

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALFONSO MELEGRITO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4487. September 07, 1908

Ponente: CARSON, J.

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CARSON, J.:

The accused were charged with the crime of robbery in an armed gang (robo en cuadrilla) on the following complaint:

"The undersigned charges Alfonso Melegrito and Catalino Melegrito with the crime of robbery in a gang, committed as follows: That between 10 and 11 p. m. of the 15th of March, 1907, in the barrio of Mabanengbeng, pueblo of Bacnotan, Province of La Union, the said accused, accompanied by two unknown men, willfully, illegally, and feloniously, and with arms, entered the dwelling of one Teodoro Daeany and, with intent of profiting thereby and by means of violence and intimidation, took possession of personal property of said Teodoro Dacanay, of the total value of 1,028 pesetas; the commission of the crime being marked by 'gravity manifestly unnecessary for its execution.' The said deed constitutes the crime punished by paragraph 4 of article 503 of the Penal Code, and was committed within the jurisdiction of this Court of First Instance and against the statute."

The evidence of record conclusively establishes the guilt of the accused of the crime of robbery, as charged, except in so far as it is alleged that it was committed en cuadrilla, and that the robbery was attended with violence or intimidation, manifestly unnecessary for its execution.

The only question raised by counsel for the appellants is as to the accuracy of their identification by the witnesses for the prosecution. Upon this point the trial judge held that "the two accused were clearly and positively identified at the time of their arrest by Agapita Lagao, who is a very intelligent woman, and her daughter, a young girl, in whose testimony the court had the utmost faith. There is not the least doubt in the mind of the court of the identity of the accused nor of their guilt." We think that this finding must be sustained.

The evidence in support of the allegation that the crime was committed en cuadrilla consists of proof that the two appellants being armed, entered the house of Teodoro Dacanay, leaving several companions outside, and that one of their companions drove a bolo through the floor of the house. None of their companions were seen by the witnesses. While it appears, therefore, that at least three of the party were armed, the evidence of record does not disclose that "more than three" of the party were armed, as required by the provisions of article 505 of the Penal Code, which describes a gang as consisting of more than three armed malefactors united in the robbery.

The only evidence as to violence committed by the accused was to the effect that they pushed Teodoro Dacanay, the owner of the house, into one corner of the room, and at the same time struck him in the back with a bolo, causing no wound, and making him lie down and cover himself with a blanket or sheet. This is not violence or intimidation of a "gravity manifestly unnecessary for the execution of the crime," and was not sufficient to bring it under the provisions of subdivision 4 of article 503, as alleged in the complaint.

The judgment of the trial court should, therefore, be reversed, and the appellants should be and are hereby convicted of the crime of simple robbery, as defined in subdivision 5 of article 503, and it appearing that the crime was marked by the aggravating circumstance of nocturnity and the fact that it was committed in the house of the offended person, the penalty should be imposed in its maximum degree. (U. S. vs. Marcelo Aquino et al., decided September 8, 1908;[1] U. S. vs. Leyba, 8 Phil. Rep., 671: sentencia of the supreme court of Spain, December 24, 1896.) The penalty of nine years of presidio mayor with the accessory penalties prescribed by law imposed by the trial court, is within the limits prescribed for the offense of which the accused are thus convicted, and we therefore impose upon the appellants the same penalty, with the cost of this instance against the appellants. So ordered.

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

[1] Page 244, post.

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