

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDAO MANANGAN ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4672. September 01, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

In the barrio of Caboaan, pueblo of Balaoan, in the Province of La Union, the house in which Isabel Rosimo was sleeping, while her husband was absent, was entered by robbers who, keeping her quiet through intimidation, took and made away with P70 and a pair of earrings, which had been locked in a trunk.

She testified that there were four robbers, and immediately after the occurrence described three of them to the police as men whom she knew by sight, though not by name, living in the neighboring barrio of Narebcam. Proceeding to that barrio in the company of police, she there identified the three accused as being the culprits, and also as having been men who six months previously had moved the materials of her house from one site to another. It appeared that the accused, Pedro Manangan, was one of the men who had moved those materials, while the other two accused, his nephew and cousin, had taken no part in the moving. All three swore to an alibi, which was reenforced by the testimony of the two sisters of Pedro, to the effect that all of them had passed the entire night in his house, where the police found them at an early hour in the morning. Although this alibi is fairly well sustained, it can not overcome the positive identification by the woman who was robbed, reenforced as it was by details as to Pedro.

If he is guilty, it is clear that so also are the other two, who admit that they were with him and who are bound up in the same defense.

The robbery having been perpetrated at night, by a band of four men, all armed with bolos, the crime constitutes robbery in an armed band, with aggravating circumstances. The trial judge allowed the extenuating circumstance of the race of the accused, and imposed the penalty of eight years and one day. This extenuation is not admissible, and the punishment must be raised to the maximum grade, and the term increased to ten years of presidio mayor, with restitution, jointly and severally, by the accused to Faustino Orfiano of the stolen earrings, or in default of them, the payment of their value, P2 and also the payment, jointly and severally, of the P70 of stolen money, with one-third of the costs of this instance against each of them. As so modified, the judgment is affirmed. So ordered.

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

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