

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EULOGIO DE MESA (ALIAS ALEJANDRO TIMBANG), DEFENDANT AND APPELLANT.*G.R. No. 3441. March 09, 1907*

Ponente: TORRES, J.

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The accused, Eulogio de Mesa (alias Alejandro Timbang), was, on the 13th day of February, 1906, by written complaint filed on that day in the Court of First Instance of this city by the prosecuting attorney, accused of the crime of robbery, in that on or about the 7th of the said month of February, 1906, the accused did, voluntarily and criminally, through intimidation, take forcible possession of several pieces of money together with various bills in paper money, of different values, of the total amount of 35 pesos, Philippine currency, or the equivalent of 175 pesetas, all of which was the property of Florentino Elicaño and then in the hands of one Timoteo Gaton.

After trial of the cause duly had on said complaint the judge presiding in said cause rendered on May 3, 1906, his decision finding the accused guilty and sentencing him to four years' imprisonment (presidio correccional), from which sentence appeal was taken by the attorney for said accused.

It has been duly proven in this case that on the afternoon or night of the 7th of February, 1906, Timoteo Gaton and Vicente Eculango were engaged in making purchases in various stores on Calle Rosario, in the city of Manila, when they were approached by an unknown person, who requested of Timoteo Gaton, the latter then having in his hands some money and other effects, that he, said unknown, be permitted to carry the money, and that they all three would go on together, this in order, as the unknown stated, to prevent the loss of the money. Gaton refused to accede to this request and in reply asked the unknown who he was and by what right he wanted to take charge of the money, to which the unknown stated that he insisted that the money be handed to him, and with that snatched the money from the hand of Timoteo, taking the same, and immediately afterwards ran away without giving an opportunity to detain him. Vicente Eculango testified that during the conversation and dispute he also asked the unknown why he wished to obtain the money then in the hands of his companion, to which such unknown answered that he was an officer of the law, showing them at the same time a revolver, and, taking the money then being carried by said Timoteo Gaton, left them. It was ascertained afterwards that the said unknown was the accused, Eulogio de Mesa.

Notice of the occurrence was immediately given by Timoteo Gaton at the office of the secret service, together with all information in detail and the circumstances connected therewith and describing the author of the crime; and, upon being shown in frames the photographs of different individuals, he designated the picture of the accused as the person who had committed the robbery. During this period the city of Manila was going through the experience of having many robberies, all of which were being reported to the police; and during the investigations of these reports of robberies the picture of the accused in this case was in many instances designated by the sufferers as being the author of the crimes. The accused was arrested several days afterwards by the police of the city of Manila and was identified by Timoteo Gaton as the author of the robbery.

It has been conclusively proven in the present case that the offense is that of robbery with intimidation of persons, and therefore the same comes under and is punishable by articles 502 and 503, paragraph 5, of the Penal Code, inasmuch as the accused herein boldly and audaciously, on a principal and busy street, took possession by force of the money then held in the hand of Timoteo Gatón, and this after he had made known that he was an officer of the law and showed the revolver which he carried. It is also proved that the accused left immediately after the commission of the crime and that Timoteo Gatón was unable to detain him and recover the 35 pesos so stolen, the property of Florentino Elicaño.

Notwithstanding that the accused denied his guilt, his evidence and testimony was certainly not true, and his guilt was clearly established; he was proven the author in direct participation of the said crime, the commission of which carried with it all the elements of aggravating circumstances under paragraph 8 of article 10 of the Penal Code, in that the accused used, for the commission of his said offense, craft, fraud, and simulation as an officer of the law; therefore, owing to the nature of the crime, the special circumstance of article 11 of the Penal Code, which covers the point of extenuating circumstances can not be considered, this in accordance with former decisions of this court.

Neither can this court consider, in connection with the accused and his offense, paragraph 17 of said article 10 of the Penal Code—that is to say, consider the prior convictions of the accused for other crimes for which the law provides an equal or greater penalty in cases of two or more prior offenses punishable by a less penalty. Since the certified copies of the sentences rendered against the accused in the former cases were not exhibited during the trial of the present case nor attached to the record herein, a procedure that must be observed in order to take into consideration the existence or fact of aggravating circumstances connected with the commission of an offense, and this in the presence and with the knowledge of the accused on trial, the said accused being the one affected and prejudiced by the production of the proof as to such prior convictions, it is not proper to increase the penalty of the accused.

Therefore, in view of the above reasons, we reverse the judgment and sentence appealed from and find the accused, Eulogio de Mesa (alias Alejandro Timbang), guilty, and hereby sentence him to ten years' imprisonment (presidio mayor), with the accessory penalties prescribed in article 57 of the Penal Code, together with the restitution to Florentino Elicaño of the 35 pesos stolen, without subsidiary imprisonment in case of insolvency in accordance with article 51 of the Penal Code, and the costs of both instances. After the expiration of ten days from the notification of this judgment let judgment be entered in accordance herewith and ten days thereafter the case be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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