

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MAGDALENO MENDEZ (ALIAS BISOY), DEFENDANT AND APPELLANT.

*G.R. No. 3992. December 21, 1907*

Ponente: CARSON, J.

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### CARSON, J.:

The information filed in this case is as follows:

"The undersigned fiscal accuses Magdaleno Mendez, (alias Bisoy), detained at the provincial jail, of the crime of robbery (art. 508 of the Penal Code), committed as follows:

"That on or about the 21st day of December, 1905, the accused Magdaleno Mendez (alias Bisoy) went up to the house in which one Vy-Chiong dwelt, in the municipality of Dumaguete, Oriental Negros, P. I., and maliciously, criminally, and with intent of gain stole a trunk which was locked and took the same to a field in which some banana trees were planted, about 20 brazas distant from the said house, where he broke the lock of the said trunk and took possession of all of its contents, namely, P86, a razor, two pairs of trousers, and a shirt, of the value of about P6, which property belongs to the said Vy-Chiong. The trunk was found in the said field and recovered by its owner. The above crime was committed within the jurisdiction of this court. All contrary to law."

The guilt of the accused of the crime with which he is charged is established by the testimony of record beyond a reasonable doubt. The facts alleged and proven constitute the crime of robbery, as defined and penalized in the last paragraph of article 508 of the Penal Code, taken together with paragraph 4 of the said article, because it does not appear that the accused was armed at the time of the perpetration of the robbery, or that the value of the property stolen exceeded 1,250 pesetas. The penalty prescribed by the above-cited provisions of article 508 is the minimum degree of presidio correccional in its medium degree to presidio mayor in its minimum degree—that is to say, presidio correccional in its medium degree [divided into three periods]—and no aggravating or extenuating circumstances having been alleged or proven, this penalty should be imposed in its medium degree. The medium degree of presidio correccional in its medium degree [divided into three] is from two years eleven months and eleven days to three years six months and twenty days of presidio correccional.

The trial court imposed the penalty of eight years and one day of prision correccional without subsidiary imprisonment, and the payment of the costs of the trial.

The judgment of the trial court should be, and is therefore, reversed, and the accused should be, and is hereby, sentenced to three years presidio correccional, with the accessory penalties prescribed by law, to the indemnification of the owner of the property in the sum of P94, with subsidiary imprisonment in case of insolvency, and to the payment of the costs in both instances. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Wiliard, and Tracey, JJ., concur.

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