

5 Phil. 460

[G.R. No. 2061. December 28, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCOS ZAFRA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The evidence is sufficient to prove the participation of the appellant, Marcos Zafra, in the crime charged.

The testimony of Juan Gutierrez, one of the witnesses to the alibi, so conflicts with the testimony of Simon Banguirao, the other witness, that we are not able to give credit to either declaration.

The testimony of the policemen to the effect that the appellant was not with them on the afternoon in question can not, in our opinion, overcome the testimony of the witnesses for the Government to the contrary.

In the altercation which took place on the day in question in the pueblo of San Carlos, wounds were inflicted upon Fortunato Uacay and upon Faustino Balunes. Two cases were commenced on account of the crimes then committed, one against Marcos Zafra, Pablo Rocusalen, Felix Lubasan, and Nicolas Marino, for injuries inflicted upon Faustino Balunes. This case was numbered 601. The other, numbered 603, was against Marcos Zafra alone, for the injuries inflicted upon Fortunato Uacay. The two cases were set down for trial on the same day, and the trial of No. 601 commenced. After the fiscal had finished his evidence in that case, he made a motion that it be consolidated with No. 603. The defendant Zafra consented that this order might be made, thereupon it was made, the cases were tried together, and one judgment was

entered applicable to both cases. By this judgment the defendant and appellant, Marcos Zafra, was convicted and sentenced to four months' imprisonment; the defendant Rocusalen was acquitted; the other two defendants, Felix Lubasan and Nicolas Marino, were convicted and sentenced to four months' imprisonment each. Neither of these last two defendants appealed. Marcos Zafra, the only appellant, makes the point in this court that the order consolidating the two cases was illegal, and the judgment afterwards rendered was therefore void. It is not necessary to decide what the condition of the case would be if the appellant had objected to the order of consolidation, for he expressly consented thereto, and he can not now allege as error an order of the court to which he thus gave his consent.

It might be added, also, that the consolidation has worked to his benefit, because as a result thereof he was sentenced to four months' imprisonment, when if the cases had not been consolidated he would probably have been sentenced to eight months' imprisonment.

The judgment of the court below is affirmed, with the costs of this instance against the appellant.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.