

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. L. V. SMITH
AND MATEO BACANI, DEFENDANTS AND APPELLANTS.***G.R. No. 3497. September 30, 1907*

Ponente: JOHNSON, J.

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These defendants were charged with the crime of robbery. The evidence shows that on the night of the 14th of October, 1905, these defendants, one of whom was armed with a revolver, with criminal intent went to the house of Domingo Ocainpo, situated in the barrio of Pio, municipality of Porac, Province of Pampanga, and ordered the said Ocampo, by means of threats and intimidation, to come out of his house, when the defendants immediately manacled him; that they also compelled one Severo Mañgila, who was then and there in the house of the said Ocampo, to come out of the house also, whereupon Mateo Bacani entered the house, while the said Smith guarded the said Ocampo and Mañgila, and by means of threats and intimidation compelled the women who were in the house to turn over to him the sum of P8, being all the money which the said women had in their possession.

At the conclusion of the trial in the lower court the judge thereof sentenced each of the said defendants to be imprisoned for a period of eight years of presidio mayor, to suffer the accessory penalties of article 57 of the Penal Code, to indemnify, jointly and severally, the offended persons in the sum of P8, to pay the costs and to deliver the said revolver and ammunition found upon the defendants to the chief of Constabulary of the said province.

From this sentence the defendants appealed to this court and the cause was received here upon the 3d day of August, 1906.

On the 2d day of November, 1906, the said defendant Mateo Bacani presented a request in this court, asking that his appeal be dismissed, which request was granted upon the 3d day of November of the same year.

On the 23d day of November, 1906, the defendant Smith filed an affidavit in this court made by the said Mateo Bacani, in which the said Bacani swears that he, Smith, took no part in the said robbery, but that his companion was another American known as Thomas. Upon this affidavit, the defendant Smith asked for a new trial.

During the trial of said cause in the court below the said Bacani appeared as a witness and denied any participation whatever in the commission of the crime. If he, Bacani, did actually participate in the commission of the crime, as the withdrawal of his appeal would seem to indicate, then certainly the facts which he alleges in his said affidavit are not facts discovered after the trial in the court below, and therefore the facts stated in the affidavit do not furnish a sufficient basis for the granting of a new trial; therefore the said motion for a new trial is denied.

A careful examination of the evidence brought to this court shows beyond peradventure of doubt that the defendant Smith was guilty of the crime charged in said complaint. The record also discloses that the crime was committed in the nighttime and at the dwelling house of the offended parties. These facts should be considered as

aggravating circumstances and the defendant, therefore, should be punished in the maximum degree of the penalty of presidio correccional to presidio mayor in its medium degree, in accordance with paragraph 5 of article 503 of the Penal Code.

It is therefore the judgment of this court that the sentence of the lower court be modified and that the defendant Smith be sentenced to be imprisoned for a period of ten years of presidio mayor; to suffer the accessory penalties of article 57 of the Penal Code; to indemnify the persons offended in the sum P8, and to pay one-half the costs. With this modification, the sentence of the lower court is hereby affirmed. It is so ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

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