

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GAUDENCIO CABUNCAL, DEFENDANT AND APPELLANT.

G.R. No. 4267. October 09, 1908

Ponente: CARSON, J.

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CARSON, J.:

The trial court convicted the accused of the crime of robo en cuadrilla (robbery in an armed band), committed in the manner and form charged in the complaint. The evidence of record sustains the finding of the guilt of the accused of the crime of robbery as charged, except as to the alleged fact that it was committed en cuadrilla (in an armed band).

A cuadrilla (armed band), as defined in the Penal Code, consists of a band of more than three armed persons. The witnesses in this case testified that the accused and two others entered the house wherein the robbery was committed, the three being armed with bolos, and that they left three or four confederates downstairs, but whether armed or not, the witnesses were not able to testify. Under the definition of an armed band, as defined in the code, this evidence is not sufficient to sustain a finding that the robbery was committed by an armed band (U. S. vs. Mendigoren, 1 Phil. Rep., 658; U. S. vs. Aquino et al., decided September 8, 1908[1]).

We find no other error in the proceedings prejudicial to the rights of the accused, but the court failed, in imposing sentence, to take into consideration the aggravating circumstances that advantage was taken of the darkness of the night in its commission, and that it was committed in the house of the offended person (U. S. vs. Leyba, 8 Phil. Rep., 671; sentencia of the supreme court of Spain of December 24, 1896); and the court further failed to direct the return to the owner of the stolen property, or P446.50, its proven value.

We therefore reverse the judgment of conviction imposed by the trial court, and find the accused guilty of the crime of simple robbery, as defined in subsection 5 of article 503, of the Penal Code, marked by the aggravating circumstances above set out, and sentence him to ten years presidio mayor together with the subsidiary penalties prescribed by law; to the restitution of the stolen goods or the payment to the owner thereof of their proven value, which amounted to 446.50, but without subsidiary imprisonment ; and to the payment of costs in both instances. So ordered.

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

[1] Page 244, supra.

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