

**UNITED STATES, PLAINTIFF AND APPELLEE, VS. SIMEON
GAMALINDA AND FOUR OTHERS UNKNOWN, DEFENDANTS, S.
GAMALINDA, APPELLANT.**

G.R. No. 4165. February 08, 1908

Ponente: TORRES, J.

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TORRES, J.:

At a late hour of night on the 15th of June, 1905, five individuals, one of them being the accused, Simeon Gamalinda, armed with a revolver, and the other four with bolos, made their appearance in the neighborhood of the house of Moises Santiago, in the sitio of Caspalog, town of Paniqui, and under threats compelled him and his brother Cenon Santiago to come out of the house. They did so, and as they entered the yard they were tied up, and in the meantime one of the thieves, who turned out to be the accused, Gamalinda, armed with a revolver, kept watch over them to prevent them from making any movement. By order of the accused the other four unknown men then stole from the corral four carabaos, the property of the above-named brothers, valued at P400; after this they left the place, taking with them the said carabaos, and, in order to intimidate the owners, the defendant fired two shots with his revolver to prevent their being pursued by the offended parties, who recognized the accused as the one who was provided with the revolver and watched over and commanded the band of robbers.

A few days after the affair Lucas Santiago, a son of Cenon, went out with Jacinto Madrid and Alberto Pacunla in search of the carabaos, which they found close to a hut in the sitio of San Agustin, within the territory of Victoria, at about 4 o'clock in the afternoon, and as they were about to take charge of the stolen carabaos, five individuals came out of the hut, one of whom was the accused, armed with a revolver, and objected to their approaching the animals; they then withdrew because they were afraid, and the carabaos have not since been recovered.

Upon presentation of the complaint, proceedings were instituted, and the judge, in view of the evidence adduced, entered judgment on the 4th of March, 1907, and sentenced Simeon Gamalinda to the penalty of fifteen years of cadena temporal, to suffer the accessory penalties of article 56 of the code, and to return the stolen carabaos to the owners or to indemnify them in the sum of 300, the value thereof, and to pay the costs. From said judgment the accused has appealed.

The facts stated above appear to have been duly proven, and constitute the crime of robo en cuadrilla, defined and punished in articles 502 and 503, No. 5, in connection with article 504 of the Penal Code, it being unquestionably true that, at a late hour of night on the 15th of June, 1905, five individuals, of whom one, the accused, was armed, by means of violence and intimidation upon and toward the brothers Moises Santiago and Cenon Santiago, took possession of four carabaos owned by the latter, the thieves taking them away with them on their departure, and, notwithstanding that search has been made by the owners, the carabaos have not been recovered; the record shows that the value of the stolen carabaos was, according to the owners, P400.

The accused pleaded not guilty, and, notwithstanding the fact that the defense attempted to introduce an alibi to the effect that on the night in question the accused was at the house of his mother-in-law, and that in consequence

thereof he could not have committed the robbery which was carried out in a different place, the case furnishes sufficient evidence of his guilt as one of the principals by direct participation, fully convicted of the robbery; the two injured parties who, at the time when the crime was being committed, were tied up and kept under watch by the robbers in order that they might not oppose the stealing of the animals, positively state, without the least shadow of doubt, that they recognized Simeon Gamalinda as the individual who, carrying a revolver, commanded and directed the four unknown men armed with bolos, and he was the same one who, for the purpose of intimidating them when the thieves were about to leave and take with them the carabaos, fired two shots with his revolver. Furthermore, a few days later Lucas Santiago, the son of Onon, having gone with two others in search of the carabaos, found them in the forest of San Agustin, in the town of Victoria, and out of the five armed individuals who objected to their recovering the carabaos that were there corralled, they recognized the defendant Gamalinda as one of them. Therefore, there is no doubt that the accused took part in the robbery, and that he was one of those who, a few days later, prevented the son of one of the injured parties from recovering the stolen carabaos, and considering that it has also been proven that Gamalinda was the chief of the band of robbers that committed the crime, the penalty to be imposed under the provisions of article 504 of the code is the next higher to that prescribed by article 503, No. 5; that is, from presidio mayor in its maximum degree to cadena temporal in its medium degree.

In the commission of the said crime the aggravating circumstance of nocturnity, with nothing to mitigate its effects, must be considered, for which reason the penalty already imposed is in accordance with the law.

For the reasons above set forth, it is our opinion that the judgment appealed from should be affirmed with the costs against the culprit, provided, however, that he be further sentenced to reimburse the owners for the value of the four stolen carabaos, jointly and severally with such of the other coprincipals as may be captured, without subsidiary imprisonment, however, in case of insolvency, in view of the nature of the main penalty imposed. So ordered.

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

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