

4 Phil. 389

[G.R. No. 1540. April 08, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. VICTOR RAMOS ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

In this case the defendants, after the judgment of the court below was entered and the case removed to this court, made a motion here for a new trial on the ground of newly discovered evidence. This motion was supported by affidavits showing that the complaining witness, Ruperto Evaristo, since the judgment in the court below had been convicted of bribery and was imprisoned in Bilibid, where these appellants were and are confined, and that he stated to the persons making the affidavits that the appellants were not the persons who made the assault upon him for which they were arrested. This showing would be sufficient to warrant us in granting a new trial.

But after an examination of the evidence already taken in the court below we think that the claim of the defendants' counsel in this court that that evidence was not sufficient to convict them must be sustained.

The testimony of John W. Green, a detective in the employ of the Government, to the effect that the defendant Ramos made a confession before him, must be rejected, because in violation of section 4 of Act No. 619 of the Commission. (United States vs. Isidoro Pascual,^[1] 1 Off. Gaz., 70G.)

The only other testimony in the case to show that the defendants were the persons who committed the assault was the testimony of Evaristo himself. He was a detective in the employ of the Government, and upon coming out of a small Chinese store at night, near San Lazaro,

he was set upon by three men, armed with bolos and a revolver, and very severely injured. He testifies that the attack was made upon him almost instantly upon his coming out of this store; that the only light was that furnished by a lamp in the inside of the store. Evaristo did not know these defendants before, but he claims to be able to identify them from what he saw of them on the night in question. They were not arrested until two months or more after the event, and their arrest then was due to the fact that a cousin of Evaristo overheard Ramos say to, one of Ramos's friends that the man whom they had attacked at San Lazaro had recovered. Upon this conversation being reported to Evaristo he and another detective arrested these defendants. We are satisfied that the identification of the defendants made by the complaining witness at the trial is due not to the fact that he saw them with sufficient distinctness upon the night in question so as to be able to recognize them thereafter but to the fact that his cousin overheard the conversation above narrated.

The judgment of the court below is reversed, and the defendants are acquitted, with the costs of this instance *de officio*. So ordered.

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

^[1] 2 Phil. Rep., 457.
