

4 Phil. 198

[G.R. No. 1940. February 06, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. NICOLAS PALILIO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

In a complaint dated February 1, 1904, the provincial fiscal of Bulacan charged Nicolas Palilio and Emiliano Gonzalez with the crime of robbery *en cuadrilia*. The complaint states that on or about December 17, 1903, at 10 o'clock in the evening, the defendants, with other unknown persons, provided with firearms, raided and robbed the house of Emeterio Puno and Ponciana Salazar, husband and wife, after having bound the former and threatened the latter; that they afterwards took and carried away some money and other personal property amounting in value to 15 pesos, Mexican, with the intention of profiting thereby and contrary to law.

That case having come up for trial in pursuance of said complaint, it appears from the evidence that about 10 o'clock on the evening of December 17, 1903, some individuals came to the house of Emeterio Puno and asked for a person by the name of "Nazario;" that when Ponciana Salazar looked out of the window to see who they were she saw that they were armed; that Ponciana went immediately to a room separated from the house by a small bamboo bridge; that at that time two of the individuals came into the house and tied her husband around the elbows, took him downstairs and out of the house to a place where some bananas grew; that there they mistreated him by striking him with the butt of a revolver and asked him for money; that afterwards and because he was unable to give them any money, they conducted him to his store and

there they took and carried away some packages of cigarretes, bread, and soap amounting to the value of 2 pesos; that Puno observed that the robbers had taken from the house two hats and a pair of shoes, of the value of 8 pesos; that he identified among the malefactors the defendant Nicolas Palilio; that he knew him of old. This latter fact is proven because at the time he was testifying before the court he pointed him out without any hesitation. Ponciana Salazar stated that she did not recognize any one of the malefactors. The facts constitute the crime of robbery *en cuadrilla*, as defined and punished by article 502 and subsection 5 of article 503, in connection with articles 504 and 505 of the Penal Code.

The robbery was committed by more than three persons, which brings it within the definition of *cuadrilla*

as given in the law. Nicolas Palilio pleaded not guilty.

Notwithstanding this, and in spite of his exculpatory statements, there is sufficient evidence in the case to clearly convince the mind of his guilt as principal in the crime for which he is now prosecuted. The testimony of Emeterio Puno, corroborated by that of the justice of the peace of Hagonoy, before whom Palilio testified that he had been taken prisoner and conducted by some malefactors to the neighborhood of the robbed house without justifying his presence there, as well as the testimony of Valentin Trono, shows sufficiently and beyond a reasonable doubt that Nicolas Palilio was in the raided house and in the neighborhood thereof. These statements must be taken as true; the injured man, Puno, did not influence his wife to testify in the same terms as himself, and, further, there is no contradiction in the evidence, and for these reasons their testimony should be given credence over that of the defense, which offered the mother-in-law of the defendant to establish an *alibi*.

We agree with the court below as to the existence of the extenuating circumstance in the commission of the crime, as well as the aggravating circumstance which counter-balances same. For this reason the penalty prescribed by law should be imposed in its minimum degree. It must be observed that this decision can in no way refer to Emiliano Gonzalez, because he was acquitted by the court below.

Therefore, by virtue of the foregoing reasons, we are of the opinion that the judgment below, rendered on the 8th of April, 1904, should be affirmed and Nicolas Palilio sentenced to six years ten months and one day of *presidio mayor*, to pay the sum of 18 pesos to the injured party, with the accessories provided for in article 57 of the Penal Code, and to pay one-half of the costs of the court below and full costs in this instance.

This case to be remanded to the court below, together with a certified copy of this decision and of the judgement which shall be rendered in accordance herewith. So ordered.

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