

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARTIN SOL ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 3973. November 26, 1907*

Ponente: TORRES, J.

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Between 7 and 8 p. m. on June 28, 1906, at the time when Macario Castañeda, a resident of the barrio of Batuan, town of Victorias, Occidental Negros, was absent from his house, the said house was assaulted by a band of armed robbers, five of whom were provided with siantongs (long bolos) and daggers, and one with a stick of palm a brava. When they entered the house the Castañeda family was partaking of supper, and the robbers, pretending to be agents of the authorities, ordered the men who were in the house not to stir, and intimidating the women with their weapons, compelled them to point out the place where the money was kept. In the meantime two of the robbers watched over the men who were in the kitchen; the other three entered the bed room, and breaking open a trunk that was there, stole from it the sum of W20 in cash contained in a bag, and then took possession of certain articles of clothing valued at P20. On their departure they sequestered and took with them the women Florentina Olloso, wife of the owner of the house, and his daughters and niece, named, respectively, Natividad and Florentina Castañeda and Facunda Lucena, also the laborers Vicente Villan, Primitivo Castañeda, Graciano Granula, Marcelo Sembrano, Nicasio Camperada, Esteban Grajo, Luis Tenerife, and Federico Camperada, who at the time were in the house, leading them to the sitio of Bucuy, of the municipality of Sara via, near Batuan. Half an hour afterwards the band set at liberty the sequestered persons but not without previously maltreating those who did not walk fast, and obliging them under threats of death to swear that they would not inform anyone of what had occurred. It should be noticed that besides the five who entered the house, three of the robbers remained in the yard guarding the gate, these latter joining their companions on their departure. There being a light in the house, the dwellers recognized the faces of the robbers who entered it, particularly Martin Sol, who on that night was recognized by Natividad Castañeda when she was caught and dragged by the arm by said accused.

Proceedings having been instituted by virtue of the complaint filed by the provincial fiscal on the 17th of July, 1906, the judge in view of the result sentenced each of the accused, Martin Sol, Sotero Guardiaho, and Ciriaco Amparo, to the penalty of six years ten months and one day of presidio mayor, to jointly refund to the family of Macario Castañeda the sum of P420, and each of them to pay one-eighth of the costs, suspending the proceedings against the absent persons Bruno N., Ibo N., Juan Guardiano and two persons unknown, until they present themselves or be arrested, their capture being ordered.

A new trial having been granted upon the request of the attorney for the accused who were present, based on the discovery of new evidence, the judge, on the 8th of December, 1900, repronounced his former decision and ratified the sentence imposed on the said three accused. From said judgment their counsel has appealed.

The above-stated facts, having been duly proven, constitute the crime of robbery en cuadrilla effected by eight armed individuals, who, in order to attain their purpose intimidated the dwellers in the house and used force on a trunk found therein, a crime denned and punished by articles 502 and 503, No. 5, in relation with articles 504 and

505 of the Penal Code.

The accused pleaded not guilty, and notwithstanding their allegations and the justification adduced in their favor by the defense, the cause offers complete and conclusive evidence of their guilt as the proven authors by direct participation with three absent and two unknown individuals, fully convicted of the crime of robbery en cuadrilla.

There was a light in the house of the injured party, Macario Castañeda, then absent, when five of the robbers provided with long bolos and daggers entered it in order to carry out the robbery, and it was then that the wife and three children of the owner of the house recognized among the five assailants the accused Martin Sol, Sotero Guardiano, and Ciriaco Amparo who were already known to them, Natividad Castañeda having taken particular notice of Martin Sol because it was he who caught her by the arm and dragged her along, when compelling them all to go downstairs after the robbery, so that when, they were brought into the court of the justice of the peace they were recognized without any difficulty as being among the eight robbers who committed the robbery, and of the five who entered the house.

Marcelo Sembrano, one of the laborers who were at the plundered house, attested and confirmed the facts as stated by the family of the injured party; and Vicente Villan, of about 90 years of age, who often visited the said house and on the night of the affair was in a camarin close by, stated that he saw the robbers from said camarin, going in the direction of the said house, and also their departure when taking with them the family of the owner and his laborers; on this occasion he recognized among the robbers the three accused and those named Ibo, Bruno Hilado, and Juan Guardiano, brother to Sotero; he did not recognize those who remained in the yard and further stated that on the following day as he was returning to his house which is close to that of Sotero Guardiano, and when passing through some land planted with nipa, he saw the three accused and their other five companions dividing among themselves the money and clothes that they had stolen and heard from their conversation that each of them had received P30 and a patadion, and indicated the accused herein as three of the eight who committed the robbery.

The proof of the guilt of the accused has not been overcome by the proofs offered by the defense because the witnesses presented by them to prove an alibi contradicted the testimony of the accused themselves. It may be true that the laborers of the estate of Isidoro Escares, for whom the culprits worked, returned to their respective houses after supper, at about 7.30 in the evening on the date when the affray took place, but as the plundered house was one hour's travel from the aforesaid estate, it was not improbable that the accused, instead of returning to their houses, joined others, and all of them together committed the robbery; the allegation that Villan, owing to ill feeling toward two of the accused, falsely accused them, together with a third person, of such a serious crime, must be considered as futile, and taking into account that Villan was a relative of the same, one is induced to believe that the witness simply fulfilled his duty in telling the truth.

In the crime of robbery as committed the aggravating circumstances of its perpetration during the night and in the dwelling of the injured parties should be taken into consideration, without any mitigating circumstance to offset the effects thereof, and therefore, on account of the presence of the qualifying circumstance of cuadrilla, the penalty should be imposed in the maximum degree.

It should be noticed for the legal effects thereof, that the sequestration of nearly half an hour of the dwellers of the house when the robbers compelled them to leave it and follow them up to a certain distance, undoubtedly for no other purpose than to prevent their reporting the matter to the authorities while the robbers were near the place where the robbery was committed, can not be qualified as the crime of illegal detention, but as an act of restraint generally resorted to by robbers in order to delay or prevent assistance being rendered by the authorities; therefore, the court, following its constant opinion in matters of this kind, considers that said act does not

constitute the crime of illegal detention, for the reason that the conditions which are inherent to such crimes against the liberty of persons are not present in this case.

For the considerations above set forth it is our opinion that Martin Sol, Sotero Guardiano, and Oiriaco Amparo be sentenced, each of them, to the penalty of ten years of presidio mayor, to suffer the accessory penalties of article 57 of the code, to return the stolen clothes, or otherwise to indemnify the injured parties in the sum of P20 as the value thereof, and also to restore the sum of P420 likewise stolen, and each to pay one-third of the costs of both instances, the judgment appealed from thus modified being hereby affirmed. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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