

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMILIO SEVILLA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 9512. March 24, 1915

Ponente: CARSON, J.

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CARSON, J.:

Emilio Sevilla, Mariano Diego, and Wenceslao Ortiz Luis were convicted in the Court of First Instance of Nueva Ecija of the crime of robbery in an armed band (robo en cuadrilla), and sentenced to four years' imprisonment in Bilibid, to indemnify the offended party in the sum of P11.20, and to pay the costs of the proceedings.

The undisputed testimony of record establishes beyond a question that on the night of May 29, 1913, a band of robbers, three of whom were armed with bolos and a gun and a fourth with a stick or club, forced their way into the house of Balbino Yambot and committed the robbery described in the information. It appears that the real object of the assault was a sum of money which the robbers thought that Yambot had hidden in or about the house, in anticipation of a payment to be made by him on a mortgage debt. The robbers on entering the house made the occupants lie down on the floor, faces downwards, and endeavored by the use of force and threats to compel their victims to tell them where this money was hidden. Cords were tied about the heads of Yambot and his wife, and by twisting and gradually tightening these cords from behind the robbers tried to force their victims to give them the information they desired. Failing in this, they took Yambot to a nearby river and threw him in, threatening him with death by drowning unless he disclosed the whereabouts of the money. It does not definitely appear whether Yambot did or did not have this money in his possession at that time; but whether he did or not, the robbers failed to find it, and after ransacking the house and appropriating a pair of earrings, two undershirts, two belts, a felt hat, and a penknife, in all worth between P11.20 and P12, they left the place.

There is and can be no question as to the fact that the robbery took place. Yambot, his wife, his two daughters, and his son, all of whom were in the house when the robbers entered, testified at length and in considerable detail, and there is no room for doubt that they related the facts as they recalled them and substantially as they occurred.

The only question, raised by the defense is as to the identity of the robbers. The three defendants denied that they had anything to do with the robbery and undertook to set up an alibi. The daughter of the defendant Luis testified that he did not leave his house on the night of the robbery. One of the defendant Sevilla's tenants testified that he spent that night in Sevilla's house, and that Sevilla had not gone out until the following morning. The wife of the defendant Diego testified that on that night she was ill and that for that reason her husband did not leave the house; and in corroboration of her statement another witness testified that he had been called to assist the sick woman and had been with her until 10 o'clock that night, though he did not say whether Diego was or was not present at that time. The testimony of these interested witnesses, as it appears in the record, is not convincing, and wholly fails to put in doubt the clear, positive, and definite identification of the accused, as members of the band of robbers, by various members of Yambot's household.

It is true that none of the family knew any of the accused before the night of the robbery. It is true, also, that

Yambot himself was unable to identify any of the accused, and admitted that he would not be able to recognize any of the robbers even were they pointed out to him. He explained that he was so frightened and maltreated by the band that, being strangers to him, he could not recall their faces and would not attempt to identify them. But his daughter Ismaela, a young woman about 22 years of age, positively and definitely identified all three of the accused. She gave a full and detailed account of all that occurred in the house and said that while she was lying on the floor, face downwards, she managed to look around and to watch the robbers while they ransacked the house and maltreated her parents. Her account of the incident and her answers to the questions propounded to her are so clear and convincing as to indicate that she is an intelligent and quick-witted woman, and that there is no reason to doubt the truth and accuracy of her testimony. Her testimony as to the identity of the defendant Diego was corroborated by her mother, and as to Sevilla by her brother, a boy about 18 years of age. These witnesses admitted that they could not identify any of the other members of the band, but they were positive and definite as to the identity of the individuals named by them.

In convicting the accused, the trial judge, who saw and heard the witnesses testify, necessarily accepted the testimony of the witnesses for the prosecution, and declined to believe the witnesses called in support of the alibi set up by the defense, and we are of opinion that the record fully sustains his conclusions in this regard. The members of Yambot's family never saw the accused before the night of the robbery, and do not appear to have had any sinister motive or ulterior purpose in procuring their conviction and punishment. Indeed, the frank and honest admissions of Yambot himself and of the other members of the family, except the daughter Ismaela, as to their inability to recall the faces of all the members of the band, strongly tends to confirm us in our belief that there was no desire on their part to aid in the conviction of any one except the guilty parties, or to tell anything but the truth, the whole truth and nothing but the truth when on the witness stand.

The defendants and appellants were properly convicted in the court below of the crime of robbery in an armed band (*robo en cuadrilla*), committed in the nighttime and in the house of the offended party, but the trial judge improperly sentenced them to four years' imprisonment in Bilibid.

The penalties prescribed in the Penal Code should be imposed in the form and manner in which they are prescribed, and the trial courts should not attempt to substitute equivalents or supposed equivalents for such penalties, in the form of imprisonment for a term of years in a designated gaol or penitentiary.

The penalty prescribed for the crime of "robbery in an armed band" of which these defendants were convicted is set forth in article 502, read together with article 503, subsection 5 of the Penal Code, being the penalty of presidio correctional to presidio mayor in its medium degree. There being two aggravating and no extenuating circumstances, this penalty should have been imposed in its maximum degree. The sentence imposed by the trial court should therefore be modified by substituting the penalty of nine years of presidio mayor, together with the subsidiary penalties prescribed by law, for so much thereof as imposes imprisonment for a term of four years, and thus modified the judgment of the court below should be affirmed, with a proportionate share of the costs in this instance against each of the appellants. So ordered.

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

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