

1 Phil. 658

[G.R. No. 950. January 23, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. EMIGDIO MENDIGOREN, DEFENDANT AND APPELLANT.

D E C I S I O N

LADD, J.:

The evidence shows that the defendant was one of four men who, on the evening of a day which the witnesses are not able to fix, in the month of September, 1901, went to the house of Severino del Castillo, in the pueblo of Binalupijan, Province of Bataan, terrorized the dwellers in the house, and took and carried away a suit of clothes and 10 pesos in money.

The defense set up—a frequent one in this class of cases—is that the defendant was not a voluntary member of the party, but had been captured by the others and forced to accompany them. It would require very convincing evidence in any case to establish a defense of this character, and in the present record we discover nothing which can fairly be said to have even a remote tendency in that direction.

It appears that two and perhaps three of the robbers carried arms; as to the fourth—the defendant—the evidence seems to indicate that he was not armed. The party, therefore, did not constitute a *cuadrilla* in the sense of the law (art. 505 of the Penal Code; judgment of the supreme court of Spain of May 22, 1871), and the judgment of the court below, basing the conviction upon the article cited, is so far erroneous.

The defendant is guilty of the crime of *robo* as defined and punished in article 503, No. 5, of the Penal Code; the time and place of the commission of the crime constitute aggravating circumstances (art 10, Nos. 15 and 20); the defendant is accordingly sentenced to eight years of *presidio mayor*.

The judgment of the court below will be modified in accordance with this opinion, and

affirmed in other respects with costs. The cause will be remanded to the court below for the execution of the judgment. So ordered.

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

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