

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. AQUILINO NIEM ET AL., DEFENDANTS AND APPELLANTS.*CA-No. 521. December 20, 1945*

Ponente: PARAS, J.

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This is an appeal from a judgment of the Court of First instance of Laguna, convicting the herein appellants, Aquilino Niem, Filemon Niem, Benito Niem, and Jose Buenafe, of the crime of robbery in band committed in an uninhabited place and sentencing them to the indeterminate penalty ranging from two years and four months of prison correccional to seven years, ten months and twenty-one days of prison mayor; to indemnify the offended parties, Toribio Quiogue and Genaro Gelitia, jointly and severally, in the respective sums of F89 and P27.41, without subsidiary imprisonment in case of insolvency; and to pay the costs.

In the sitio of Balanoy, barrio of Mabacan, municipality of Calauan, Province of Laguna, along an uninhabited railroad truck, Toribio Quiogue and Genaro Gelitia were held up at about noon of January 18, 1945, by four waylaying men, three of whom were armed with revolvers and one with a knife. At the subsequent investigation conducted by Constabulary Sergeant Julian Artillaga, Genaro Gelitia easily identified the herein appellants, among many persons shown to him, as the four individuals who robbed him and his companion, Toribio Quiogue, of their clothes and other personal belongings worth F116.41; and in the search made in the house of Aquilino Niem with whom the other appellants lived, the belt buckle (Exhibit C) and the pandan bag (Exhibit D) taken away by the appellants, were recovered.

More specifically, Genaro Gelitia testified in positive terms that he was confronted and ordered to undress by Benito Niem and Jose Buenafe, the latter holding a revolver and the former a knife, and that, in the meantime, Filemon Niem poked his revolver at Toribio Quiogue's side while Aquilino Niem acted as guard holding a revolver. Although Toribio Quiogue was also able to identify Filemon Niem, he was frank enough to admit that he could not recognize the other three.

The appellants were rightly convicted. The defense of alibi vigorously set up by their counsel is not convincing. It cannot prevail over the positive testimony of the offended parties, particularly in the absence of any showing that they had any motive for implicating the appellants, coupled with the recovery of the belt buckle and the pandan bag from appellants' house. Moreover, as the plantation where the appellants are alleged to have been working on the day in question is only about six hundred yards away from the scene of the crime, it was not impossible for them to leave their place of honest work momentarily in order to attend to the unlawful hold-up business which, though seemingly lucrative, never pays in the long run.

Counsel for appellants is suspicious about the ability of Genaro Gelitia in identifying the appellants who, according to the very evidence for the prosecution, had effected the robbery within the brief period of two minutes, especially in view of the failure of Toribio Quiogue to recognize three of the appellants. We have, however, every reason to suppose that Genaro Gelitia spoke the truth not only because he appears to have no

motive in testifying falsely but because we find corroboration in the discovery in appellant's house of two of the articles robbed. Upon the other hand, the candid admission of Toribio Quiogue that he could identify only Filemon Niem, far from being a detracting circumstance, serves to make the evidence for the prosecution more truthful and persuasive. Indeed, Toribio's failure to recognize all the appellants may be due to his inferior perceptive power or to the fact that he was not in so good a position as to view all the appellants well enough to be remembered for some time.

We cannot accept appellants' speculative contention that the initials "G. G." appearing on the belt buckle was a probable fabrication and that Genaro Gelitia, being illiterate, could, not have read said initials. Said buckle had been positively identified by its owner and it is not unusual for even an illiterate to recognize his property by any familiar distinguishing mark.

Contrary to appellants' allegation, there is satisfactory proof that all the appellants were armed and the articles specified in the information had really been taken away by them. The fact that only the knife (Exhibit A), the belt buckle (Exhibit C), and the pandan bag (Exhibit D) had been produced before the court does not prove any deficiency in the evidence for the prosecution regarding the corpus delicti, but merely indicates the speed with which the appellants were able to conceal or dispose of their weapons and the other articles robbed.

The appealed judgment will therefore be, as the same is hereby, affirmed, with the sole modification in conformity with the recommendation of the Solicitor General, that the minimum of the indeterminate penalty imposed upon the appellants is reduced to six months of arresto mayor. So ordered.

Moran, C. J., Jaranilla, Feria, Pablo, and Briones, JJ., concur.

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