

4 Phil. 733

[G.R. No. 1783. September 06, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SILVINO ARCEO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

The complaint presented in the Court of First Instance of the Province of Pampanga charged that this defendant, together with Basilio de la Cruz and Juan de la Cruz, at about 2 o'clock a. m. on the 18th day of October, 1903, did by force enter the house of Saturnina Manago, in the barrio of San Agustin, in the pueblo of Santa Ana, announcing themselves to be members of the Philippines Constabulary, and being armed with guns and bolos, did, by means of force and intimidation take from a trunk in said house the sum of 35 pesos, contrary to the law.

Silvino Arceo was tried alone, and was found guilty of the crime of robbery under paragraph 5 of article 503 of the Penal Code, and was sentenced to be imprisoned for the period of six years ten months and one day of *presidio mayor*, with the accessories corresponding, and indemnification of the property stolen, and subsidiary imprisonment in case of insolvency, and to pay the costs of the suit. From this sentence the defendant appealed.

The evidence adduced during the trial proved the following facts: That Saturnina Manago, Martin Pineda, and Luis Pineda were the owners of a house situated in the barrio mentioned in said complaint; that they were sleeping in said house in the early morning of the 18th of October, 1903, when they were awakened by the voices of some men; that two of said men later entered the said house, one of them being armed

with a gun and the other with a bolo, and by force and intimidation took from a *maleta* or satchel the sum of 30 pesos, the property of said Saturnina Manago; that said armed persons took and carried away from said house to the fields near by Martin Pineda and Luis Pineda; that besides the two men who entered the house of the said Saturnina Manago, one of whom was recognized as this defendant, there were three others who remained outside, surrounding the said house; that four of the said men were armed with bolos and one with a gun.

These proven facts constitute the crime of robbery by a gang, with the aggravating circumstance of nocturnity. The robbery consisted in the appropriation of 30 pesos by means of force and intimidation, and was committed by more than three armed persons. There existed in the commission of this crime, therefore, two aggravating circumstances—(a) nocturnity and (b) that of having been committed in the dwelling of the aggrieved party. There being two aggravating circumstances and no extenuating circumstances, the maximum degree of the punishment provided for by the code must be imposed.

Paragraph 5 of article 503 of the Penal Code provides that those who, with intent of profiting thereby, shall take possession of the personal property of another, with violence or intimidation of the person, or by employing force with regard to the person or property in cases of robbery by a gang shall be punished with the maximum degree of the maximum of the penalty of *presidio correccional* to *presidio mayor* in its medium degree. The penalty here provided will be eight years eight months and eleven days to ten years of *presidio mayor*.

In accordance with the provisions of the Penal Code and the facts proven, it is the judgment of this court that the defendant be sentenced to be imprisoned for the period of nine years of *presidio mayor*, with the accessories corresponding, a return of the property stolen, without necessity to suffer subsidiary imprisonment in case of insolvency, and to pay the costs of the suit. So ordered.

Arellano, C.J., Torres, Mapa, Carson, and Willard, JJ., concur.

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