

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ESTEBAN CELESTINO ET AL., DEFENDANTS.-FAUSTO PARALES AND ALEJANDRO LAPENA, APPELLANTS.

G.R. No. 5235. August 18, 1909

Ponente: TORRES, J.

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TORRES, J.:

Late on the night of April 3, 1908, three individuals, two of whom turned out to be Fausto Parales and Alejandro Lapena, accompanied by others unknown, attacked the house of Vicenta Gervasio, wife of Crispulo Eusebio, situated in the pueblo of Bacoar, Cavite. The thieves were armed with revolvers, and after ordering the owner of the house to strike a light they searched the wardrobe and other places of the house, and seized a watch and chain, a pair of earrings, a hat, and shoes and slippers, of the total value of 41; the husband named above was absent at the time, and the woman was alone in the house with her three children, the eldest of whom was 4 years old; she recognized the three accused as the men who entered her house, and one of them, Fausto Parales, as the one who cautioned her against speaking aloud. During the time which the thieves took to search the house, nearly two hours, the woman does not appear to have been illtreated by them, although they pointed their revolvers at her when demanding the delivery of the money and when the children cried; the woman could not say if the others who were in the yard near the house were armed or not.

Upon leaving the house of Vicenta Gervasio the malefactors also visited the adjoining house owned by Dominga Espiritu, who woke up at the moment when the door was broken open, and two of the thieves who were also armed with revolvers managed to get in; they ordered her to strike a light and to turn over to them the sum of P700 which they said had been deposited in her hands by her brother-in-law, Crispulo, the husband of Vicenta Gervasio, and as no such delivery had been made, nor had she any money to deliver, they searched the house and seized P3 in copper coins, one rosary and pair of earrings, shoes, and some other articles of the total value of P23.50. The offended woman recognized Fausto Parales as one of the two thieves. At the time her husband was absent and she also heard thieves in the house of her sister-in-law, Vicenta Gervasio.

In view of the above, a complaint was presented by the provincial fiscal in the Court of First Instance of Cavite charging Esteban Celestino, Fausto Parales, and Alejandro Lapena with the crime of robo en cuadrilla, and corresponding proceedings having been instituted, the trial judge in his decision of December, 22, 1908, sentenced the accused Parales and Lapena to the penalty of three years, eight months, and one day of prisidio correccional, to suffer the accessory penalties, each to pay one-third of the costs, and to return the stolen articles, or to jointly and severally indemnify the owners in the value thereof, and in case of insolvency to suffer the corresponding subsidiary imprisonment. Esteban Celestino was acquitted with the remaining one-third of the costs de oficio. From said judgment the first two who were sentenced have appealed, and this decision shall only refer to them.

As shown by the facts above stated the case furnishes satisfactory proof of the reality and certainty of the crime of

robbery executed by several individuals in the two adjoining houses of the brothers Crispulo and Marcelo Eusebio, situated in the barrio of Talaba, town of Bacoor, Cavite, the thieves having seized jewelry, clothing, and other effects of the total value of P41 in the first house, and cash, jewelry, and other articles valued at P23.50 in the second. The fact that the thieves, of whom there were more than three, were all armed has not been established, for which reason the deed only deserves to be classified as simple robbery, without the character of cuadrilla, and the same falls within the provisions of articles 502 and 503, No. 5, of the Penal Code.

Notwithstanding the denial of the accused appellants, Paraless and Lapena, and their exculpatory allegations, the preponderance of the evidence and other merits of the case produce in the mind conviction, beyond all reasonable doubt, of the guilt of the said accused as the proven authors who, with others at present unknown, participated in the crime in question.

Fausto Paraless was recognized by the owners of the two houses broken into as one of the malefactors who robbed them, while Alejandro Lapena was recognized by one only of said owners, Vicenta Gervasio, who had more presence of mind, and not by the other, Dominga Espiritu, who was probably badly frightened; but the second robbery having been committed in the house of the latter by the same thieves, one of whom was Lapena, who together with Paraless first entered the house of Vicenta, it is to be presumed with good reason that he also took part in the second committed by the same gang. It should be noted that the complaint, the proceedings, and the judgment refer to only one crime of robbery.

In the commission of this crime the concurrence of the two aggravating circumstances 15 and 20 of article 10 of the Penal Code should be considered, for the reason that it was executed in an inhabited house and in the darkness and silence of night, without any mitigating circumstance to compensate their effects; therefore the proven authors of the same should be punished with the maximum degree of the penalty imposed for said crime.

In view of the foregoing it is our opinion that the judgment appealed from should be reversed, and Fausto Paraless and Alejandro Lapena should each be sentenced, as we do hereby sentence them, to the penalty of seven years of presidio mayor, to suffer the accessory penalties of article 57 of the code, to jointly and severally return to the injured parties the money, jewelry, and other articles stolen, or to indemnify them for the value thereof, without subsidiary imprisonment in case of insolvency under the provisions of article 51, and each of them to pay one-third of the costs of both instances; the remaining one-third shall be de oficio. So ordered.

Arellano, C. J., Johnson, Carson, and Moreland, JJ., concur.

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