

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CASIMIRO OLLALES ET AL., DEFENDANTS, FRANCISCO SOBIJEJUANETE, APPELLANT.

G.R. No. 4324. March 21, 1908

Ponente: CARSON, J.

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CARSON, J.:

The complaint charges the appellant, Francisco Sobrejuanete, and two others with the crime of robbery in an armed band.

At the trial it was proven beyond a reasonable doubt that on the night of the 27th of July, 1907, the three accused in company with four unknown persons, armed with a rifle and other deadly weapons, attacked the storehouse of one Jacinto Guilarau, and by force and threats took from him P700, in currency, and goods valued at P500.

The trial court convicted all the accused and sentenced all and each of them to six years and one day of presidio mayor, to pay the sum of P100 to Cluilaran by way of civil damages for mistreatment received at the hands of the robbers, with subsidiary imprisonment in ease of insolvency, and to the payment of their respective shares of the costs of the trial.

From this judgment of conviction Francisco Sobrejuanete appealed, and his counsel rests the appeal upon the failure of the witnesses for the prosecution to identify him as one of the persons who committed the robbery. We think, however, that the testimony of the witnesses,

Jacinto Guilaran, Felipe Dias, and Julian Ulanday, leave no room for doubt on this point and that the finding as to the guilt of the appellant is conclusively established by the evidence of record.

The judgment and sentence of the trial court must nevertheless be reversed and a new judgment rendered, first, because the penalty prescribed was not imposed in the maximum degree; second, because it fails to provide for the return of the stolen goods or payment to the owner of their value, and third, because it allows subsidiary imprisonment in case of insolvency or the failure to make payment of the civil indemnity allowed, in violation of the provisions of paragraph 1, article 50, of the Penal Code.

The offense charged and proven is that of robbery in an armed band, defined and penalized in paragraph 5 of article 503 of the Penal Code, and it appearing that in the commission of the robbery advantage was taken of the darkness of the night, the penalty prescribed should have been imposed in its maximum degree. The penalty prescribed for the crime of robbery in an armed band is from six years ten months and one day to ten years of presidio mayor, and the maximum degree of this penalty is from eight years eleven months and eleven days to ten years of presidio mayor.

We therefore reverse the judgment and sentence of the trial court as to this appellant, and we find him guilty of the crime of robbery in an armed band, and at night, with which he was charged, and sentence him to ten years of presidio mayor; to pay P100 damages to Jacinto Ouilaran on account of mistreatment received by him at the hands

of the robbers; to restore the stolen property or to pay the owner thereof P1,200, the proven value thereof, but without subsidiary imprisonment in case of insolvency; and to pay one-third of the costs in first instance, and all the costs of this appeal. So ordered.

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

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