

4 Phil. 207

[G.R. No. 1686. February 13, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PAULINO PALISOC ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

The defendants here were charged with the crime of robbery. The complaint alleged that the said defendants did on the 23d day of September, 1903, in a barrio of the pueblo of San Carlos,. Province of Pangasinan, enter the house of one Regino Maminta, all being armed with *talibones*,

and then and there, by force and violence and with intent to deprive the owner of the property therein, took and carried away the sum of 20 pesos, Mexican, and various pieces of jewelry, all of the value of 120 pesos, Mexican.

The said defendants were tried by the Court of First Instance of the Province of Pangasinan on the 7th day of November, 1903, and each of the defendants, Paulino Palisoc, Fabiano Diadib, Inocencio Valerio, and Domingo Torres, was sentenced to be imprisoned for the period of five years of *presidio correccional*; and Rufino Lavarias, because the court found that he was the leader of the said band of robbers, was sentenced to a period of six years of *presidio correcciona*; the court also ordered the indemnification to the offended parties in the sum of 120 pesos, Mexican, or the return of the property stolen, and each of the said defendants to pay one-flfth part of the costs. From this sentence Fabiano Diadib, Inocencio Valerio, and Rufino Lavarias appealed to this court.

The record shows that at the beginning of the trial Rufino Lavarias was not present and did not appear in court until after the fiscal had presented all of the witnesses for the prosecution; all of the other defendants were present, were duly arraigned, pleaded not guilty, and were represented by a lawyer; that after the prosecution had closed its case against all of the said defendants except Rufino Lavarias, the court discovered that Rufino Lavarias was outside the court room. Upon discovering this fact the court ordered the said defendant Rufino Lavarias to appear in the court room, and then and there recalled one of the witnesses for the prosecution, Regino Maminta, and proceeded to examine Kim with reference to the part Rufino Lavarias took in the said robbery charged in the complaint, without arraigning the said Rufino Lavarias, reading to him the complaint, or informing him that he had the right to be represented by an attorney during the trial, in accordance with the provisions of sections 16, 17, and 18 of General Orders, No. 58.

The provisions of sections 16, 17, and 18 of General Orders, No. 58, are mandatory in their terms, and for the reason that the court did not comply with the provisions of these sections, the judgment of the court with reference to Rufino Lavarias is hereby reversed, and the cause is remanded to the Court of First Instance of the Province of Pangasinan for the purpose of a new trial.

Upon a consideration of the evidence adduced during the trial of said cause, we are of the opinion that it was sufficient to support the complaint filed in said cause; that the sentence of the court conformed with the provisions of the Penal Code with reference to the crime described in said complaint, and therefore the judgment of the court is affirmed as to the sentence of Fabiano Diadib and Inocencio Valerio. So ordered.

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

