

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SALVADOR CABA, DEFENDANT AND APPELLANT.*G.R. No. 12139. August 03, 1917*

Ponente: JOHNSON, J.

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This defendant was charged with the crime of robo con lesiones. He was duly arrested, arraigned, tried and found guilty, at first, of the crime of tentativa de robo en cuadrilla and sentenced to be imprisoned for a period of six months of arresto mayor, and to pay the offended person the sum of P6, the amount which the latter had paid in being cured of the wound which he had received from the defendant at the time of the commission of the crime. Immediately after the sentence, the defendant presented a motion for a new trial which was granted; and a new trial was had upon the 19th day of February, 1916. At the close of the second trial, and after a consideration of the evidence adduced, the lower court found the defendant guilty of the crime of robo en cuadrilla con lesiones and sentenced him to be imprisoned for a period of six months of arresto mayor, and to pay to the offended person the sum of P6 and costs, and in case of insolvency, to suffer subsidiary imprisonment in accordance with the provisions of the law. From that sentence the defendant appealed to this court.

The only error assigned by the appellant is that the proof adduced during the trial of the cause does not show that he is guilty of the crime charged.

During the second trial a number of witnesses testified. The fact that on the night of the 3d day of August, 1915, four persons entered the house of Miguel Caidoy is not denied. Neither is the fact denied that at the time the four persons entered the house of Caidoy there were present himself, his wife and his child. Miguel Caidoy testified that he and his wife and his child on the night in question were eating their evening meal; that four persons entered his house; that two of them immediately attacked him and wounded him; that the other two took and carried out of his house a trunk which contained clothing and other articles; that the trunk was left just outside of the house and was later recovered. All of these facts are supported by the declarations of his wife. The only disputed fact is one relating to the identity of the defendant and appellant. The record shows that Miguel Caidoy, immediately after the robbers had escaped, went to the house of the teniente of the barrio to make a report of the occurrence. Miguel Caidoy testified that he gave the name of the defendant to the teniente of the barrio as one of the persons who took part in the robbery. That fact is denied by the teniente of the barrio. Miguel Caidoy and his wife each testified that they recognized the defendant at the time he entered the house, because they had known him a long time; that there was a light in the house; and that by means of the light they recognized the defendant. Luis Navales, a neighbor of Miguel Caidoy, testified that at about 8 o'clock on the night in question, he passed by the house of Miguel Caidoy carrying a light and saw two persons with a trunk and at the same time saw two other persons coming out of the door of the house of the offended person; that one of the two who came out of the door was the defendant; that he positively recognized the defendant as one of the two persons; that he had known the defendant prior to that time; that immediately the four persons ran away leaving the trunk near the house of Miguel Caidoy. The record further shows that Miguel Caidoy, on the following day, met the defendant in a

tienda near his house and then and there accused him of having taken part in the said robbery. Of course, if Miguel Caindoy and his wife did in fact recognize the defendant as one of the four robbers at the time of the commission of the crime, and if, in fact, Caindoy did not give the name of the defendant to the *teniente* of the *barrio*, that would raise some doubt upon the question of the identification. Miguel Caindoy during the trial swore positively that he did give to the *teniente* of the *barrio* the name of the defendant as one of the robbers. The *teniente* of the *barrio* denied that fact. However, we have the undisputed testimony of the wife of Caindoy that she recognized the defendant at the time of the commission of the robbery. We have the testimony of Luis Navales who, so far as the record is concerned, is a disinterested party, who also testified positively that he recognized the defendant as one of the two persons whom he saw running out of the house of Caindoy. Discarding, therefore, the testimony of Miguel Caindoy, we have the undisputed testimony of two witnesses to the effect that they recognized the defendant as one of the four persons who committed the robbery charged in the complaint.

The lower court found the defendant guilty of *robo en cuadrilla con lesiones*. The only proof adduced during the trial of the cause showing the existence of the *cuadrilla* was obtained from Miguel Caindoy who was called by the judge as a witness after the prosecution and defense had closed their proof. He testified that the four persons who entered his house were armed with *bolos*. The Attorney-General is not inclined to accept that declaration as positive proof of the existence of the *cuadrilla*. He was led to that conclusion evidently from the fact that none of the witnesses during their principal examination made any statement concerning the fact that the four men were armed. If they had been armed with *bolos* it would have been most natural for the offended party to mention that fact as one of the principal facts. No mention whatever was made of that fact until after the evidence had been closed and not then until after the judge himself had recalled the witness for the purpose of ascertaining whether or not the robbers were armed. Considering the argument of the Attorney-General in relation with the facts just stated, we are inclined to agree with him in his conclusion, to wit, that the crime committed was *robo simple con lesiones*.

It will be remembered that the provincial fiscal described the offense with which the defendant was charged in the complaint as that of *robo con lesiones*. The question might be presented: Upon what theory did the lower court find the defendant guilty of the crime of *robo en cuadrilla con lesiones* under said complaint? An examination of the body of the complaint presented shows that the defendant was accused "in company with three accused, and in numbers more than three * * * all armed, and by means of violence upon the persons, entered the dwelling house of Miguel Caindoy," etc. If the facts alleged in the complaint had been proved during the trial the judge was fully justified in finding the defendant guilty of the crime of *robo en cuadrilla con lesiones*. We have frequently decided that in a complaint or information filed in a criminal cause, the qualification of the crime is not confined to the designation given by the prosecuting attorney in the first part of the complaint (the title of the complaint). The crime must be qualified by the description of the offense actually given in the body of the complaint. (*U. S. vs. Supila*, 13 Phil. Eep., 671; *U. S. vs. Treyes*, 14 Phil Rep., 270; *U. S. vs. Jeffrey*, 15 Phil. Rep., 391; *U. S. vs. Lim San*, 17 Phil. Rep., 273; *U. S. vs. De Guzman*, 19 Phil. Rep., 350; *U. S. vs. Campo*, 23 Phil. Rep., 368.)

After a careful examination of the evidence, we are of the opinion that the evidence adduced during the trial of the cause shows beyond a reasonable doubt that the defendant was guilty of the crime of *robo con lesiones* and should be sentenced to be imprisoned, taking into consideration the aggravating circumstance of *morada*, in accordance with the provision of paragraph 5 of article 503 of the Penal Code, with the penalty of *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree, or with the penalty of imprisonment of eight years and one day. Therefore, it is hereby ordered and decreed that the sentence of the lower court be revoked and that the defendant and appellant be sentenced to be imprisoned for a period of eight years and one day of *presidio mayor* and to indemnify the offended person in the sum of P6, and to pay the costs. So ordered.

Arellano, C. J., Araullo, Street, and Malcolm, JJ., concur.

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