

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. UTO ALLI, DEFENDANT AND APPELLANT.

G. R. No. 25071. March 25, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

The defendant is accused of the crime of robbery with physical injuries the information alleging "that on or about May 3, 1925, in the sitio of Tikong, municipal district of Parang, Province of Sulu, Philippine Islands, the herein defendant did willfully, unlawfully, and criminally and with intent of gain, through force, violence, and intimidation upon persons, compel one Mora by the name of Ulad to deliver P20 to him, as said Mora Ulad did in fact deliver to him P2.50 by fear, and at the act of delivering said sum and on the occasion of said robbery, said defendant did willfully, unlawfully, and criminally assault and attack said Mora Ulad, striking her cut blows on the neck and other parts of the body, thus inflicting wounds on said parts of the body, which required medical attendance for over thirty days, and prevented her from performing her usual work for a like period of time, and produced deformity on her neck. That the commission of this crime was attended by the aggravating circumstance of nocturnity and of the same having been committed in the dwelling of the offended Mora Ulad."

The court below found the accused guilty as charged in the information and sentenced him to suffer ten years and one day of presidio mayor and to return to the offended party the sum of P2.50, and to pay the costs. From this judgment the defendant appeals and his counsel makes the following assignments of error:

"(1) That the trial court erred in not acquitting the accused on account of reasonable doubt.

"(2) That the trial court erred in finding the accused guilty of robbery under article 503 (4) of the Penal Code and sentencing him to suffer imprisonment for ten years and one day of presidio mayor, and

"(3) That the trial court erred in finding the accused guilty of a crime not charged nor comprehended in the information."

As to the first assignment of error it is our opinion that the evidence leaves no doubt as to the defendant's guilt. It is true that the conviction rests almost exclusively upon the testimony of the offended party, but the accused was her neighbor, she had ample opportunity to identify him, and, as far as the record shows, she had no motive to falsely charge the defendant with the crime. The defendant attempted to prove an alibi, but the story does not seem very probable and his witnesses contradicted each other on important points.

The second and third assignments of error rest upon an erroneous interpretation of paragraph 4 of article 503 of the Penal Code. The paragraph reads as follows:

"A penalty ranging from presidio mayor in its medium degree to cadena temporal in its minimum degree, whenever the violence or intimidation employed in committing the robbery shall have been carried to a degree clearly unnecessary to the commission of the crime, or when in the course of the perpetration of the crime the offenders shall have inflicted upon any persons not connected with its commission any of the physical injuries falling within the terms of paragraphs three and four of article four hundred and sixteen."

The appellant contends that the information does not allege that violence or intimidation employed in committing the crime was "carried to a degree unnecessary to the commission of the crime." That is true, but it is alleged in the information that the wound on the neck of the offended party caused a deformity and the lower court found that the deformity existed. This being the case, the defendant was properly convicted under the paragraph quoted in connection with paragraph 3 of article 416.

The penalty imposed by the court is in accordance with law and the findings of the court below are fully sustained by the evidence. The judgment appealed from is therefore affirmed with the costs against the appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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