

4 Phil. 307

[G.R. No. 1804. March 20, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GEORGE HERRMAN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

George Herrman, the appellant in this case, was charged with the robbery of the steamboat *Victoria*, the property of Gutierrez Hermanos, valued at 10,000 pesos, of which crime he was convicted in the Court of First Instance of Misamis and sentenced to five years of *presidio correctional*, with the accessory penalties prescribed by law, and the payment of the costs of the proceeding.

The findings of the trial court are fully sustained by the evidence, and we find no error in the proceedings prejudicial to the rights of the accused.

The court erred, however, in failing to take into consideration as an aggravating circumstance the false and fraudulent pretenses made use of to carry the crime into effect. The accused, a captain of Constabulary, chartered the steamer in question upon the pretext that she was to be used in the Government service, when in fact he entered into this contract with the intention and for the purpose of taking possession of her by force when the opportunity presented itself.

In view of this circumstance the penalty should have been imposed in its maximum degree, and, therefore, reversing the sentence imposed by the trial court, we impose upon the said George Herrman the penalty of eight years' *presidio mayor*, with the accessory penalties set out in article 57 of the Penal Code, and the costs of both instances. So ordered.

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

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