

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ARNULFO ALVAREZ, DEFENDANT AND APPELLANT.

G. R. No. L-9626. May 22, 1957

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

Appellant Arnulfo Alvarez was accused of robbery in an, inhabited house in an information filed with the Court of First Instance of Manila, which reads as follows:

"That in or about and during the period comprised between January 15 and January 16, 1955, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously enter the store and house No. 1106 San Fernando St., Binondo, in said City, which was at the same time the dwelling place of one Tiong Cuanco and the members of his family and therefore an inhabited house by then and there passing thru the top of the main door of the store, and house after forcibly cutting the iron grills on top of said door, and once inside the said store and house, with intent of gain and without the 'consent' of the owner thereof, wilfully, unlawfully and feloniously took, stole and carried away 20 pieces of Gas Lantern (Optimus) made in Sweden, 300 candle power, valued at P600 and 5 pieces of Gas Lantern (Petromax) made in Germany valued at P160 belonging to the said Tiong Cuanco, to the damage and prejudice of the said owner in the total sum of P760 Philippine currency."

Upon arraignment, he pleaded guilty and was sentenced, considering his plea of guilty as a mitigating circumstance, to suffer an indeterminate penalty of from six years of prison mayor, as minimum, to twelve years and one day of reclusion temporal, as maximum, to return to the offended party the stolen articles not recovered or indemnify him in the sum of P729.60, without subsidiary imprisonment in case of insolvency and to pay the costs.

Not satisfied with the penalty, imposed upon him, he appealed from the decision only to question its propriety.

The crime alleged in the information, of which the appellant pleaded guilty, clearly falls under the provision of Article 299 of the Revised Penal Code and penalized there under with prison mayor, for the value of the stolen property exceeds P250 but the appellant was not armed when he committed the crime. Hence, the proper penalty that should be meted upon him is the minimum period of prison mayor ranging from six years and one day to eight years. Accordingly, and applying the provisions of the Indeterminate Sentence Law, the decision must be modified and appellant is hereby sentenced to an indeterminate penalty of from two years and four months of prison correccional, as minimum, to eight years of prison mayor, as maximum.

Appellant contends that he is entitled to a fixed penalty alleging that the present case is his first offense, that he did not molest the family living in the tenement robbed and that he was not armed when he committed the offense. But granting these allegations to be true—although we do not find them clearly proven except the fact that the appellant was not armed when he committed the crime at bar—the same do not constitute legal ground for

imposing upon him a fixed penalty instead of applying the Indeterminate Sentence Law which is favorable to him;

Wherefore, with the modification of the appealed decision as above indicated, the same is hereby affirmed in all other respects, with costs against the appellant.

Bengzon, Padilla,, Montemayor, Reyes, A., Bautista, Angelo, Labrador, Conception, Reyes, J. B. L., and Felix, JJ., concur.

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