful examination of the evidence, and their confessions adduced during the trial of the cause, that they are guilty of the crime charged in the complaint and therefore the judgment of the lower court, as to them, is hereby affirmed with the costs of both instances. So ordered.

Arellano, C.J., Torres, Willard, and Tracey, JJ., concur.
