

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALEJANDRO QUIJANO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4417. September 29, 1908

Ponente: TORRES, J.

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TORRES, J.:

After 10 o'clock at night on the 17th of January, 1907, the house of the married couple Manuel Boydon and Josef a Flores, situated in the barrio of Jaen, town of San Antonio, Nueva Ecija, was assaulted by six armed individuals, and, while they entered the house, one of six others who had remained in the yard fired a shot; in the meantime the assailants, by means of intimidation and threats of death, succeeded in securing the sum of P19.40. When leaving the house the thieves caught the woman by the hand and dragged her a distance of about one hundred brazas, and on reaching a place called Dampulan, they released her under the promise that she would bring them P10 more in paper money, for which they agreed to wait; but she did not return because she met her husband on the road together with other residents who were called out by the latter to search for his wife, Josefa Flores. The culprits on leaving the yard of the house fired another shot.

In view of the foregoing, the provincial fiscal of Tarlac and Nueva Ecija filed a complaint on the 1st of April, 1907, charging the said six individuals, and others unknown, with the crime of robbery en cuadrilla, and the trial judge entered judgment on the 7th of October, 1907, sentencing the five accused to the penalty of ten years of presidio mayor, with the accessory penalties, to jointly and severally pay an indemnity of P9.40 and each of them to pay one-fifth of the costs. From this judgment the accused have appealed.

The above-described facts, duly proven in this case, constitute the crime of robbery en cuadrilla, defined and punished by articles 502 and 503, No. 5, in connection with article 504 of the Penal Code, inasmuch as the commission of the said crime, that is, the robbery of the sum of P9.40 by means of intimidation and threats, carried out by six armed individuals accompanied by six others who remained in the yard and the environs of the assaulted house, has been proven by the testimony of the aggrieved parties and by some of their neighbors, one of these being the lieutenant of the barrio; the robbers fired two shots, one on commencing the assault, and another when leaving the place where the robbery was committed, undoubtedly for the purpose of intimidating the injured persons and other inhabitants of the place.

The five defendants present denied the charge and pleaded not guilty, but notwithstanding the allegations and attempts to prove an alibi made by Alejandro Quijono, Oipriano Candelaria, and Sotero Quitelig, the merits of the case, taken as a whole, produce in the mind a full conviction of the guilt of the said three defendants as the proven principals by direct participation, together with one Francisco and other persons unknown, of the robbery en cuadrilla herein prosecuted, since, notwithstanding the attestations of the witnesses, it is a fact that the injured woman, Josefa Flores, recognized them when she was seized and maltreated by them and by the other thieves; and when she reported the affair to the lieutenant councilor of the barrio though she did not then reveal the names of the thieves whom she had recognized as being residents of the barrio, for fear of being killed, she did so later, however, through her son.

Manuel Boydon, the husband of Josefa Flores, confirmed his wife's statement and set forth that, among the thieves who assaulted their house, they only knew Alejandro Quijano and recognized the voices of Cipriano Candelaria and Sotero Quitalig who, from below, instructed those who were in the upper floor of the house to demand from the inmates the value of a horse which Boydon had sold a week before, which sale had been made, as a matter of fact; and the lieutenant of the barrio also confirmed the statement made by the injured woman, Flores, inasmuch as it was because of her description and that made by her husband that the accused, who were residents of the same barrio where they lived, were arrested. From the foregoing data and other merits resulting in these proceedings, one acquires the fullest conviction of the participation of the said Quijano, Candelaria, and Quitalig in the robbery in question; it should also be noted that Candelaria has already served a term of imprisonment for theft, and Quitalig, although acquitted, was once prosecuted for robbery.

As to the other accused persons, Mamerto Garcia and Agustin Macaspac, the injured woman Flores also alleges that she recognized them among the thieves who sequestered her after the robbery; but this statement, being an isolated one, and not corroborated by any evidence even tending to prove their culpability, is not by itself sufficient to justify a conviction. It is not incompatible with the rigor of the criminal law, or strict justice, to give them the benefit of any reasonable doubt in regard to their culpability, and to acquit them; the presumption of innocence in this particular being given more weight in the absence of satisfactory evidence of their participation in the crime.

As to the motion for a new trial presented by counsel for Sotero Quitalig, as the same is not in accordance with the provisions of section 42 of General Orders, No. 58, and the requisites set forth in the decision rendered in the case of *U.S. vs. Luzon*,^[1] it is not proper to admit the motion; this will the more clearly appear when it is remembered that the affirmative declarations of the four witnesses therein referred to would not in any way have modified the result of the proceedings, nor have affected the judgment appealed from.

In the perpetration of this crime of robbery en cuadrilla, the presence of the aggravating circumstances of having committed the crime at night and in the dwelling of the aggrieved parties, including the fact that the culprit Candelaria is a recidivist, should be considered; in other words, the circumstances recited in paragraphs 15, 18, and 20 of article 10 of the Penal Code, without any mitigating circumstance to compensate their effects.

Therefore, the penalty should be imposed on the convicted persons in the maximum degree.

Therefore, it is our opinion that Alejandro Quijano, Oipriano Candelaria, and Sotero Quitalig should be sentenced, and they are hereby each sentenced, to the penalty of ten years of presidio mayor, to suffer the accessory penalties of article 57 of the code, to jointly and severally indemnify the injured parties in the sum of P9.40, without subsidiary imprisonment in case of insolvency under article 51 of the code, and each of them to pay one-fifth of the costs of both instances. Mamerto Garcia and Agustin Macaspac are hereby acquitted and the remaining two-fifths of the costs are declared de oficio. The judgment appealed from is affirmed in so far as it agrees with this decision, and in other respects it is reversed, and the motion for new hearing presented by counsel for Quitalig is denied. So ordered.

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

[1] 4 Phil. Rep., 343.

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