

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSE DE LARA, ACCUSED AND APPELLANT.

G.R. No. L-8942. February 29, 1956

Ponente: REYES, A., J.

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REYES, A., J.:

This is an appeal from a judgment of the Court of First Instance of Camarines Sur certified to us by the Court of Appeals on the ground that it involves only a question of law.

The appellant Jose de Lara pleaded guilty to an information for robbery committed as follows:

"That on or about January 8, 1953, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the accused herein, confederating together and mutually helping one another, did then and there wilfully unlawfully and feloniously with intent of gain by the use of force upon things, to wit: by cutting the iron chain which was padlocked and fastening the . door of the bodega, an inhabited house, which the accused Jose de Lara then and there forcibly opened, and entered and once inside, did, then and there take, steal and carry away therefrom, without the knowledge and consent of the owner and complaining witness, Cipriano Agawa, the following/property, to wit:

"Twelve (12) sacks of palay (raminad) at P9.50 each P114.00

"Ten (10) empty sacks of P0.50 each 5.00

valued in the total amount of One hundred and nineteen (P119) pesos, Philippine currency, to the damage and prejudice of the said owner and complaining witness, Cipriano Agawa in the aforementioned amount of P119.

"That an aggravating circumstance of night time is present in the commission of the offense of robbery."

In view of said plea, the trial court, applying Article 299 in relation to Article 303 of the Revised Penal Code, as amended, sentenced him to an indeterminate penalty of not less than 6 months and 1 day nor more than 2 years, 11 months and 11 days of prison correctional, and to pay proportionate costs.

In this appeal counsel for the appellant contends that the trial court should have applied Article 302 instead of Article 299 of the Revised Penal Code, on the ground that, as there is nothing in the record to show that the bodega where the robbery was committed was itself an inhabited house or a dependency of an inhabited house, appellant could be convicted of robbery in an uninhabited house and sentenced to a lighter penalty.

The contention is without merit. A plea of guilty imports unqualified admission of the facts alleged in the information. And it appears that in the information filed in the present case the bodega where the robbery was committed is expressly described as "an inhabited house." The fact that from affidavits of the complaining witnesses, counsel could glean that the bodega was uninhabited or that it was not a dependency of a dwelling house does not detract from appellant's admission in his plea of guilty. Those affidavits were not put in evidence to qualify the plea, and we cannot assume that, had that been done, the prosecution could not have countered with proof that, as it had alleged, the bodega was in fact inhabited.

However, we agree with the Solicitor General that the trial court was in error in applying the lower penalty provided in Article 303 for robbery that consists in the taking of cereals, fruits, or firewood, considering that the appellant, in addition to the palay, also took 10 empty sacks valued at 50 centavos each. (6 Viada, 5th ed., p. 198, citing sentence of the Supreme Court of Spain of June 5, 1909.)

Appellant should, therefore, be convicted of robbery in an inhabited house under Article 299 of the Revised Penal Code, as amended, for which offense—in the absence of allegation that he was armed and it appearing that the value of the property taken does not exceed 250 pesos—the penultimate paragraph of that article prescribes the penalty of prision mayor in its minimum period. Since the mitigating circumstance of plea of guilty is offset by the aggravating circumstance of nighttime alleged in the information, the penalty should be imposed in its medium period. Going down one degree for the purposes of the Indeterminate Sentence Law, and following the ruling laid down in *People vs. Gonzales*, 73 Phil, 549, and *People vs. Mape*, 77 Phil., 809, the appellant should be sentenced to an indeterminate penalty the minimum of which shall not be less than 6 months and 1 day nor more than 6 years of prision correctional, and the maximum not less than 6 years, 8 months and 1 day nor more than 7 years and 4 months of prision mayor.

No credit for preventive imprisonment is allowable in view of the nature of the crime committed. (Art. 29, Revised Penal Code.)

Consistently with the foregoing, the penalty imposed below should be modified and, in line with the recommendation of the Solicitor General, the appellant is sentenced to an indeterminate penalty of from 2 years, 4 months and 1 day of prision correctional to 6 years, 8 months and 1 day of prision mayor.

Modified accordingly, the judgment appealed from is affirmed, with costs.

Parás, C. J., Padilla, Montemayor, Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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