

[G.R. No. 1420. March 10, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. BENITO CASROVERDE ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

CARSON, J.:

Benito Castroverde, the appellant in this case, was convicted in the Court of First Instance of Iloilo of the crime of robbery by an armed band (*robo en cuadrilla*) and sentenced to eight years' imprisonment and to pay an indemnity of 90 pesos to said Gabriel Pageatipunan, the owner of the stolen property, and costs, with the alternative sentence of imprisonment of one day for each 12 pesetas of said costs and indemnity in case of insolvency, with all other accessories of said sentence. The evidence adduced at the trial fully sustains the findings of fact in the sentence, as set out in the opinion of the trial court, and establishes the guilt of the appellant beyond a reasonable doubt.

In the course of the decision, however, the trial court states that "the evidence discloses that said crime was deliberately premeditated and with the assistance of armed persons, which the court regards as aggravating circumstances under the provisions of article 10 of the Penal Code."

Upon conviction of the charge of robbery by an armed band, neither of these facts can properly be regarded as aggravating circumstances under the provisions of said article. Deliberate premeditation is an inherent qualification of the crimes of robbery, theft, and analogous offenses, and therefore ought not to be taken into consideration under

the provisions of the said article as an aggravating circumstance, as the legislature, in fixing the penalty for these offenses, necessarily had in mind, as an essential ingredient of the particular offense to be penalized, the fact that in the very nature of things it must have been committed with deliberate premeditation; and the Penal Code, in article 504, specifically provides the punishment which must be imposed in all cases where robbery has been committed "by an armed band," and therefore in such cases this circumstance should not be taken into consideration the second time as an aggravating circumstance under the provisions of article 10.

The above-mentioned article 504 of the Penal Code, taken in connection with paragraph 5 of article 503 of said code, penalizes the crime for which the appellant in this case was convicted with the maximum degree of *presidio correccional* to *presidio mayor* in its medium degree; that is to say, from six years to ten years and one day of *presidio mayor*.

We are of opinion, further, that the trial court erred in imposing upon the accused an alternative sentence in case of insolvency, of subsidiary imprisonment on account of the unpaid costs, and civil indemnification allowed the owner of the stolen property. There is no provision in the Spanish Penal Code for the imposition of subsidiary imprisonment on account of unpaid costs in criminal cases; and article 51 of said Penal Code prohibits the imposition of subsidiary imprisonment on account of failure to pay the civil indemnification allowed in criminal cases where the principal penalty imposed is of a higher grade in the scale of penalties than that of *presidio correccional*.

Modified in accordance with the foregoing principles and fixing the principal penalty at eight years of *presidio mayor*, and remitting the subsidiary imprisonment imposed by the trial court, the sentence appealed from in this case should be affirmed and the costs of this appeal imposed upon the appellant. So ordered.

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

Date created: April 24, 2014