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[G.R. No. 1150. April 18, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ANGEL DE VILLA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

At 7 a. m. one Saturday in the month of September, 1902—the precise date can not be ascertained—Epifanio Laserna and Pedro Artista were walking along near the dividing line between the barrio of San Fernando, of the town of Santo Tomas, Batangas, and that of San Yldefonso, of the town of Alaminos, La Laguna, but still in the Province of Batangas, on their way home from San Pablo to Taal, of which town they were residents. At this point they were met by some seven men, who came out of the neighboring forest, one of them armed with a rifle, another with a revolver, and the others with long bolos. These men, by violence and intimidation, seized the five horses, which were loaded with wine, oil, saddles, hats, handkerchiefs, and other goods, and also a ten-dollar bill which Laserna had with him. Laserna was taken by the robbers into the forest and tied to a tree, and then abandoned by them in this condition. He remained there until the return of his companion, Pedro Artista, who had succeeded in escaping from the thieves, and who then released Laserna. Laserna's three horses were worth \$210, and Artista's two horses \$180.

The facts related constitute the crime of robbery in a band defined and punished by article 502, paragraph 5 of article 503, and article 504 of the Penal Code. Seven armed men deprived the complaining witnesses by violence and intimidation of the live horses and the ten-dollar bank note and of the goods they were carrying. This circumstance qualifies the robbery, as the number of thieves was sufficient to constitute a band. The crime was committed in an unpopulated place in the barrio of San Yldefonso, in the Province of Batangas, in the neighborhood of a forest. It does not appear that the complaining witnesses were wounded.

The five defendants plead not guilty. Although they denied that they participated in the commission of the crime charged against them in the information, the record contains evidence which is conclusive as to their guilt, when considered as a whole in accordance with the rules of a. sound discretion, and fully convinces the mind of the guilt of each one of the five defendants. The record discloses the fact that the accused were identified by the two complaining witnesses among several other prisoners. The complainants in their testimony state that they remember the appearance of the malefactors who robbed them. The complaining witnesses also identified the gun which was taken by the officers from the defendants after their arrest, and which was found at a place designated by some of them.

It also appears from the record that late on the night of September 30 a search was made in the house of Agapito Millar by order of thek officer Avho was investigating the crime. Agapito was asked if any persons lived with him in the house, to which he replied that he lived there alone. However, the chief of police, Manuel Villa nueva, saw indications that there were more people in the house, proceeded to search it, and found the other accused, Angel de Villa, hidden under the stove. Agapito Millar and Angel de Villa were arrested, taken from the house, and held in the street while the search continued. While there they confessed to the two policemen, Benito Carpio and Urbano Marvive, who were watching them and who had questioned them about the robbery, that they were the persons who had committed the crime. Agapito and Angel also designated the other accused persons, Teodorico Millar and Ambrosio Malijan, as their companions in the commission of the crime, and upon this accusation they were arrested. Later Ambrosio Malijan also designated Guillermo Maza as another of his companions, and upon this information Maza was arrested, but Mariano Malijan and Aniceto Carpio, also accused by Ambrosio, could not be found. Agapito, Angel, and Teodorico pointed out where the gun was hidden in the San Isidro forest, which gun, according to the testimony of the complainants, was the one carried by a man they identified and who turned out to be Guillermo Maza. The five horses were also recovered by the police, who found them hidden in the interior of the forest of the said barrio near the house of Agapito, the latter and Angel having stated where.the horses were to be found.

All these facts, fully proven, constitute conclusive evidence of the guilt of the five defendants. This evidence for the prosecution has not been weakened or overcome by the alibi testimony introduced by the defense, inasmuch as the date of the commission of the crime and that on which the accused said they remained home have not been proven, and more especially in view of the relative proximity of the residences of the accused to the place of the robbery.

The record does not disclose the slightest proof that the confession made by a majority of the accused to the policemen, and to the justice of the peace, was extorted by violence and coercion. On the other hand, the finding of the goods, the horses, and the other property stolen was due to the admissions and statements of some of the defendants—the very ones who pointed out their codelinquents. Therefore, they having been identified by the complaining witnesses, as well as the gun carried by Massa, it is unquestionable that the five accused, together with the two absentees who have not been arrested, were the authors by direct participation of the crime of robbery in a band as herein prosecuted.

In the perpetration of the crime no generic circumstance, mitigating or aggravating, can be regarded as present, and therefore the penalty prescribed by article 504, by reason of the existence of the qualifying circumstance of the commission of the offense in a band, should be imposed in the medium period of the maximum degree, under paragraph 5 of article 503, as to all the defendants, inasmuch as it does not appear which one of them was the leader.

With respect to the defects which the defense alleges are to be found in the information, the proceedings at the trial, and the judgment appealed, some of them are already refuted by the preceding statements, and, with respect to the others, the information only charges one crime, committed in the territory of the Province of Batangas. The jurisdiction of that court is unquestionable. The court, by its deputy, received the complaint with respect to the crime, and subsequently took cognizance thereof, in accordance with the law. An officer who has taken an oath of office, as has the clerk of the court who acted as interpreter in this case, need not repeat the oath nor be sworn as an interpreter every time he acts as such in the discharge of his duties.

Furthermore, these objections were not made in the court below in the course of the trial, and the failure to do so must be regarded as another reason for overruling them in the appellate court.

For the reasons stated we are of the opinion, therefore, that the judgment appealed must be affirmed in so far as the five defendants, Angel de Villa, Agapito Millar, Teodorico Millar, Ambrosio Malijan, and Guillermo Maza, are thereby convicted and condemned to eight years and one day of presidio mayor, and in addition to suffer the accessories of absolute temporary disqualification to the full extent and subjection to the vigilance of the authorities for a period equal to the principal penalty, to be counted from the time of the expiration of the same, and each to pay one-fifth part of the costs of both instances, to restore the bank note and goods not recovered or to pay the value of the same, without subsidiary

imprisonment in case of insolvency, by reason of the character of the principal penalty imposed. So ordered.

Arellano, C. J., Cooper, Willard, Mapa and Ladd, JJ., concur.

McDonough, J., did not sit in this case.

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