

## THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOSE MONTANO, DEFENDANT AND APPELLANT.

*G. R. No. No. 1345. December 29, 1903*

Ponente: MCDONOUGH, J.

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### MCDONOUGH, J.:

The defendant, Jose Montafio, was charged with being accessory to the crime of robbery in a gang, committed in the month of January, 1902, in the barrio of Napnapin, in the town of Tigbauan, by more than three armed men, who, in the nighttime, with force and arms committed a robbery and carried away as the proceeds thereof eight carabaos.

There is evidence in the case to show that soon after the robbery four of these carabaos were found in the possession of the defendant at Alimodian; that the defendant was informed that these carabaos had been stolen; and that the credentials of Ownership were exhibited to him by the rightful owners; that the defendant stated that if he had known that the carabaos had been stolen he would not have bought them, and that he asked to be paid one-half of the price of the carabaos as a condition of delivering them to the owners.

The owners testified that they then stated to the defendant that they had not the money with which to make this payment, but that they would go to their homes and return with the money. This they did the next day, but then the defendant stated that he had returned the carabaos to the men from whom he had bought them; and so the owners were not able to recover possession of their property by reason of the disposal of the same by the defendant after he had been informed that the carabaos had been taken from the owners through robbery.

The defendant denied that he had had these carabaos in his possession; denied that he had promised to return them on payment of half the price which he had paid for the same, and denied that he had had any conversation with the owners about the same. He also produced witnesses whose testimony tended to prove an alibi, but this branch of the proof was weak, and the contradictory statements of the defendant had the effect of weakening his testimony also.

The court below, evidently believing the evidence produced by the prosecution, found the defendant guilty and sentenced him to serve a term of four months of *arresto mayor*, together with the corresponding accessories and indemnification and to the payment of the costs.

In order to convict the defendant of the crime of being accessory to the crime of robbery committed as shown by the evidence in this case, it was not necessary to show that he had participated therein. It was sufficient to show that he had knowledge of it, and the proof shows that he acquired such knowledge when he was told by the owners that these carabaos had been taken away from the owners by robbery. After having obtained this knowledge he disposed of the property or concealed the same so that the owners were deprived of their property the body and effects of the crime. (See art. 15, Penal Code.)

We are of opinion, however, that in sentencing the defendant an error was committed by the court below. As the

punishment provided for the crime of robo en cuadrilla is that designated in No. 5 of article 503 of the Penal Code in its maximum grade, the penalty corresponding to an accessory after the fact is not that of arresto mayor in its maximum grade the punishment fixed for an accomplice but a correctional fine. (Arts. 26, 67, and 68 of the Penal Code.)

The judgment below is therefore reversed and judgment ordered as follows: That the said Jose" Montano be sentenced to pay a fine of 2,500 pesetas, and, if he fail to pay said fine, that he be imprisoned until the same shall be paid, but such imprisonment not to exceed one month. (Art. 92, Penal Code.)

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

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