

7 Phil. 191

[G.R. No. 2766. December 12, 1906]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PAULO CABAMNGAN ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

These defendants were charged with the crime of *robo en cuadrilla* in the Court of First Instance of Ilocos Norte.

The evidence adduced during the trial shows that on the night of the 4th of May, 1904, a band of persons, numbering about forty, more or less, armed with a gun, revolvers, bolos, and clubs, entered the convent in the pueblo of Piddig of the Province of Ilocos Norte, and took and carried away from said convent by force, money, clothing, and jewelry amounting to P3,000, more or less. The said defendants were thereafter arrested and placed upon trial at Laoag, the capital of the said province, on the 11th of January, 1905.

After hearing the evidence adduced during the trial of said cause the court found that the evidence was insufficient to support the charges against Nemesio Kabanglit, Valeriano Manuel, Candido Domingo, and Nemesio Domingo, and therefore dismissed them from the custody of the law.

The court, after considering the evidence, found that Paulo Cabamngan, Cecilio Lazo, Valeriano Baoit, and Quintin Quinduyos were guilty of the crime of *robo en cuadrilla*, in that they did, on the night of the 4th of May, 1904,. together with others unknown, armed with a gun, revolvers, bolos, and clubs, enter the convent, an inhabited house in the pueblo of Piddig, and by means of false keys did, by force, take and carry away certain money, clothing, and jewelry amounting in value to about P3,000, more or less. During the trial of the cause in the court below the prosecuting attorney presented one Severo Lagat as a witness, who testified that he was a member of the said band and entered the said convent

on the night in question. This witness identified Paulo Cabamngan, Cecilio Lazo, Valeriano Baoit, and Quintin Quinduyos as persons who were also members of the said band who entered the said convent and assisted in the said robbery.

Other witnesses were called during the said trial, among whom was Martin Nicolas, who was a *muchacho* in the said convent on the night of the robbery. He was able to identify the accused Valeriano Baoit as one of the band who entered said convent on the night in question. None of the other witnesses confirmed the statement of Severo Lagat.

Other members of this alleged band were arrested and tried in separate causes (Nos. 2767,^[1] 2768,^[2] and 2769^[3]). This same Severo Lagat appeared as a witness in some of those other causes. In cause No. 2769, United States vs. Fabian Vallesteros, in which the defendant was charged with being a member of this same band, this court held in deciding that case that the unsupported testimony of Severo Lagat was insufficient upon which to base a judgment of conviction. In the present case his testimony is only supported by that of Martin Nicolas with reference to one of the accused, Valeriano Baoit; therefore the evidence in this case is insufficient to support the charges against the other defendants, Paulo Cabamngan, Cecilio Lazo, and Quintin Quinduyos. The cause is therefore dismissed as to them.

We further find that the testimony is sufficient to support the charges against Valeriano Baoit, and we therefore find him guilty of the crime of *robo en cuadrilla*.

The lower court sentenced Valeriano Baoit to be imprisoned for a period of fourteen years and eight months of *cadena temporal*. This degree of punishment was imposed upon the theory that the defendant had committed the crime of robbery with intimidation to the persons in an inhabited house and by making use of false keys. An examination of the evidence shows that the defendant, together with an armed band composed of more than three persons, by force and intimidation, committed robbery in an inhabited house and took and carried away money, clothing, and jewelry amounting to P3,000, more or less. The evidence does not show, however, that the defendant and his companions used false keys in effecting the robbery; the keys that were used were obtained by force from persons in the house. Therefore the penalty provided in paragraph 3 of article 508 of the Penal Code is not applicable to this case. (Decision of the supreme court of Spain, 26th of December, 1807; decision of the supreme court, of Spain 11th of June, 1872; Viada, vol. 2, p. 369.)

Under the evidence the defendant should be punished in accordance with the provisions of

paragraph 5 of article 503 in relation with article 504 of the Penal Code. The penalty provided for in this paragraph is eight years eleven months and ten days to ten years of *prosidio mayor*. The crime was committed in the nighttime. The defendants evidently took advantage of that time in order that they might the more effectually carry on their criminal purposes. Nocturnity should therefore be considered as an aggravating circumstance. There were no mitigating circumstances. The defendant must therefore be punished in the maximum degree of *prosidio mayor*, which is ten years.

It is the judgment of this court that the sentence of the lower court be modified and that the defendant be sentenced to be imprisoned for a period of ten years of *prosidio mayor* and to pay the costs.

After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the cause be remanded to the lower court for proper procedure. So ordered.

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

^[1] 6 Phil. Rep., 411.

^[2] 6 Phil. Rep., 401.

^[3] Not reported.