

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ERNESTO SEBASTIAN Y PANGILINAN (ALIAS ERNING) AND MAURO
PANGILINAN Y SALTA, DEFENDANTS. MAURO PANGILINAN Y SALTA,
APPE...**

G.R. No. L-2725. February 27, 1950

Ponente: REYES, J.

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REYES, J.:

This is an appeal from a judgment of the Court of First Instance of Manila, convicting appellant of robbery.

Appellant was, together with his co-accused in the court below, charged with robbery in an inhabited house, committed, in the language of the information, as follows:

"That on or about the 5th day of September, 1948, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping each other, and at night time purposely sought to better accomplish their ends, did then and there wilfully, unlawfully and feloniously enter house No. 179 Simon Street, in said City, inhabited by Mr. and Mrs. Jose Rivera and by means of threat and intimidation, to wit: by pointing a .45 caliber pistol at the said Mr. and Mrs. Jose Rivera and that they will be shot if they will make a false move, and with intent of gain and without the consent of the owner thereof, took, stole and carried away cash money amounting to P28, one palm beach trousers, one knitted skipper color green, one white polo shirt, two pairs of men's shoes, one white and other than, one gold lay's ring with one diamond, two electric flat irons (GE) and one eversharp fountain pen, all valued at P537.30, belonging to the said Mr. and Mrs. Jose Rivera, to the damage and prejudice of the said owner in the said amount of P537.30, Philippine currency.

"Contrary to law."

Upon arraignment, appellant pleaded not guilty to the above information, but he changed the plea to that of guilty after hearing the testimony of the offended party, whereupon the lower court convicted him of robbery under Article 299 of the Revised Penal Code, as amended by Section 7, Republic Act No. 18, and taking into consideration his plea of guilty, sentenced him to an indeterminate penalty of 6 years and 1 day of prision mayor, as minimum, to 12 years and 1 day of reclusion temporal, as maximum, and pay indemnity and costs.

The appeal raises only a question of law, and we agree with both the Solicitor General and the attorney de oficio that the lower court erred in convicting appellant under Article 299 of the Revised Penal Code, as amended, and in applying to him the penalty therein provided. Aside from the fact that the information to which appellant pleaded guilty does not allege that the robbery was committed under any of the circumstances enumerated in said article, such as entering the house through an opening not intended for entrance or egress, the breaking of doors, etc., it is now settled that where robbery, though committed in an inhabited house, is characterized by intimidation, this factor "supplies the controlling qualification," so that the law to apply is Article 294 and not Article 299 of the Revised Penal Code. This is on the theory that "robbery which is characterized by violence or intimidation against the person is evidently graver than ordinary robbery committed by force upon things, because

where violence or intimidation against the person is present there is greater disturbance of the order of society and the security of the individual." (U.S. vs. Turla, 33 Phil. 346; People vs. Baluyot, 40 Phil. S9.) And this view is followed even where, as in the present case, the penalty to be applied under Article 294 is lighter than that which would result from the application of Article 299. (See last case cited.) In accordance with this view, appellant should have been declared guilty of robbery under paragraph 5 of Article 294 of the Revised Penal Code, as amended by Republic Act No. 18, since the charge to which he pleaded guilty alleges robbery through intimidation of persons. His criminal liability is aggravated by the circumstances of nocturnity and dwelling and not mitigated by his plea of guilty, which was not entered until after the offended party had already testified. (Art. 13, No. 7, Rev. Penal Code; People vs. Co Chang, 60 Phil. 293; People vs. De la Cruz, 63 Phil. 874; People vs. Herminio, 64 Phil. 403; People vs. Bawasanta, 64 Phil. 409.)

The penalty prescribed for the offense committed is prision correccional in its maximum period to prision mayor in its medium period, which, because of the presence of two aggravating circumstances, should be applied in its maximum degree, or from 8 years and 21 days to 10 years of prision mayor. Applying the Indeterminate Sentence Law, appellant should be sentenced to an indeterminate penalty of not less than 4 months and 1 day of arresto mayor, nor more than 4 years and 2 months of prision correccional, as minimum, and not less than 8 years and 21 days nor more than 10 years of prision mayor, as maximum.

Wherefore, modifying the judgment appealed from in so far as appellant is concerned, he is hereby declared guilty of robbery under paragraph 5 of Article 294 of the Revised Penal Code, as amended, and sentenced to an indeterminate penalty of 4 years and 2 months of prision correccional, as minimum, to 10 years of prision mayor, as maximum; jointly and severally with his co-accused to indemnify the offended party in the sum of P39.50; and to pay proportionate costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.
Paras, and Feria, JJ., no part.

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