

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
TEODORO DE LA CRUZ Y TOJOS, ET AL., DEFENDENTS, TEODORO DE
LA CRUZ Y TOJOS, APPELLANT.***G.R. No. L-52. February 21, 1946*

Ponente: PERFECTO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4aeb4a980321/>**PERFECTO, J.:**

Appellant is charged with the crime of robbery in band committed on June 25, 1945. The Court of First Instance of Manila sentenced him to suffer an indeterminate sentence of not less than 6 months nor more than six years, ten months and one day of imprisonment, to indemnify the offended party in the sum of P8,000, with subsidiary imprisonment in case of insolvency, and to pay the costs. He appealed from this sentence, praying that he be acquitted. The prosecution recommends affirmance, with the elimination of the subsidiary imprisonment in case of insolvency, the principal penalty imposed being higher than prisión correccional.

At about 8:30 p.m, on July 25, 1945, while Dr. Gregorio B. Sison was closing the door of his drug store at 389 Dimasalang, Manila, four men armed with revolvers got near him, stuck revolvers over his ribs, pushed him inside the drug store, and ordered him and all other persons inside to lie down face downward. One remained to watch the door, another, who was manipulating his revolver several times, kept watch of the persons lying down, and the remaining two went upstairs. The one watching the door called several times the other watching the persons lying down, telling him to shoot their heads if they moved.

The malefactors were able to get P200 from the cash register, P7,000 in bills, P500 in silver coins, and one pair of earrings with diamonds valued at P300, all located in one of the drawers in the kitchen.

The main question in this case revolves on appellant's identity. He denies having participated in the commission of the crime. At the hour and on the day the robbery was committed, appellant does not remember whether he was at home or at Felix Huertas. He alleges that he lives by selling bread, shoes, pomade, and other things in the market, and admits that he gambles. Two witnesses for the prosecution recognized appellant as the one watching the people who were ordered to lie down in the drug store. Dr. Gregorio B. Sison testified that he was able to recognize appellant "when he stuck the revolver against my ribs, I happened to look at him; he was wearing a fatigue uniform with cap, and before I lied down I had a good look at him." (P. 2, t. s. n.)

Luz Mendoza de Sison testified that she heard one of the robbers called appellant by the name Doro. She declared that while she was lying down I tried to raise my head to look at him and then one of his companions shouted 'Doro', shoot her, she is raising her head." (P. 9, t. s. n.) At that time she was able to see appellant's face. There were three gas lights inside the drug store then. The witness testified that she saw appellant twice, the first time "when he pushed my husband" (p. 13, t. s. n.) inside the drug store, and the last time when she looked at him "while he was manipulating the gun * * * to see his face". (P. 13, t. s. n.)

Detective Alejandro Eugenio testified that appellant, being one of those arrested in connection with the holdup of Dr. Teodoro Virata and being named as Doro, was brought to the drug store on July 17, where he, in a group

composed of said detective and detective Querijero, in plainclothes, and two uniformed policemen, following the practice of presenting persons caught as holdup men to victims for identification, was identified by Luz Mendoza de Sison.

The analysis of the testimonies given in this case convinces us that appellant was conclusively identified as the robber who kept watch of the people inside the drug store while lying down; who, upon entering the drug store, was one of those who stuck a revolver at the ribs of Dr. Gregorio B. Sison; who, during the watch, was manipulating his revolver to the extent of dropping two bullets to the floor, and who was being named as Doro.

The fact that the prosecution witnesses singled him out as the only one among the four robbers they could identify, it appearing that there were circumstances which made his identification possible, and that no unreasonable motive was shown why they should point him out, instead of any one of the three remaining gangsters, only serves to strengthen the credibility of said identification.

There are no words strong enough to condemn banditry and gangsterism. During the enemy occupation, our peace citizenry had to endure the scourge of frequent wanton robberies. The abnormal conditions then reigning, the example of outlawry given by the masters of the situation, hunger and misery in some cases, the moral distress or mental disequilibrium in others, which produced the extraordinary situation, might explain the robberies and lootings perpetrated under the regime of greatest looters ever known in our country. But now, when everybody is given full opportunity to earn an honest and decent living, under a régime of law and freedom, of peace and justice, of noble principles and high ideals, any act such as the one committed by appellant and his co-gangsters does not merit the least attenuation. The authors of such acts must be branded forever with the stigma of infamy. They are the shame of a race and the ignominy of a people, the disgrace of humankind.

One of the geniuses who flourished in the thirteenth century, the philosopher and theologian whose exalted native endowment and original creative power in the intellectual field is the admiration of Christian world, Saint Thomas Aquinas, maintained that the appropriation of others' goods which they (the owners) do not need, if made in obedience to extreme necessity, does not constitute robbery. He declared that the superfluous things in the possession of some persons, by natural law, are goods for the maintenance of the poor. Evident and urgent necessity makes the one who appropriates the goods of another for the maintenance of his own life the legal owner of said goods (Summa Theologica, 2d part, Question LXVI, Art. VII) . To strengthen his position, he quoted from Saint Ambrose (serm. 64, De temp. Decret. 47, cap. Sicut hi) the following: "The bread you are retaining belongs to the hungry; the cloth you are keeping aside belongs to the naked; the money you are hiding underground is for the redemption and absolution of the unfortunate." But, without subscribing necessarily to the above propositions of the two saintly authors, in the present case, there is absolutely no showing that extreme necessity impelled accused to perpetrate the robbery here in question. There is not the remotest hint that appellant would have died of hunger without the money and jewel which he and his fellow gangsters took from complainants' drug store, or that he would face an imminent danger of losing any vital limb or right. On the contrary, he testified that he was engaged in selling foodstuffs, such as bread; wearing apparel, such as shoes; and even articles of luxury, such as pomade. And it is evident that he earned more than enough to satisfy his prime needs, for he allowed himself the leisure and the spare money for gambling. He robbed, therefore, not because he was compelled by any pressing necessities, but by following impulses of moral perversity. For such individual, and for all individuals belonging to his depraved tribe, there is no reason to waste any pity or leniency. The race of robbers, bandits, gangsters, and other malefactors of the same brand, should be ostracized perpetually from human society until the shame shall have disappeared completely from memory.

With the elimination of the penalty of subsidiary imprisonment in case of insolvency, as recommended by the prosecution (case 3, article 39, Penal Code), we affirm the decision of the lower court. The correction of form

suggested by the Solicitor General to the effect that the designation of prisión correccional used in the lower court's decision must be read as prisión mayor, being an evident lapsus plumae. does not need from us any specific pronouncement. The costs in this instance 'shall be taxed against appellant.

Ozaete, De Joya, Hilado, and Bengzon, JJ., concur.

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