

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS, NARCISO TABANDA, GERONIMO PASCUA, ANDRES SALVADOR, AND GUILLERMO DE LA CRUZ, DEFENDANTS. NARCISO TABANDA, GERONIMO PASCUA, AND AND...

G.R. No. 6619. September 08, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of robo en cuadrilla. On the 15th of March, 1910, the fiscal of the Province of Cagayan presented the following complaint:

"That the said Narciso Tabanda, Geronimo Pascua, Andres Salvador, and Guillermo de la Cruz, in company with other parties unknown, did, on the night of December 15, 1909, in the municipality of Lallo, Province of Cagayan, P. I., willfully, unlawfully, and criminally enter the house of Juan Bacuyag, situated in the barrio of Bical of said municipality of Lallo, Province of Cagayan, P. I., all armed with bolos and clubs; and once inside did, by means of force upon property and violence and intimidation against persons, steal money, jewels and clothing to the value of approximately three hundred pesos (P300), in violation of law."

Upon the arraignment of the accused in the court below the defendant Guillermo de la Cruz pleaded guilty to the crime charged and on the 9th of September, 1910, he was sentenced by the lower court to be imprisoned for a period of one year of presidio correccional, to indemnify Juan Bacuyag in the sum of P300 and in case of insolvency to suffer subsidiary imprisonment and to pay one-fourth part of the costs. Guillermo de la Cruz did not appeal from this sentence.

The other defendants pleaded not guilty to the crime charged.

After hearing the evidence, the lower court found each of them guilty of the crime charged and sentenced each of them, on the 4th day of October, 1910, to be imprisoned for a period of six years, ten months and one day of prison mayor, to jointly and severally indemnify the persons robbed in the sum of P216, and in case of insolvency to suffer subsidiary imprisonment, and each to pay one-fourth part of the costs.

From that sentence each of the defendants appealed to this court. The only question presented here is one of fact.

The attorney representing the defendants in this court does not ask that the sentence of the lower court be reversed, but believes that the sentence of that court should be reduced.

From an examination of the evidence brought to this court, the following facts seem to be proven beyond peradventure of doubt:

That on the 15th of December, 1909, in the barrio of Vical, municipality of Lallo, Province of Cagayan, the four defendants, being armed with bolos, went to the house of Juan Bacuyag, between 7 and 8 o'clock in the evening and proceeded to manacle Alejo Bacuyag, Pedro Abing and Juan Bacuyag, and with force and violence did break

open several trunks found in the house of Juan Bacuyag, from which they extracted money, jewelry and clothing of the value of P216, which they took and carried away. The defendants were each identified by one of the persons in the house at the time of the robbery. The defendants attempted to prove an alibi. The evidence adduced in support of this defense does not seem to be sufficiently creditable to cast the slightest doubt upon the guilt of the defendants as shown by the testimony of the offended persons. The evidence shows that the defendant, Salvador, acted as chief of the band. The penalty, therefore, which should be imposed upon him should be in the grade immediately above the penalty imposed upon the members of the band, in accordance with the provisions of paragraph 2 of article 504 of the Penal Code. (U. S. vs. Gamalinda, 10 Phil. Rep., 100; U. S. vs. De los Santos, 12 Phil. Rep., 622.) The evidence shows also that there existed the aggravating circumstances of nocturnity and morada. The crime was committed in the night-time, the defendants evidently selecting that time for the purpose of more effectually committing the robbery. They also entered the house of the offended persons and committed the crime there. There were no extenuating circumstances.

It has been the practice of this court for nearly eight years, under circumstances attending the commission of the crime of robo en cuadrilla such as are proven in the present case, to impose the maximum degree of the penalty provided for by law. (U. S. vs. Gutierrez, 14 Phil. Rep., 88.) The Attorney-General, after a careful examination of the facts, recommends that the sentence of the lower court be modified, and that the defendant, Andres Salvador, the chief of the band, be sentenced to be imprisoned for a period of fourteen years eight months and one day of cadena temporal; that the other defendants, Narciso Tabanda and Geronimo Pascua, be sentenced to be imprisoned for a period of ten years of presidio mayor, with the accessories of articles 56 and 57 of the Penal Code, to indemnify jointly and severally Juan Bacuyag in the sum of P216 and Lamberta Consigna in the sum of P80, without subsidiary imprisonment in the case of insolvency, and to pay the costs.

After an examination of the evidence brought to this court, we are of the opinion that the recommendation of the Attorney-General is in conformity with the facts and the law. Under the provisions of article 51 of the Penal Code, subsidiary imprisonment can not be imposed upon a person condemned to a penalty higher in the general scale than that of presidio correctional. This court said, in the case of U. S. vs. Mendiola (12 Phil. Rep., 125): "Subsidiary personal liability on account of insolvency should not be imposed where the principal penalty to which the convict is sentenced is higher in the general scale of penalties than that of presidio correctional" (U. S. vs. Miranda, 2 Phil. Rep., 606; U. S. vs. Cofrada, 4 Phil. Rep., 154; U. S. vs. Castroverde, 4 Phil. Rep., 246.) The penalty of imprisonment imposed in the present case being higher than that of presidio correctional, subsidiary imprisonment can not be imposed. Therefore, the judgment of the lower court is hereby modified and the said Andres Salvador, as chief of the band, is hereby sentenced to be imprisoned for a period of fourteen years eight months and one day of cadena temporal, and Narciso Tabanda and Geronimo Pascua are each hereby sentenced to be imprisoned for a period of ten years of presidio mayor, with the accessories of articles 56 and 57 of the Penal Code, to indemnify jointly and severally with the said Guillermo de la Cruz, Juan Bacuyag in the sum of P216 and Lamberta Consigna in the sum of P80 and each to pay his proportional amount of the costs. So ordered.

Torres, Mapa, Carson, and Moreland, JJ., concur.

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