

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ADRIANO GUINTO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 12492. August 09, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of robo en cuadrilla. The complaint alleged:

"That, on or about June 6, 1916, in the barrio of San Ildefonso., Magalan, Pampanga, Philippine Islands, said accused, Adriano Guinto, Sotero Mañaul, Eugenio Garcia, Pablo Pineda, and Maximino Arce, operating and conspiring together, armed with a shotgun, revolver, and bolos, did, between 10 and 11 o'clock at night, commit the following acts in violation of law: The said Eugenio Garcia, together with an unknown companion, went up into the house of Pedro Polintan, the rest of the accused remaining on guard in the lower part of the house; once inside they opened various tampipes and a trunk belonging to Pedro Polintan; they then seized and carried away P565, in bank notes and coin, and a pair of earrings valued at P5, none of the stolen property having been recovered by the offended party. Account should be taken of the aggravating circumstances of nocturnidad, cuadrilla, and morada, and the use of arms prohibited by law."

After hearing the evidence the Honorable Percy M. Moir, judge, in a carefully prepared opinion in which the evidence was analyzed in detail, reached the conclusion that the evidence showed that each of the defendants was guilty of the crime charged in the complaint and sentenced each of them, in accordance with article 504, in its relation with paragraph 5 of article 503, to be imprisoned for a period of nine years of presidio mayor, with the accessory penalties of article 57, and to indemnify Pedro Polintan in the sum of P565 and Serafina Mercado in the sum of P5, and each to pay one-fifth part of the costs, and in case of insolvency, to suffer subsidiary imprisonment in accordance with the provision of law. From that judgment each of the defendants appealed to the Supreme Court.

The appellants allege that the lower court committed the following errors: (1) in giving credit to the testimony of the witnesses for the prosecution; (2) in declaring that the defendants were guilty of the crime charged beyond a reasonable doubt; and (3) in not absolving them from liability under the complaint.

With reference to the first assignment of error we find, in reading the sentence of the lower court, that he made special mention of the frankness and honesty of each of the witnesses for the prosecution. We find nothing in the evidence which would justify us in finding that the witnesses for the prosecution were not entitled to full faith and credit. Nothing developed during the severe cross-examination to which they were subjected which weakened their direct testimony in the slightest degree.

After the record was received in the Supreme Court a motion for a new trial was presented, based upon the affidavit of the defendant Maximino Arce. In his affidavit he admits that he participated in the commission of the crime charged, but denies that his present codefendants participated in the commission of the crime. He asserts that his coparticipants were Lupo Lague, Francisco Lacsamana, Inigo Galang, and Gabriel Lacsamana. During the trial in the court below Maximino Arce declared as a witness. His only defense was that of an alibi. In view of the

positive identification of the five present defendants by, at least, three witnesses, and in view of the defense of alibi presented by Maximino Arce in the court below, we are not inclined to believe that had the said motion for a new trial been presented in the lower court that the said court would have granted it. The court did not believe him when he swore that he was not present at the time of the commission of the crime. It is not likely that it would have believed the affidavit which he now presents, in which he says that other persons than his present codefendants participated with him in the commission of the crime.

In view of the positive declaration of several of the witnesses that they saw and identified the defendants in the present case at the place and at the time of the commission of the crime, we are now not inclined to give credit to said affidavit in support of the motion for a new trial; and said motion is, therefore, hereby denied.

With reference to the second assignment of error an examination of the proof shows that the only defense presented by the defendants in their own declarations was an alibi. A reading of the proof presented by the witnesses for the prosecution is so free from contradiction and so clear and convincing that we can see no escape from the conclusion that it shows beyond a reasonable doubt that the defendants are guilty of the crime charged in the complaint in the manner and form therein charged. The sentence of the lower court, which has been pronounced to the defendants, is so fully supported by the evidence that we find no reason for changing or modifying the conclusions reached.

It is to be noted, however, that the lower court imposed the penalty of presidio mayor with an indemnity, with the condition that they should suffer subsidiary imprisonment in accordance with the provisions of the law in case of insolvency. That part of the sentence of the lower court must be modified. Subsidiary imprisonment for insolvency can only be imposed when the penalty of imprisonment is presidio correccional or for some of the lower penalties provided for by the Penal Code. (Art. 51, Penal Code; U. S. vs. Celestino, 14 Phil. Rep., 34.)

With that modification the sentence of the lower court should be and is hereby affirmed, with costs. So ordered.

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

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