

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ARISTON LUNCAY, DEFENDANT AND APPELLANT.

G. R. No. 25634. October 19, 1926

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Cavite, finding the appellant, Ariston Luncay, guilty of the offense of robbery with serious physical injuries and sentencing him, with his co-accused, Maximo Nepomuceno, to undergo imprisonment for ten years and one day, presidio mayor, with the accessories prescribed by law, and requiring them to pay jointly and severally to W. P. Hamil the sum of KL7, and to pay each one-third part of the costs.

The proof shows beyond peradventure of doubt that on the night of May 12, 1925, the appellant, Ariston Luncay, and Maximo Nepomuceno, in conjunction with a third person whose identity has not been established, assaulted one W. P. Hamil while the latter was riding in a calesa near the barrio of San Roque, Cavite. The party assaulted was able to discern the faces of two of his assailants from the lights of the calesa, as said two approached him on either side of the vehicle. These two were the appellant, Ariston Luncay, and his co-accused, Maximo Nepomuceno. Approaching near the vehicle, the said two attacked Hamil and gave him several blows on the face and head, by reason of which Hamil lost consciousness. He was then robbed of P17 which he had upon his person and his unconscious body was thrown out of the calesa in a swampy place about 200 yards from the nearest house. He was there found the next morning covered with blood and lying in an unconscious state. Taken to the Army and Navy Hospital at Canacao, Hamil was treated by a physician, and in time he recovered, though the hearing of one ear was destroyed by one of the blows he had received. Among other injuries Hamil suffered were a fracture of the jaw, a fracture of the skull, and several lacerated wounds or bruises. The evidence shows that in this assault Ariston Luncay used iron knucks (*Llave inglesa*) while Nepomuceno used a stick.

The testimony of Hamil in respect to the identification of the appellant as one of his assailants is placed beyond doubt by the testimony of Arsenio Concepcion, a boy about 16 years of age who was at first joined in the complaint as a confederate of the other two; but at the request of the fiscal, the prosecution was dismissed as to him at the hearing and he was used as a witness for the prosecution. We suppose that this fellow was the unidentified third person who took part in the commission of the offense, but he renounced the honor of having been a willing participant and claims that the third assailant was another person than himself. We have no hesitation in accepting his testimony as corroborative of Hamil as to the identity of two of the miscreants.

The offense committed is punishable under paragraph 3 of article 503 in relation with paragraph 2 of article 416 of the Penal Code. In connection with the offense are to be appreciated the aggravating circumstances of nocturnity and the use of iron knucks. With less certainty might be considered the additional aggravating circumstances of abuse of superior strength and that the offense was committed in an uninhabited place. The lower court appreciated in favor of the appellant the mitigating circumstance indicated in article 11 of the Penal Code, as amended. This concession was probably not merited, but in the face of, the aggravating circumstances

mentioned, it does not avail to reduce the penalty lower than the minimum of the maximum degree of the penalty prescribed by law. As suggested by the Attorney-General, the penalty appropriate to the offense is imprisonment for seventeen years, four months, and one day, cadena temporal, with the appropriate accessories.

It being understood that the penalty shall be imprisonment for seventeen years, four months, and one day, cadena temporal, with the accessories, the conviction is affirmed, including the clause of indemnization, with costs. So ordered.

Avanceña, C. J., Johnson, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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