

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FLORENTINO LEYBA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3767. September 28, 1907

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The basis of this case is the charge of brigandage against Florentino Leyba, Isabelo Manalo, and Isidro Almando, who were alleged to have committed two robberies on the night of the 24th of May, 1906, at the residences of Vicente Badillo and Pastor Diocno. The witnesses stated that the robbers were about ten in number, although only five took part in the assault, among whom were the three who were captured and are now under prosecution.

In the complaint filed on the 23d of October of the same year it is stated that, in connection with the robbery, the malefactors caused some injuries to Vicente Badillo, Irene Badillo, and Federico Diocno, that the property stolen from Vicente Badillo consisted of 1,000 pesos in silver and notes, and one watch valued at 20 pesos, and that the property stolen from Pastor Diocno consisted of 120 pesos and two gold rosaries valued at 15 pesos.

The court below qualified the crime as robo en cuadrilla, under paragraph 5, article 504 (probably meaning article 503, which is divided into five paragraphs) of the Penal Code, and sentenced the three accused, without considering any aggravating or mitigating circumstance, "to six years ten months and one day of presidio correccional to presidio mayor in its medium degree," to pay jointly and severally 1,000 pesos, Philippine currency, to Vicente Badillo, the equivalent in value of the money and the watch stolen by them from the latter, and 150 pesos to Pastor Diocno, the equivalent in value of the money and the two rosaries stolen from him, and the costs.

The existence of the crime committed in the dwellings of Badillo and Diocno is sufficiently evidenced by the insistent testimony produced at the trial and by the evidence of the injuries inflicted upon Vicente and Irene Badillo (not Demetrio Diocno, whom the complaint mentions as wounded also, but who was not injured). As Vicente Badillo was the depositary of the money belonging to his partners in the fishing business, which amounted to 400 pesos of the 1,000 alleged to have been stolen, it might have been suspected that he had sought this means to avoid the responsibility for the same, especially as he admitted having acquired some real estate for the sum of 400 or 500 pesos after the trial case had occurred, it appearing that the robbers had left him without any money; the money with which he bought this land, however, was not really a part of that which he might still have had at his house, but was borrowed from one of his relatives.

The responsibility of the three persons accused is also sufficiently shown by the testimony of the injured parties and of three fishermen who saw the band, consisting of about ten persons, among whom were the three defendants, pass near the beach on which they were. Some doubt might have also been entertained at the beginning regarding this responsibility, inasmuch as in the preliminary investigations it appears that Vicente Badillo and Irene Badillo indicated some other persons, while Demetrio Diocno seems to have always insisted on the recognition made by him while the criminal act was in progress; but, the identification of these three

defendants having been repeatedly affirmed without sufficient contrary evidence, the court acted within the law in basing its judgment thereupon.

The payment to Vicente Badillo, as ordered in the judgment, is proper. The amount stolen from him was not really 1,000 pesos, as stated by his daughter Irene, who testified that she had taken 20 pesos from the sum kept by her father, but by adding to the balance 20 pesos, representing the value of the watch stolen, makes up the 1,000 pesos ordered in the sentence.

But the payment to Pastor Diocno should be 165 pesos, one hundred and twenty being the amount stolen, thirty for the value of one gold rosary, and fifteen for the value of the other.

With regard to the qualification of the crime, the judgment is in accordance with law in applying the penalty, not for brigandage but for robo en cuadrilla, committed by more than three armed malefactors, and substantially included within terms of the complaint. But, considering first the complex crime of robbery with injuries, of which those inflicted upon Vicente Badillo were cured in thirty days (par. 4, art. 416), and those inflicted upon Irene Badillo in one week, the crime is provided for in paragraph 4, article 503, of the Penal Code, which applies thereto the penalty of presidio mayor in its medium degree to cadena temporal in its minimum degree, and then, considering that it was committed en cuadrilla, the penalty must be raised to the maximum degree, as provided by article 504.

We must not fail to take into consideration also the aggravating circumstance with reference to the dwelling of the offended parties, when the robbery, as occurred in these two instances, is qualified by violence toward the persons of Vicente Badillo and Irene Badillo, and by the intimidation of Pastor Diocno; because, as established in the decision of the supreme court of Spain of the 24th of December, 1896, the aggravating circumstance No. 20 of article 10 of the Penal Code must be considered in cases of robbery with violence to the person, which crime may even be committed out of the dwelling. In view of this circumstance, as well as of that of cuadrilla alone, the penalty must be raised to its maximum degree.

Therefore, we sentence Florentino Leyba, Isabelo Manalo, and Isidro Almando to fourteen years of cadena temporal with the accessories of article 56 of the Penal Code, to indemnify Vicente Badillo in the sum of 1,000 pesos, Philippine currency, and Pastor Diocno in the sum of 165 pesos, without subsidiary imprisonment, in case of insolvency, and to pay the costs of both instances. So ordered.

Torres, Johnson, Willard, and Tracey, JJ., concur.

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