

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DEMETBIO
DEFENDANT AND APPELLANT.***G.R. No. 4018. November 18, 1907*

Ponente: ARELLANO, C.J.

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The robbery of which the defendant is herein accused consisted in his taking the sum of P526 by employing force against personal property—that is, by breaking open a trunk containing the said amount, by means of a bolo which lie found in the house, where he lived as a servant of the owner of the money, he being the only other person living there.

On the day that the robbery was discovered the defendant left the house and the town and only upon receiving word that the relative who had recommended him for the position was under arrest did he appear in the justice's court.

That court, on the hearing of the case, considered the proofs presented at the trial sufficient to demonstrate the commission of the crime and the responsibility of the defendant therefor. As to this view of the court below we can find no error of fact nor of law, inasmuch as it does not conflict with the result of the proceedings had nor with the true principles of justice.

But there is certainly an error in the qualification of the crime. The trial court regarded the robbery in question as one within the meaning of article 508, paragraph 1, of the Penal Code, by reason of which, and taking into account the presence of certain aggravating circumstances of abuse of trust and confidence surrounding the case, sentenced the defendant to twelve years and one day of cadena temporal, to indemnify the complaining witness in the sum stolen, and to pay the costs of the suit. Although the trunk containing the money was broken open with a cutting and dangerous weapon, there is no reason why the defendant should be classified with "Those who should with arms rob an inhabited house * * * by breaking open a locked coffer," who are amenable to paragraph 1, article 508, subparagraph 4, of the Penal Code; subparagraph 2 [5] is the only one applicable in this case and prescribes: "If the malefactors should not carry firearm and the extent of the robbery should exceed 1,250 pesetas, the penalty next lower shall be imposed," taking into consideration the wording of the aforementioned subparagraph 4, with reference to breaking open a locked coffer, etc.

Hence the only penalty applicable to the defendant in this cause is the one next lower to that prescribed in paragraph 1 and applied in the judgment below.

The Attorney-General, in moving that the penalty imposed in the lower court be modified to conform to the conclusions of law above stated, has also asked that the costs in this instance be remitted in consideration of the fact that the appeal taken by the defendant is not wholly groundless, in view of the excessive penalty imposed.

We therefore sentence Demetrio Saludo to six years and one day of presidio mayor and the accessory penalties, and the remainder of the sentence below is hereby affirmed with the costs of this instance de oficio. So ordered.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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