

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MAXIMO AUSTRIA ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 3563. July 26, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

The evidence is sufficient to support the judgment of the court below so far as it relates to the appellants Bugenio Pagdayunan and Lucindo Añes.

Rejecting all of the testimony against Maximo Austria which was hearsay, that which is left proves only that a band of brigands went to his house on a certain occasion and took away a number of fish and some other articles; that he accompanied them to their camp and that he carried a revolver. This evidence is not, in our opinion, sufficient to convict him of the crime of voluntarily furnishing provisions to such a band. As to him, the judgment of conviction must be reversed.

At the time the acts charged in the complaint were committed, the appellant, Sotero Alarcon, was 14 years old. That he was with the band of Miguel Capistrano for sometime was admitted, but he testified that he was seized and carried away by these people and was forced to stay with them, they compelling him to carry certain articles for them. At the time Mariano Ponce killed Capistrano, this appellant was with the band and came into Manila with Ponce. The testimony of Ponce, which, having been taken in another case against this defendant, was admitted as evidence, is rather indefinite, for he speaks therein of two men, both named Alarcon, and at times does not indicate to which one of the two his testimony refers. After considering all of the evidence we have reasonable doubt as to the guilt of this appellant and he must, therefore, be acquitted.

The judgment of the court below, so far as it relates to Eugenio Pagdayunan and Lucindo Anes, is affirmed, with one-quarter of the costs of this instance against each of them. So far as it relates to Maximo Austria and Sotero Alarcon, the judgment is reversed and they are acquitted, with their proportionate part of the costs of both instances de oficio. So ordered.

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

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