

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. NEMESIO BORENAGA, RODOLFO JURIDICO, AND JOSE SIRUELO, DEFENDANTS AND APPELLANTS.

G. R. No. 45211. March 03, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the accused Nemesio Borenaga, Rodolfo Juridico and Jose Siruelo from the judgment of the Court of First Instance of Iloilo finding them guilty beyond a reasonable doubt of the crime of robbery in an inhabited house and sentencing each of them, taking into consideration the circumstances of the case (without enumerating them), to an indeterminate penalty of from two years of prision correccional to six years and one day of prision mayor with the corresponding accessory penalties; to jointly and severally indemnify the Redemptorist Fathers in the sum of P100, and each to pay one-third of the costs.

In support of their appeal, the appellants assign as the only error committed by the trial court its having sentenced them to the above-stated penalty.

The pertinent facts necessary for the resolution of the only question of law raised by the appellants, are as follows:

On April 24, 1936, the provincial fiscal of Iloilo filed against the herein accused-appellants Nemesio Borenaga, Rodolfo Juridico and Jose Siruelo an information which reads as follows:

"That on or about February 16, 1936, in the municipality of Santa Barbara, Province of Iloilo, Philippines, and within the jurisdiction of this court, the said accused conspiring and aiding one another, with deceit, taking advantage of nighttime to better realize their purpose and employing force upon things, to wit: by breaking open a locked cabinet, entered the convent occupied by Redemptorist priests and, with intent of gain and without the consent of the owner, took possession of crucifixes and of the sum of P130, all valued at P230, belonging to said Redemptorist priests; said accused being recidivists, having been convicted of the crime of theft by virtue of a final judgment of the justice of the peace court of Santa Barbara, dated March 11, 1936, in criminal case No. 4448. Punishable by law."

After the case had been called for trial and the accused arraigned, Nemesio Borenaga pleaded guilty to the criminal acts charged therein. As his coaccused Rodolfo Juridico and Jose Siruelo had not followed suit, the trial proceeded with respect to the latter two and both the prosecution and the defense presented their respective evidence. After all the witnesses for the prosecution and two for the defense had testified, counsel for the accused asked the court to permit his clients to withdraw their plea of "not guilty" and substitute it with that of "guilty."

Therefore, the only question to be decided in this appeal is whether or not the trial court erred in imposing the above-stated sentence upon the accused-appellants.

As the accused had entered an inhabited house, a convent being an inhabited house, taking advantage of the darkness of night in order to better realize their purpose and breaking open a locked cabinet from which they took

crucifixes and the sum of P130, the total value of the goods taken, belonging to the Redemptorist priests, being P230, and were unarmed, the crime committed by them is robbery in an inhabited house defined and punished in article 299, penultimate paragraph, of the Revised Penal Code, with the minimum period of prision correccional in its medium period to prision mayor in its minimum period, that is, from two years, four months and one day to four years and two months of prision correccional.

For the application of the penalty the mitigating circumstance of having spontaneously confessed his guilt before the court prior to the presentation of the evidence for the prosecution should be taken into consideration as to the accused Nemesio Borenaga, but not as to his coaccused Rodolfo Juridico and Jose Siruelo, the latter two having withdrawn their plea of "not guilty" and substituted it with that of "guilty" after the prosecution and the defense had already presented their evidence (art. 13, 7th mitigating circumstance, Revised Penal Code). As to all of them, the aggravating circumstance of nighttime availed of to facilitate the commission of the crime (art. 14, 6th aggravating circumstance) and that of recidivism (article 14, 9th aggravating circumstance), alleged in the information and admitted by all of them by virtue of their plea of guilty, should likewise be taken into consideration. As to the accused Nemesio Borenaga, therefore, after one of the aggravating circumstances is offset by the mitigating circumstance, there still remains one aggravating circumstance to determine the penalty which should be imposed upon him, that is, the minimum period of the maximum period of prision correccional in its medium period, or three years, six months and twenty-one days (art. 64, rule 4, Revised Penal Code). With respect to the accused Rodolfo Juridico and Jose Siruelo, two aggravating circumstances were present in the commission of the crime with no mitigating circumstance to offset them, and consequently the maximum period of the maximum period of prision correccional in its medium period or four years and two months of prision correccional should be imposed upon each of them (art. 64, rule 3, Revised Penal Code). Inasmuch as the prison sentence that should be imposed upon each of the three accused exceeds one year and the crime committed by them is not among those excluded by law, they are entitled to the benefit afforded by the Indeterminate Sentence Law (sees. 1 and 2, Act No. 4103, as amended by Act No. 4225). Therefore, an indeterminate penalty of from six months and one day to three years, six months and twenty-one days of prision correccional must be imposed upon the accused Nemesio Borenaga and an indeterminate penalty of from eight months to four years and two months of prision correccional must, in turn, be imposed upon each of the accused Rodolfo Juridico and Jose Siruelo.

In view of the foregoing, and it being understood that Nemesio Borenaga is sentenced to an indeterminate penalty of from six months and one day to three years, six months and twenty-one days of prision correccional, and each of the accused Rodolfo Juridico and Jose Siruelo to an indeterminate penalty of from eight months to four years and two months of prision correccional, the appealed judgment is affirmed in all other respects, with costs to the appellants. So ordered.

Avancena, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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