

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DANILO E. VARGAS, DEFENDANT AND APPELLANT.

*G.R. No. L-20111. September 29, 1964*

Ponente: PAREDES, J.

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### PAREDES, J.:

Defendant-appellant Danilo E. Vargas and Alfredo C. Ulanday, were charged before the CFI of Rizal, Branch VI, with the crime of robbery, in an information worded as follows:

"That on or about the 22nd day of October, 10(31, in the municipality of Pasig, province of Rizal, Philippines, a place within the jurisdiction of this Honorable Court, the above named accused, conspiring and confederating with one Ernesto Mamucod who is still at large and whose case is still pending with the Justice of the Peace Court of Pasig, Rizal, and all three (3) of them mutually helping and aiding one another, at night time, a circumstance deliberately sought to insure success in the commission of the crime, entered a public school building (Pasig Elementary School) by passing thru its window, an opening not intended for ingress or egress, and by means of force upon things, that is, by forcibly breaking and sawing the iron bar of the window grills, and once inside the said building, with intent of gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away therefrom the following property, to wit:

One (1) typewriter, "Underwood", 24 inches carriage with Serial No. B-8167, valued at.....

**P450.00**

One (1) Adding Machine, "RC Allen", hand operated, Model 1005, with serial No. 1078531, valued at .....

800.00

all in the total value of P1,250.00, belonging to the Pasig Elementary School, to the damage and prejudice of said Pasig Elementary School in the aforesaid amount of P1,250.00."

Both accused waived preliminary investigation and the case was elevated to the CFI for proper proceedings. Under date of December 22, 1961, the accused were arraigned and accused Ulanday, assisted by Atty. Oseña, pleaded guilty to the crime, as charged in the information. A plea of not guilty was registered by herein appellant Danilo E. Vargas. On December 26, 1961, the trial court rendered judgment against Ulanday, finding him guilty beyond reasonable doubt of the crime as charged, and sentenced him to suffer from 2 years and 4 months of prision correccional as the minimum to 10 years of prision mayor as the maximum, and to pay the costs.

Trial was ordered, as to accused Vargas. At the scheduled trial, on January 9, 1962, Vargas, now assisted by Atty. Augusto Sanchez, moved to withdraw his former plea of not guilty and substitute it with that of "guilty" of the crime charged. On the same date, the lower court rendered a decision, the dispositive portion of which reads:

"Wherefore, the Court finds the accused Danilo E. Vargas guilty beyond reasonable doubt of the crime as

charged in the above information and hereby sentences him to suffer an indeterminate sentence of from 2 years and 4 months as the minimum to 6 years prision correccional as the maximum, and to pay the proportionate costs."

Counsel for the accused moved for the reconsideration of the above decision, only with respect to the propriety of the penalty imposed. Counsel claims that accused Vargas is entitled to the mitigating circumstance of minority (being 17 at the commission of the offense) and the plea of guilty, and that his penalty should only be one (1) month and one (1) day of arresto mayor to two (2) years and four (4) months, of prision correccional, after applying the indeterminate sentence law. Upon denial of the motion, the instant appeal was interposed.

It would seem that the only question which we are required to pass upon, is the penalty to be imposed.

Article 299 of the Revised Penal Code, which penalizes the crime at bar, provides:

"Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to \*  
\* \*, shall be punished by reclusion temporal, if the value of the property taken shall exceed 250 pesos, and if—

\* \* \* \* \*

When the offenders do not carry arms and the value of the property taken exceeds 250 pesos, the penalty next lower in degree shall be imposed."

Under the above provisions, therefore, the penalty imposable should be prision mayor (six [6] years and 1 day to 12 years). There is no allegation in the information that the accused were armed. This penalty should again be reduced to one degree lower, or prision correccional (6 mos. and 1 day to 6 years) because the accused was admittedly a minor (par. 2, Art. 68, RPC). From this penalty, a further reduction is authorized by the application of the indeterminate sentence law which is another degree lower, or arresto mayor (1 mo. and 1 day to 6 months). The Solicitor General recommended that the penalty should not be less than 1 month and 1 day nor more than 6 months of arresto mayor as minimum, and not less than 2 years, 4 months and 1 day nor more than 4 years and 2 months of prision correccional, as maximum. All circumstances considered, this Court imposes upon appellant Danilo E. Vargas an indeterminate penalty which ranges from 6 months of arresto mayor to three (3) years, six (6) months and twenty-one (21) days of prision correccional.

WHEREFORE, modified as above indicated, the decision appealed from is affirmed, in all other aspects. With proportional costs against appellant.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

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