

5 Phil. 427

[G.R. No. 1788. December 15, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN TULAGAN 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 the Province of Nueva Ecija, they were each found guilty and Juan Tulagan, as chief of the gang, was sentenced to imprisonment for a period of fifteen years with the accessories of article 56 of the Penal Code. The other three defendants were sentenced to be imprisoned for a period of nine years of *presidio mayor* with the accessories of article 57 of the Penal Code, and all to return to one Pedro Joaquin two carabaos which were stolen, or to pay the sum of 180 pesos, their value, in default of which they were to suffer subsidiary imprisonment in accordance with the nature of the crime and each to pay one-fourth part of the costs. From this decision each of the defendants appealed to this court.

The record discloses the fact that Esteban Ramos died while detained in Bilibid on the 5th day of April, 1904, and that Juan Tulagan died in Bilibid on the 8th of October, 1905. The appeal is therefore dismissed as to these two defendants.

An examination of the evidence adduced during the trial discloses the fact that on or about the night of the 26th of April, 1902, these defendants Emeterio Gonzaga and Mariano Escobar, together with twenty or more other persons, armed with bolos and clubs, under the orders and direction of the said Juan Tulagan, who was armed with a bolo and a

revolver, attacked the *presidencia* of the pueblo of Cuyapo of the Province of Nueva Ecija for the purpose of taking and carrying away the money belonging to the said pueblo which was supposed to be in the said *presidencia*. The purpose of the attack upon the said pueblo was proved by three witnesses, who were with the said defendants and the other members of the gang immediately prior to the time of the said attack.

The evidence further discloses the fact that when the said defendants, together with the said gang, attempted to enter the said *presidencia* they were repulsed and driven away by the members of the Philippine Constabulary and the municipal police, and that for this reason the said defendants, with the said gang, were unable to enter the pueblo of Cuyapo.

There was an attempt to prove that the said gang stole two carabaos on the night of the said attack from one Pedro Joaquin; this fact, however, was not proven.

The evidence adduced during the trial proves the following facts:

First. That the two defendants, Emeterio Gonzaga and Mariano Escobar, were members of a gang armed with bolos and clubs, composed of twenty or more persons.

Second. That the said defendants, together with the said gang, on or about the night of the 26th of April, 1902, attempted to enter the pueblo of Cuyapo in the Province of Nueva Ecija for the purpose of committing robbery.

The defendants are, therefore, guilty of an attempt to commit the crime of *robo en cuadrilla*.

Considering the aggravating circumstance of *cuadrilla* and the provisions of article 66 of the Penal Code, which provides that "*upon the principals in an attempt to commit a crime shall be imposed a penalty lower by two degrees than that prescribed by law for the consummated crime,*" it is the judgment of this court that the

defendants, Emeterio Gonzaga and Mariano Escobar, be each fined in the sum of 6,250 pesetas, and in case of insolvency to suffer corresponding subsidiary imprisonment for a period of one month, and each to pay one-fourth part of the costs. So ordered.

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

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