

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE, VS. ALEJO PIABOL, DEFENDANT-APPELLANT.*G.R. No. L-280. August 26, 1946*

Ponente: HILADO, J.

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Convicted by the Court of First Instance of Iloilo to suffer imprisonment for one year, four months and one day of prison correccional to return the money and articles object of the robbery with which he was charged, or to indemnify the offended party for the value thereof, with subsidiary imprisonment in case of insolvency, and to pay the costs, the accused, Alejo Piabol, appeals from said judgment to this Court.

The facts presently to be narrated have been established beyond reasonable doubt.

Around noon of July 13, 1944, in the barrio of Cumpo, municipality of Passi, province of Iloilo, the appellant went up the house of one Victoria Castro and inquired where her brother Dioscoro was. Upon being told that said brother, Dioscoro Castro, was not in the house, and seeing that Victoria Castro was alone with her child, the accused stood up from the chair where he was sitting and reached for a sack containing money and other articles belonging to Dioscoro, which sack was placed over a bamboo container for keeping palay. Upon Victoria Castro's trying to prevent him from taking said sack by clutching his clothes, the appellant tore and disengaged himself away by violently pushing Victoria, thus being able to go down the house. Victoria pursued him downstairs and when she tried to hold him back again, appellant unsheathed a scythe which he was carrying on his waist and with it threatened Victoria. Thereupon, he fled to a corn field in the neighborhood. Immediately thereafter, the accused was seen by a neighbor named Manuela Paclibar near the Agutayan Creek rummaging over a sack and extracting therefrom pants, shirts, patadiong, one pair of earrings and two empty sacks, the same articles which were in Dioscoro's sack which he had taken. Victoria Castro looked for her brother to inform him of what had happened. Upon learning of the occurrence, Dioscoro, after failing to find the appellant at his (appellant's) house, reported the Incident to the barrio lieutenant. The latter filed a complaint against the defendant with the justice of the peace of the municipality, which last fact is admitted by the appellant who was called to the house of the barrio lieutenant on the same day for questioning regarding the charge filed against him by Dioscoro Castro.

The case was tried in the Court of First Instance on January 9, 1945. It was fully proven that the money and the value of the effects specified in the information and in the judgment appealed from gave a total of P922.25.

The accused set up the defense of alibi. But we are clearly of opinion that he has failed to prove this defense. On the contrary, his authorship of the crime, as already stated above, has been proven beyond reasonable doubt. The offense charged and proven falls under Article 294, No. 5, of the Revised Penal Code, penalizing robbery with violence against and intimidation of persons with prison correccional to prison mayor in its medium period, which, in the absence—as in this case—of any modifying circumstance, should be applied in its medium period, namely, from three years, eight months and one day to six years and ten months. The trial court convicted the appellant to suffer one year, four months and one day of prison correccional, to return to the offended party the

effects of which the latter was robbed or pay him their value, suffering the corresponding subsidiary imprisonment in case of insolvency at the rate of one day of imprisonment for each P2.50 which he should fail to pay, without exceeding one third of the principal penalty, plus the costs.

Pursuant to the provisions of the Indeterminate Sentence Law, the minimum imposable penalty—that lower by one degree than prision correccional to prision mayor in its medium period—is arresto mayor in its full extent. Consequently, the accused should be, as he is hereby, sentenced to suffer an indeterminate penalty of not less than 3 months of arresto mayor nor more than 3 years, 8 months and 1 day of prision correccional.

In conclusion, the judgment appealed from is modified in accordance with the preceding paragraph, as regards the penalty imposed by the trial court, and affirmed in all other respects, with costs.

SO ORDERED.

Paras, Pablo, Perfecto, and Padilla, JJ., concur.

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