

THE UNITED STATES, PLAINTIFF-APPELLEE, VS. PEDRO VEGA, ET AL., DEFENDANTS. SILVESTRE REFRESCA AND FERMIN VILLANUEVA, APPELLANTS.

G.R. No. 17775. March 01, 1922

Ponente: OSTRAND, J.

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OSTRAND, J.:

Silvestre Refresca, Fermin Villanueva, Pedro Vega, Jose Villanueva, and Antonio de la Cruz were tried before the Court of First Instance of Batangas for the crime of robo en cuadrilla, the information alleging:

"That the above named accused, Pedro Vega, Silvestre Refresca, Fermin Villanueva, Jose Villanueva, and Antonio de la Cruz, together with Pedro alias Tabong and one named Igme alias Sario who have not yet been found, conspiring together and confederating themselves, on or about the night of the 7th of November, 1919, in the municipality of Tanauan, Province of Batangas, Philippine Islands, being all armed with a revolver and other weapons, with intent of gain, en cuadrilla and by use of force, violence and intimidation, did voluntarily, illegally and criminally, assault the a house of Raymundo Marudo, from which they stole and carried away the amount of P20 in paper money, a pair of pearl earrings valued at P20, a muffler valued at P2.50 and two khaki pantaloons worth P5, all to the value of P47.50, equivalent to 237 1/2 pesetas. The accused Silvestre Refresca has been already convicted of theft of large cattle in case No. 1790 of the docket of the Court of First Instance of Laguna, and is, therefore, a recidivist."

Shortly after their arrest Silvestre Refresca and Fermin Villanueva made confessions in which they implicated the defendants Pedro Vega, Jose Villanueva, and Antonio de la Cruz. On the strength of the confessions the last named defendants were arrested and included in the information, but as at the trial of the case Silvestre Refresca and Fermin Villanueva retracted their confessions, and as there was no other evidence against the other defendants, the latter were acquitted. The court found the defendants Refresca and Fermin Villanueva guilty as charged and sentenced them, respectively, to ten years and seven years, ten months and twenty-one days of presidio mayor, with the accessory penalties prescribed by law, to indemnify jointly and severally Raymundo Marudo in the sum of P52.50, and each to pay one-fifth of the costs. The case is now before this court upon appeal from that sentence.

The evidence establishes beyond a reasonable doubt that the defendants are guilty of robo but some doubt has been expressed as to the sufficiency of the proof of the existence of an armed band. Upon this point the only evidence is the confessions of the appellants at the time of their arrest and it is argued that as these confessions were insufficient to convict the other defendants, they must also be regarded as insufficient proof of there being a band of more than three armed persons. In answer to this we may say that as there, aside from the extrajudicial confession of the accused Silvestre Refresca and Fermin Villanueva, was no proof of conspiracy or combination involving the other accused, such confessions were inadmissible in evidence against the later and could not, of course, be utilized to establish their guilt. (Bishop's New Criminal Procedure, 2d ed., vol., 2, 1248; Greenleaf on Evidence. 16th ed., vol., 1, sec. 233.) It was therefore not so much a question of the sufficiency of the evidence as

of its admissibility.

But there is no reason whatever why the confessions should not be used against the persons who made them. The defendants Silvestre Refresca and Fermin Villanueva having confessed that there were more than three persons in the band which committed the robbery and that all of them were armed and their respective confessions being competent evidence against each of these defendants, the court may take the confessions into consideration and if satisfied beyond a reasonable doubt from such confessions that the robbery was committed by four or more armed men, may so find, irrespective of the fact that the other members of the band have not been brought to justice or have not been convicted. We are convinced beyond a reasonable doubt that the robbery in the present case was committed by an armed band.

The sentence of the lower court being in accordance with the law and the merits, the same is hereby affirmed with one-half of the costs in this instance against each of the appellants. So ordered.

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

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