

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SERGIO MANZANILLA ET AL., DEFENDANTS. SERGIO MANZANILLA, APPELLANT.

G. R. No. 17436. March 09, 1922

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Seven persons, whose names appear in the information on which this action was initiated, were prosecuted for the crime of robbery by a band. Two of them, Escolastico Manalo and Bernabe de Chavez, were excluded from the information and used as witnesses for the prosecution. The remaining five, who were found guilty of the crime charged after trial, were sentenced, Sergio Manzanilla as the leader of the band, to ten years and one day of presidio mayor, and all the rest to six years, ten months, and one day of presidio mayor, all of them to return jointly and severally to Regino Pavino the sum of one hundred twenty-six pesos (P126) and effects to the value of six pesos (P6), and to Anatolio Villaverde and Julian Romulo the clothing and effects appraised at five (P5) and eleven pesos (P11) respectively, and to pay each one-seventh of the costs.

The five accused thus sentenced appealed from this judgment, but the accused, Nicolas Barradas, Francisco Malihan, Luciano Mabilañgan, and Luciano Zaragoza withdrew their appeal during the pendency thereof.

The accused, Sergio Manzanilla, however, maintained his appeal, but his attorney de oficio states to this court that he is constrained to say, in view of the evidence for the prosecution and the absence of evidence for the defense, that the judgment appealed from must be affirmed.

Later on, a motion signed by this appellant, Sergio Manzanilla, was filed in this court, asking for a new trial on the ground: (a) That this accused was not called to testify, (b) that the proceeding was held without due process of law, (c) that some of his coaccused were used as witnesses for the prosecution, (d) that his attorney was bribed by the accused who were used as witnesses, and (e) that the trial court decided the case without the accused having presented their evidence.

The motion is not sworn to and the authenticity of the signature appearing on this motion is doubtful, when compared with the signatures of this appellant shown on page 65 of the "Rollo" and on pages 8, 14, 20, and 122 of the record.

The motion does not say what evidence the accused had, which they were prevented from introducing, nor does it allege that such evidence would change the result of the case.

The exclusion from the information of the two accused, who were used as witnesses for the prosecution, was done in accordance with the law.

As to the charge of bribery against the attorney, there is not even a prima facie evidence of such fact. Besides, this attorney, Mr. Felix Imperial, from all that appears in these proceedings, does not seem to have conducted himself in an irregular or improper manner, and much less to have acted adversely to the interest of the appellant. The

action of the attorney in not introducing any evidence for the defense and in not permitting the accused to testify was within his discretion which he could lawfully exercise, and did exercise, believing undoubtedly that, in doing so, the rights of the accused were better protected.

At all events, these facts concerning the attorney do not constitute a ground for a new trial.

"Incompetency or negligence of defendant's counsel.—A new trial may be granted where the incompetency of counsel is so great that defendant is prejudiced and prevented from fairly presenting his defense, and a new trial sometimes is granted because of some serious error on the part of such attorney in the conduct of the case. But a new trial does not necessarily follow either from the attorney's incompetency or his neglect. This latter rule has been applied to the failure of defendant's counsel to introduce certain evidence, to his failure to summon witnesses, to his failure to except to a ruling or an instruction, to his negligence resulting in defendant's failure to make a statement to the court, to submission of the case * * * without argument * * *" (16 C. J., 1145.)

We do not see how the motion for a new trial can be granted. It is, therefore, denied.

Considering the cause upon its merits, we find that the facts established beyond doubt are: That the herein appellant, Sergio Manzanilla, led the party formed by these seven accused; that more than three of them were armed, and therefore, they constituted a band, within the meaning of the law; that at the order of the said Manzanilla, who was armed with a revolver, the seven accused took up their posts in different places in the Province of Tayabas for the purpose of robbing, as they did in fact rob, about ten travellers, whom they stopped on the highway and took to a nearby forest where they tied them to the trunks of the trees and intimidated them with their weapons, the accused Sergio Manzanilla having fired four times on one of the victims, named Tomas Villaro, when the latter attempted to escape, thereby inflicting a wound on his head which, fortunately, was of a light character; and by this means the accused took the money and effects mentioned in the information and referred to in the beginning of this decision, leaving thereafter the victims tied, as they were, to the trunks of the trees in the craggy ground.

As we have stated, none of the accused presented any evidence.

The facts above stated constitute the crime of robbery by a band with illegal detention. As to the appellant, it further appears that the crime is robbery with physical injuries, but this point is not alleged in the information.

We find no attenuating or aggravating circumstance in the commission of the crime. The allegation in the information that the crime was committed in an uninhabited place was not sufficiently proven.

The crime proven falls under the provisions of article 503, No. 4, of the Penal Code, for while it does not appear that the persons detained were held for ransom or deprived of their liberty for more than one day (which would have made No. 3 of said article applicable), we are of the opinion that such restraint of liberty constitutes the unnecessary violence and intimidation referred to in the aforesaid No. 4 of article 503; the penalty to be imposed in such a case would be that of presidio mayor in its medium degree to cadena temporal in its minimum degree had not the crime been, as it was, committed by a band, and the appellant been its leader, as is shown by the evidence. For this reason the penalty next higher to that aforementioned is the penalty to be imposed, in accordance with paragraph 2 of article 504 of the Penal Code, which is cadena temporal in its medium degree to cadena perpetua.

No modifying circumstance having attended the commission of the crime, said penalty must be imposed in its medium degree, as provided in rule 1 of article 81 of the said Code, which is cadena temporal in its maximum degree.

The judgment appealed from is modified and the appellant sentenced to seventeen years, four months, and one day of cadena temporal, with the accessory penalties provided in article 56 of the Penal Code, to return jointly and severally with the other four accused convicted in this cause to Regino Pavino the sum of one hundred twenty-six pesos (P126) and the effects described in the information, the value of which is fixed at six pesos (P6), and to Anatolio Villaverde and Julian Romulo the clothing and effects also described in the information and appraised at five (P5) and eleven (P11) pesos, respectively, and to pay one-seventh of the costs in the first instance, and one-fifth of those in this instance. So ordered.

Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Ostrand, and Johns, JJ., concur.

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