

7 Phil. 281

[G.R. No. 2880. January 03, 1907]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARIANO MARCIAL ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

CARSON, J.:

Some time before daybreak on the 25th of February, 1905, a gang of robbers, composed of four or five members, boarded the sailing vessel known as the *Celeste Burrill*, at the time anchored in the harbor of the city of Manila, and within the jurisdiction of the Court of First Instance of the city of Manila, and with violence and intimidation to the person of the captain, Gregorio Llorca, took forcible possession of and carried away a sum of money amounting to P180, Philippine currency, and other personal property belonging to the said Llorca, or under his control as captain of said sailing vessel; and for the purpose of accomplishing the robbery and on the occasion thereof, the gang killed the said Llorca by inflicting upon him mortal wounds with bolos, daggers, and other deadly weapons of like nature.

During the course of the trial the complaint was dismissed as to one of the accused, Diego Pastrana, for the purpose of using him as a witness for the prosecution.

Mariano Marcial, Ramon Balboa, Diego Ampero (*alias* Diego Alfaro), and Juan Huertas were convicted of the above set out crime of robbery with homicide, and all and each of them sentenced to death.

Some of the members of the crew testified to the coming on board of the robbers, but on account of the darkness of the night were unable to identify any of the accused as members of the gang, and the only eyewitness of the robbery and the killing of Llorca was a woman who was in an adjoining cabin at the time when he was attacked, and who identified the accused Juan Huertas, Ramon Balboa, and Mariano Marcial as three of those who took part in the robbery and the assault upon the deceased.

Her testimony is the only evidence of record connecting the accused Ramon Balboa and Mariano Marcial with the commission of the offense, and, in view of the excitement necessarily incident to such an experience and of the fact that there is nothing to show that she had ever seen or known these accused prior to the robbery, we do not think that the judgment of conviction as to them should be, or can be, sustained, resting as it does on her uncorroborated identification.

Her testimony connecting Juan Huertas with the gang of robbers who killed the captain of the *Celeste Burrill* was corroborated by the fact that on the evening of the day following the night of the robbery Huertas left a silver watch with a jeweler named Ricardo Castillo for repairs, taking therefor a receipt which was found in his possession when he was arrested, said watch having the name of the deceased, Gregorio Llorca, engraved inside the cover on the back.

The accused, who went on the witness stand to testify in his own behalf, on cross-examination admitted the deposit of the watch, but alleged that it was his property, and that he had gotten it from a woman living on Calle Santa Monica, whose name he did not know, and who had pawned it to him for P1. Huertas further admitted that on the night of the robbery he started out on the bay with a party of four men, one of whom was the prisoner Diego Pastrana, but he denied that he had actually accompanied this party and alleged that he had left them as they were about to leave the dock, and took a passenger out to another vessel, and saw them no more that night. Pastrana, one of the accused, as to whom the complaint was dismissed for the purpose of using him as a witness for the prosecution, testified that he, Pastrana, was one of the gang of robbers that went out to the *Celeste Burrill* on the night of the robbery, though he was unable or unwilling to identify any other member of the party except the accused Diego Ampero.

We think the evidence of record sufficient to sustain the conviction of Juan Huertas, and that his guilt of the crime of "robbery with homicide," marked with the aggravating circumstances mentioned in cases 15 and 21 of article 10 of the Penal Code, was established beyond a reasonable doubt.

The only evidence of record connecting the accused Diego Ampero (*alias* Diego Alfaro) with the commission of the crime is the testimony of the above-mentioned Diego Pastrana and an alleged confession made in the police station after his arrest.

While Pastrana admitted that he had accompanied the gang to the side of the ship on the

night of the robbery and that he had received a part of the proceeds of the robbery, his statement bears many evidences of an unwillingness to tell the whole truth, and his testimony when recalled to the witness stand varied in some important details from his statements when he was first called for the prosecution, and we do not think that under all the circumstances his uncorroborated identification of the accused Diego Ampero (*alias* Diego Alfaro) is sufficient to sustain a conviction of the capital crime with which the said Diego Ampero is charged.

The alleged confession of this accused we have felt ourselves compelled to exclude from consideration altogether, since it appears that at the time when it is alleged to have been made there were at least two and perhaps three other witnesses present who were not called to testify; that stenographic notes were taken at the time, which were not produced in evidence; that the witness Austin admitted that he might be mistaken in his recollection of the statement of the accused, and in this connection said that "there are lots of these statements and I may get some of them mixed. I can not say for certain whether there is some part of another statement with this;" and because an examination of the statement shows that he might well have gotten the statement made by Diego Pastrana "mixed" with the alleged statement made by this accused.

The judgment and sentence of the trial court in so far as it affects the appellants Mariano Marcial, Ramon Balboa, and Diego Ampero (*alias* Diego Alfaro) should be, and is hereby, reversed, with their proportionate share of the costs of both instances *de officio*, and they will be set at liberty forthwith; and the said judgment and sentence in so far as it relates to the appellant, Juan Huertas, should be, and is hereby, affirmed, with his proportionate share of the costs of this instance against him. After ten days let judgment be entered in accordance herewith, and ten days thereafter the record returned to the court below for proper procedure. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.
