

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TAN GAN ET AL., DEFENDANTS. TAN TIOK NEE, APPELLANT.

G. R. No. 44932. July 31, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the accused Tan Tiok Nee from the judgment of the Court, of First Instance of Manila finding him guilty beyond reasonable doubt of the crime of robbery in an inhabited house and sentencing him to an indeterminate penalty of from four years and two months of prison correctional as the minimum, to eight years and one day of prison mayor, as the maximum, and to return to the offended parties Hao Ni et al. their money and jewels described in the information, of which the accused and his accomplices had robbed them, with costs.

In support of his appeal, the appellant assigns the following sole alleged error of law as committed by the court a quo in its judgment, to wit:

"The lower court erred in imposing the penalty of from four (4) years and two (2) months of prison correctional to eight (8) years and one (1) day of prison mayor on the accused-appellant."

The established facts found by the lower court in its judgment and admitted by the appellant are as follows:

"The evidence for the prosecution conclusively shows that at midnight, or immediately thereafter, of the 12th day of July, 1935, the herein defendant and the persons named in the information, taking advantage of the nighttime and with a ladder surreptitiously entered the house of Hao Ni, situated at Otis Street No. 225, of the City of Manila. Once inside the house they broke into the room of Hao Ni who was suddenly awakened by the violent opening of the door and the entry of the defendant and his companions who seized her and gagged her, compelling her to give them the key of the aparador as she did. At this moment she saw the herein defendant Tan Tiok Nee with an open knife in his right hand about more than one meter distance from her while his companions were tying her with her own blanket. She was then brought to the adjoining room. They opened the aparador and took there from her box containing P400 cash, and jewelries consisting of one Mason American gold ring; one pair of American gold bracelet, with ten diamonds each as big as rice grain; one pair of Chinese gold bracelet, with seven pearls, size of mongo grain; one pair of Chinese bracelet, plain; one pair of American gold earrings, with two diamonds each, 2 mongo grain size, and 2 rice grain size; one pair of Chinese gold earrings, set with 1 pearl each, corn grain size; one American gold ring, set with 1 diamond, corn grain size; one ring, American gold, set with 1 pearl corn grain size; one ring, Chinese gold, set with 3 pearls, one corn grain size; one ring, Chinese gold, set with 3 pearls, one corn grain size and 2 mongo grain size; one Chinese gold ring, 3 pieces joined in one; one ring, Chinese gold, with a pure jade stone attached about 2" long; ten (10) Chinese silver dollars; and twenty pesos cash in small changes, all valued at P3,848. They also made a search and turned over the clothes and everything in the room after having maltreated Hao Ni.

"In the adjoining room Where Hao Ni was brought Lee Chan (alias) Dy Chian was found, and she was also assaulted, maltreated and robbed of the following: One lady's Swiss wrist (gold), one pair of gold earrings and

one ten-peso bill amounting to a total of P80. This Dy Chian (alias) Lee Chan testified that sine saw the herein defend- ant, Tan Tiok Nee, with a knife in his right hand watching her brother Go Tian Seng, while his companions were searching the house. Immediately thereafter said defendant, Tan Tiok Nee, approached Eng Sio, the daughter-in-law of Hao Ni, and took from her her gold necklace while his other companions were taking the following: one ring, Chinese gold, heart-shape; two pairs earrings, Chinese gold, with jade stone attached, heart-shaped; one Swiss wrist watch, silver plated, case Mvt. Case; one Chinese gold neck-lace; twenty-four (24) yards, drill cloth, marked 'Deer'; one silver necklace, gold filled; one leather pocket book, 2-folds, containing six pesos cash in different denominations, valued at TX12 including the gold necklace. This Eng Sio testified having recognized and identified said Tan Tiok Nee who violently took from her her gold necklace she asserted having seen the knife in the right hand of the said defendant, and that she was also assaulted and hurt. Go Tien Seng, the husband of Eng Sio and son of Hao Ni, was also assaulted and maltreated, causing him bodily harm and prevented to move and to scream; he suffered contusions in his body. After the house was ransacked and the Herein defendant with his companions have taken the money and jewelries above-mentioned and in the manner above described, they left the house. The happening was then immediately notified to the police, and two days thereafter all the herein accused were arrested. The arrest of the herein defendant, Tan Tiok Nee, was made early in the morning of the 14th of July in his house at Rada Street No. 14.

"On account of the assault and maltreatment made by the herein defendant and his companions, Hao Ni, Go Tien Seng, Lee Chan and Eng Sio suffered contusions which were treated by Dr. Pavino of the Medico-Legal Division of the General Hospital."

The crime of robbery under consideration, having been committed in an inhabited house, with arms and by means of scaling, consisting in the use of a ladder by the malefactors in order to enter the house, is that defined in article 299, paragraph (a), subsection 1 of the Revised Penal Code and punished with prision mayor in its medium period to reclusion temporal in its minimum period, the value of the property taken being in excess of P250 (6 Viada, 5th ed., 147; Decisions of the Supreme Court of Spain of March 15, 1887; November 6, 1888; and April 8, 1903). In applying said penalty, we Should take into consideration the provision of section 1 of Act No. 4103, as amended by section 1 of Act No. 4225, ordering that "in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense."

According to the established facts, the commission of the crime was attended by the aggravating circumstance of nocturnity with no mitigating circumstance to compensate it, inasmuch" as the lack of instruction was not appreciated by the trial court; and even if it existed it cannot be taken into consideration in crimes of robbery where maltreatment was unnecessarily present (article 15 of the Revised Penal Code). Therefore the penalty of prision mayor in its medium period to reclusion temporal in its minimum period, that is from eight years and one day to fourteen years and eight months, prescribed by said article 299 of the Revised Penal Code, should be imposed in its maximum period (art. 63, No. 1, of the Revised Penal Code), or from twelve years and one day to fourteen years and eight months. The penalty next lower to prision mayor in its medium period to reclusion temporal in its minimum period, prescribed by the Revised Penal Code for the crime of robbery committed with arms and by means of scaling in an inhabited house, is prision correctional in its medium period to prision mayor in its minimum period, or from two years, four months and one day to eight years (art. 61, rule 4). The minimum penalty of four years and two months of prision correctional imposed by the lower court is within the range of said penalty next lower in degree, the extent of which the courts may apply at discretion, and, consequently, it is in accordance with law. The maximum penalty of eight years and one day fixed by the court a quo as the maximum limit of the indeterminate sentence is erroneous as it should be twelve years and one day of reclusion

temporal.

Wherefore, the appealed judgment is modified, sentencing the accused-appellant to the indeterminate penalty of from four years and two months of prision correctional to twelve years and one day of reclusion temporal, and affirming the appealed judgment in all other respects, with the costs of both instances to the appellant. So ordered.

Avanceña, C, J., Abad Santos, Diaz, Recto, and Laurel, JJ., concur.

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