6 Phil. 401

[G.R. No. 2768. August 28, 1906]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NAZARIO VALLESTEROS, DEFENDANT AND APPELLANT.

D E C I S I O N

MAPA, J.:

Of the various defendants in this case, Nazario Vallesteros was the only one convicted, the others having been acquitted. The crime charged in the complaint is that of robbery in an armed band and it is alleged to have been committed on the night of the 4th of May, 1904, in the parish house of the town of Piddig, Province of Ilocos Norte. The defendant and appellant Vallesteros having been found guilty of the said crime, was sentenced to fourteen years and eight months' imprisonment (*cadena temporal*), to return the property stolen or to pay its value, and to pay the costs of proceedings.

This conviction is not supported by the evidence of record and it can not, therefore, be sustained. None of the eyewitnesses to the occurrence identified the appellant as one of the participants in the robbery. None of them testified that he was present at the time the robbery was committed, or identified him at the time of the trial.

The justice of the peace who made the preliminary investigation testified at the trial that one of those implicated in the robbery in question had testified at the said preliminary investigation that the appellant was one of those who entered the parish house of Piddig.

The statement of that witness, however, was not introduced in evidence at the trial. Moreover, it appears from the testimony of one of the defendants, which testimony has not been contradicted, that the statement referred to by the justice of the peace had been subsequently withdrawn, during the preliminary investigation, by the person who made it.

The testimony of the justice of the peace is, therefore insufficient to establish the guilt of the

appellant.

Nor is the testimony of the Constabulary sergeant, to the effect that the appellant admitted, in the presence of the provincial fiscal and the president of the town of Dingras, having been forced to take part in the robbery in question, any more sufficient to establish such guilty participation. In the first place the sergeant stated that this admission was made upon his promise to the defendant that the provincial fiscal would do his best to have him acquitted. If this is true, then "the defendant's admission was not spontaneous, as it would have to be in order to be admissible in evidence. In the second place, it does not appear clearly from the testimony of the said sergeant whether he was present when this admission was made, or whether he learned of it through the provincial fiscal or the president of Dingras. Finally, if appellant participated in the robbery in question not voluntarily, but because he was forced, he could not be held criminally responsible, he being under such circumstances exempt from such liability by the provisions of the Penal Code.

Nor is it proof of the guilt of the appellant, that a gun was found on a building lot belonging to him, as it has not been shown that the said gun was the same one used by the robbers when the robbery in question was committed.

The judgment appealed from is hereby reversed and the appellant is acquitted with the costs of both instances *de oficio*. After the expiration of ten days from the date of final judgment the case will be remanded to the court below for execution. So ordered.

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

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