

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CHUA BUAN, CHENG HIAP, PROTACIO SUGAPONG, ALFONSO DE LA PAZ, PABLO MUÑERA, AND ANASTACIO FAJARDO, DEFENDANTS. A...

G.R. No. 37185. December 13, 1933

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Appellants Alfonso de la Paz, Pablo Muñera and Anastacio Fajardo, together with Chua Buan, Cheng Hiap, and Protacio Sugapong, were charged in the Court of First Instance of Manila, with the crime of robbery in an uninhabited house. Upon being arraigned, they pleaded not guilty. In due time the case was tried. After the prosecution had rested, counsel for the defendant Cheng Hiap moved for the dismissal of the case as regards said defendant. This motion having been denied, Cheng Hiap withdrew his plea of not guilty and substituted therefor a plea of guilty as an accessory.

Upon the evidence presented at the trial, the court found the defendants Protacio Sugapong, Alfonso de la Paz, Anastacio Fajardo and Pablo Muñera guilty as principals of the crime of robbery charged in the information, and sentenced each of them to three years, six months and twenty-one days of prision correccional, with the accessory penalties, to pay his share of the costs, and to the following additional penalty for habitual delinquency: Alfonso de la Paz, this being his fifth conviction, to an additional penalty of ten years and one day of prision mayor; Pablo Muñera, this being his fourth conviction, to an additional penalty of six years and one day of prision mayor; and Anastacio Fajardo, this being his third conviction, to an additional penalty of two years, four months and one day of prision correccional. The trial court acquitted the defendant Chua Buan with one-sixth of the costs de oficio, and found the defendant Cheng Hiap guilty only as an accessory, and sentenced him to one month and one day of arresto mayor, with the accessory penalties, and to pay his share of the costs.

From this judgment, only the defendants Alfonso de la Paz, Pablo Muñera and Anastacio Fajardo appealed, and have assigned the following errors:

- "1. The lower court erred in giving credit to the testimony of Facundo Caballero, the principal witness of the prosecution; and
- "2. The lower court erred in finding the defendants-appellants guilty of robbery in an uninhabited house as charged in the complaint."

The evidence clearly shows that on the night of February 10, 1932, a robbery was committed in a warehouse belonging to M. Verlinden, located at 335 Calle Looban, Manila; that the robbery was committed by breaking the door of the said warehouse, which was then locked; and that the property stolen was worth P328.96. The evidence further shows that the appellants were among the persons who committed the robbery. Counsel for the appellants, however, vigorously contends that there is no sufficient evidence to establish the guilt of the appellants as the

authors of the crime. After reviewing the evidence of record, we find no sufficient reason for interfering with the findings of the lower court.

While this case was pending in this court, a motion for a new trial was presented, based on affidavits signed by Victoriano Baron, Santiago Rodriguez, and Rodrigo Altavas, to the effect that they were the authors of the crime involved in this case. The record shows that these persons are habitual criminals, now serving sentence in Bilibid Prison. It would be a dangerous precedent to grant a new trial under the circumstances of this case. The motion for a new trial is, therefore, denied.

The offense committed comes within the purview of article 302, paragraph 2, in connection with article 293 of the Revised Penal Code. The aggravating circumstance of night-time should be taken into consideration. In disposing of this case, it is not necessary for us to pass on the question of whether recidivism should be taken into consideration as an aggravating circumstance. That matter is now pending decision by the court in bane. The penalty of prision correccional in its medium and maximum periods prescribed in article 302 of the Revised Penal Code should therefore be imposed in its maximum degree. Consequently, each of the appellants should have been sentenced to four years, nine months and eleven days of prision correccional.

In the imposition of the additional penalties for habitual delinquency, the presence of mitigating and aggravating circumstances will not be given the same effect as in the imposition of the primary penalty. (People vs. Tanyaquin, 57 Phil., 426; People vs. Sanchez, 57 Phil., 770.) The additional penalties imposed by the lower court upon the appellants are therefore in accordance with law.

Upon the foregoing premises, the appellant Alfonso de la Paz is hereby sentenced to suffer four years, nine months and eleven days of prision correccional, and an additional penalty of ten years and one day of prision mayor; the appellant Pablo Muñera is hereby sentenced to suffer four years, nine months and eleven days of prision correccional, and an additional penalty of six years and one day of prision mayor; and the appellant Anastacio Fajardo is hereby sentenced to suffer four years, nine months and eleven days of prision correccional, and an additional penalty of two years, four months and one day of prision correccional. The appellants are hereby ordered to indemnify, jointly and severally, M. Verlinden in the sum of P328.96.

Modified as above indicated, the judgment appealed from is affirmed with costs against the appellants. So ordered.

Street, Vickers, Butte, and Diaz, JJ., concur.

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