

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARIANO LOPEZ, DEFENDANT AND APPELLANT.

G.R. No. 9103. August 25, 1914

Ponente: CARSON, J.

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CARSON, J.:

The evidence of record conclusively establishes the guilt of the defendant and appellant of the crime of robbery in an armed band, of which he was convicted in the court below, and we find no error in the proceedings prejudicial to the substantial rights of the accused.

Counsel for appellant insists that the evidence as to the identity of this appellant as one of the band of robbers who committed the crime charged in the complaint is not sufficient to sustain a judgment of conviction. This defendant, however, was positively identified by the complaining witness, who recognized both his face and his voice. Immediately after the band left his house, he made complaint to the concejal of his barrio, and named the appellant as one of the band, saying that although this accused and one other stayed below while three of the party went up into the house, he recognized him as he passed through a ray of light from the lamp upstairs, and by the sound of his voice. The wife of the complaining witness also positively identified appellant by the sound of his voice downstairs. Appellant was also fully identified as one of the band by the boatman who brought them from the tienda of appellant to a point not far from the place where the crime was committed. It is not quite clear whether or not this witness was himself one of the band of robbers, or whether he was merely employed by the band to bring them to the scene of the crime. But however this may be, his testimony corroborating and corroborated by the positive testimony of the victims of the robbery, leaves no room for doubt as to the identity of this appellant as one of the band of armed robbers who committed the crime.

Much is made by counsel as to the possibility of mistake on the part of the witnesses in undertaking to identify appellant by the sound of his voice. But as we have said, there is other conclusive testimony of his identity in the record, and the identification by the sound of his voice is merely corroborative of that evidence.

A motion for a new trial was made in this court, based on several vague, indefinite and unsatisfactory affidavits in which affiants express their belief that appellant did not leave his barrio on the night of the robbery. There is nothing in these affidavits which would justify us in believing that the introduction of the testimony of these witnesses on a new trial would put in doubt the positive, definite and convincing testimony now in the record as to the identity of this appellant. There is no ground therefore for the allowance of a new trial.

The judgment entered in the court below convicting and sentencing this appellant should therefore be affirmed, with the costs of this instance against him. So ordered.

Arellano, C. J., Torres, Johnson, Moreland, and Araullo, JJ., concur.

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