

4 Phil. 151

[G.R. No. 1767. January 21, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. GAVINO GARCIA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The Court of First Instance has sentenced the defendant to five years' imprisonment for the crime of robbery.

The evidence in the record fully shows the guilt of the defendant.

The robbery was committed with intimidation and should be punished in accordance with paragraph 5 of article 503 of the Penal Code, as it is not covered by any of the four previous paragraphs of the said article.

There is no aggravating circumstance present in the commission of the crime to be appreciated, for, although the robbery was committed at night, it seems evident, by what is drawn from the evidence in the record, that that circumstance was not purposely sought by the accused, inasmuch as his meeting with Alejandro Masa and Julian Miguel, whom he robbed of the sums of 2 and 8 pesos, respectively, was merely accidental.

The penalty prescribed by law should therefore be imposed in its medium degree upon the accused; and this penalty being that from *presidio correccional* to *presidio mayor*

in its medium degree, it is clear that the sentence of five years' imprisonment imposed upon the said accused, and from which he appealed, falls within the said degree.

Therefore, we affirm the said judgment against the accused, it being understood that it is to

be of five years of *prisidio correccional* instead of *prision*,
and sentence him moreover to the restitution of the unrecovered amount
of 2 pesos to Alejandro Masa, and to the payment of the costs of both
instances. So ordered.

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

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