

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DAMIANO BASISTEN ET AL., DEFENDANTS. ANDRES PASQUIN, EMILIO HUESCA, PLACIDO HUESCA, VICENTE CABALLERO AND ALEJA...

G.R. No. 22744. February 27, 1925

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an appeal from the judgment of the Court of First Instance of Iloilo, finding Emilio Huesca guilty of robbery in band with homicide, and, among others, Andres Pasquin, Placido Huesca, Vicente Caballero and Alejandro Picate, guilty of robbery in band only, sentencing the first to the penalty of cadena perpetua and the rest to eight years of presidio mayor.

Counsel for appellants Emilio Huesca and Andres Pasquin states in his brief that the trial court committed no error in finding his clients guilty and sentencing them to the aforesaid penalties.

The attorney for the appellants Placido Huesca, Vicente Caballero and Alejandro Picate, while he does not point out any error, in effect rebuts the statement made in the brief of the Attorney-General that the appellants were identified, citing folio 32 of the transcript of the stenographic notes in support thereof.

It is true that these appellants Placido Huesca, Vicente Caballero and Alejandro Picate were not individually identified during the trial of the case by the inhabitants of the house, and that those who were then identified by the latter, as appears from folio 32 of said transcript of the stenographer, are not said appellants, but Damiano Basisten, Eduardo Esposo, Alfonso Escobilla, Andres Pasquin and Emilio Huesca.

It is also true that the extra-judicial confession made by Emilio Huesca (Exhibit G), is no proof against said three appellants Placido Huesca, Vicente Caballero and Alejandro Picate, on account of the latter not having given their assent to said confession, nor being present when it was made, and because such confession was made after the accomplishment of the object of the conspiracy.

*** If the evidence made a case of conspiracy to kill and murder, the rule is settled that 'after the conspiracy has come to an end, and whether by success or by failure, the admissions of one conspirator by way of narrative of past facts are not admissible in evidence against the others.'" (Sparf vs. United States, 156 U. S., 51.)

But the fact is that the witness Isidro Esposo saw and heard these appellants Placido Huesca, Vicente Caballero and Alejandro Picate on the evening preceding the night at an early hour of which the event took place, drink tuba and discuss the plan for perpetrating the robbery in question, with their codefendants Emilio Huesca, Andres Pasquin and Damiano Basisten.

The same witness, Isidro Esposo, saw the same six defendants some hours after and a few minutes before the event, a few meters from the house robbed (fols. 8 and following, part 1, transcript of stenographic notes).

A circumstance which is also against these three defendants is their demeanor when they were found and arrested by the agents of the authority.

The circumstantial evidence appearing in the record against them is such that in our opinion it shows beyond a reasonable doubt that they took part in the robbery in question.

We are, therefore, convinced of the guilt of the appellants.

As to their respective liability we find Emilio Huesca guilty of the crime of robbery with homicide, with the aggravating circumstances of nocturnity and of the crime having been committed in the dwelling of the offended party, which are offset by that of his lack of instruction and education, and therefore the proper punishment for him is the medium degree of the penalty under article 503, case No. 1, of the Penal Code, and to indemnify the heirs of the deceased Nicolas Soldevilla in the sum of P1,000.

The liability of the other appellants Andres Pasquin, Placido Huesca, Vicente Caballero and Alejandro Picate consists in having conspired and taken part in the robbery. They must not be responsible for the homicide which was not the subject-matter of their conspiracy and in which they did not have any intervention, for it was performed by Emilio Huesca alone. The proper punishment, therefore, for them is the penalty for robbery in band within the limits of which is that which the trial court has imposed upon them.

Wherefore, with the only modification that the accused Emilio Huesca is also sentenced to indemnify the heirs of the deceased Nicolas Soldevilla in the sum of P1,000, the judgment appealed from is affirmed with the costs against the appellants. So ordered.

Johnson, Malcolm, Villamor, Ostrand, and Johns, JJ., concur.

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