

1 Phil. 202

[ G.R. No. 537. April 09, 1902 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. HIPOLITO HILARIO ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**LADD, J.:**

Alejandro Bello, Bernabe Santos, Hipolito Hilario, Andres Estrella, and Anacleto Abena were tried upon a complaint for robbery in the Court of First Instance of Manila. Estrella and Abena were acquitted. The other three were convicted and appealed. Pending the appeal, this court was officially informed that Bello and Santos had escaped from prison, and the cause was in consequence suspended as to them, but was heard and submitted as to the remaining defendant Hilario.

In the court below Bello was tried separately, and Hilario, Santos, Estrella, and Abena were tried together.

The evidence upon the trial of the four latter defendants shows conclusively that Hilario was one of a band of robbers, six in number, who early in the morning of the 11th of July, 1901, succeeded in effecting an entrance into the house of one Telesforo Obispo, in Tondo, under the pretext that they were policemen, where, after having beaten Obispo and thrown him on the floor and tied his wife and some of the other inmates of the house, they took possession of a sewing machine, some clothing, and various other articles which they found in the house, and a small sum of money, all of which they carried away. It appears from the evidence that Hilario carried a light and that two of the other robbers were armed, one with a gun and the other with a revolver and a bolo.

Hilario and Santos were convicted under the last clause of article 508 of the Penal Code. We think, confining ourselves, of course, at this time to the case of Hilario, that the conviction should have been under article 503, No. 5, there having been a certain amount of personal

violence employed in effecting the robbery. We think, also, that the two aggravating circumstances of article 10, Nos. 8 and 15, are present. The defendant Hilario is therefore sentenced to ten years of *presidio mayor*, restitution of the property stolen, and costs. The cause will be remanded for the execution of this judgment.

*Arellano, C. J., Torres, Cooper, and Willard, JJ., concur.*

*Mapa, J., did not sit in this case.*

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