

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SEGUNDINO HALOOT, DEFENDANT AND APPELLANT.

G. R. No. 45490. September 15, 1937

Ponente: AVANCENA, C.J.

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AVANCENA, C.J.:

The information filed in this case is as follows:

"That on or about the 16th day of January, 1937, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent of gain and without the consent of the owner thereof, enter and penetrate into the house located at No. 901 A. Mabini St., in the said city, occupied and inhabited by one J. H. Forest, through a window, an opening not intended for entrance or egress, by breaking the wire nettings of the same, and once inside said premises, took, stole and carried away therefrom the following personal properties of the said J. H. Forest:

One (1) Caddi spoon antique.....

P50.00

Five (5) Krementz plate gent's collar button.....

10.00

One (1) pair cuff links, Japan made

8.00

Two (2) collar holders, gold filled.....

2.00

Total

70.00

to the damage and prejudice of the said J. H. Forest in the total amount of P70, Philippine currency.

"That the said accused is thrice a recidivist under the provisions of the Revised Penal Code, he having been previously convicted by virtue of final judgments rendered by competent courts, as follows:

Date of commission

Date of conviction

Criminal case No.

Crime

Date of release

Sept. 29, 1934

Oct. 3, 1934

H-20231

Theft.....

July 9, 1936"

Do.....

Oct. 12, 1934

H-20700

....do.....

Do.....

Oct. 25, 1934

D-48638

....do.....

The facts charged constitute the crime of robbery defined and punished in paragraph (a), subsection 1, in connection with the next to the last paragraph of article 299 of the Revised Penal Code, committed without arms, the value of the property taken not exceeding P250. The penalty prescribed for the crime is the minimum period of prision correccional in its medium period to prision mayor in its minimum period, that is, prision correccional in its medium period. Inasmuch as the aggravating circumstance of recidivism was present in the commission of the crime and is compensated by the plea of guilty, the said penalty should be imposed in its medium period, that is, from two years, eleven months and eleven days to three years, six months and twenty days of prision correccional. The Indeterminate Sentence Law, Act No. 4103, being applicable, a minimum of the penalty to be imposed should be fixed within the penalty next lower in degree.

There are different opinions as to which is the penalty next lower to that consisting in only one period of a divisible penalty. Article 61 of the Revised Penal Code (art. 75 of the former Penal Code) prescribes five rules for determining in various cases which is the penalty next lower to another. In rule 4 thereof, it is provided that "when the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum prescribed and of the two next following, which shall be taken from the penalty prescribed, if possible; otherwise, from the penalty immediately following in the abovementioned scale." However, the case in which the penalty prescribed consists in only one period of a divisible penalty has not been provided for. But rule 5 thereof provides that when the law prescribes a penalty for a crime in some manner not specially provided for in the four preceding rules, the courts shall proceed by analogy.

In the case of *People vs. Co Pao* (58 Phil., 545), this court decided this question in the sense that the penalty next lower in degree consists in the period next following within the same penalty, if any, otherwise within the penalty following in the scale prescribed in article 70, in accordance with the decision of the Supreme Court of Spain of June 13, 1872. This interpretation has been adopted, among other reasons stated in the decision, because it is inferred from articles 166 and 168 applied in said case that when the penalty consists in a period of a divisible penalty, there follow in gravity, in their corresponding order, the next periods of the same penalty and those of the following penalties, according to the scale prescribed in article 70. Furthermore, the penalty next lower than another should begin where the latter ends because, otherwise, if it were to skip over intermediate ones, it would be lower but not next lower in degree. And by analogy, it should consist in only one period, in the same manner as when the penalty prescribed consists of two periods, in which case the next lower penalty also consists of two periods, beginning with the period next following the minimum of the prescribed penalty, within the same penalty, if any, otherwise, within the penalty immediately following in the scale.

Referring to the decisions of the Supreme Court of Spain on the question, this court, in the above-cited case of *People vs. Co Pao*, said:

"In the first decision rendered on the subject (June 13, 1872) of the Supreme Court of Spain it was held:

" '1st. That pursuant to the provisions of article 521 of the Penal Code in force, robbery in an inhabited place, committed without arms, when the value of the property taken does not exceed 500 pesetas, is punished with the medium degree of presidio correccional; and that when this offense is frustrated, the corresponding penalty is the next lower in degree, in accordance with article 66 of said Code; and

" '2d. That if the facts stated in the decision and established by the evidence show that the accused is the author of a frustrated robbery involving less than 500 pesetas, committed without arms and without any aggravating or mitigating circumstances, the trial court in imposing the penalty of 14 months of presidio correccional, acts in accordance with the provision of said Code; because, inasmuch as it prescribes as a penalty for the consummated crime only the medium degree of said presidio correccional, and the penalty for frustrated robbery being the next lower in degree this penalty must be the minimum degree of presidio correccional, and not the penalty composed by this and the two other degrees of the next lower penalty, because this combination must be adopted when the penalty prescribed for the offense is composed of various degrees as provided in article 76, Rule 4, of said Code, and not when composed of only one degree as in the present case.'

"However, in the subsequent decision of December 20, 1872 (as well as in the decisions of July 5, 1872, September 26, 1872, and October 15, 1872) it was held:

" '1st, That article 521 of the Penal Code in force punishes consummated robbery, committed with arms, when the amount involved is less than 500 pesetas, with presidio correccional in its medium degree to presidio mayor in its minimum degree;

" '2d, That the penalty next lower in degree to that imposed by law for consummated crime is prescribed, under article 66, when the crime is frustrated, which in the present case is arresto mayor in its medium degree to presidio correccional in its minimum degree;

" '3d. That inasmuch as the accused carried no arms for the perpetration of said frustrated robbery, and the value of the property taken does not exceed 500 pesetas, his penalty should be limited to the minimum degree resulting from the graduation of the penalty, because otherwise a difference would arise, to the prejudice of the author of the frustrated crime, should the law adopt it for consummated offense in the latter part of said article 521; and

"'4th. That the trial court, in applying this rule and in imposing upon the accused four months of arresto for such crime, committed no error or violation of law to justify a reversal.'

"As may be seen, the difference between the decision of June 13, 1872, and those rendered thereafter consists in that in the former the penalty was first reduced to its minimum degree, and then the penalty immediately inferior to it was imposed, whereas in the other decisions the penalty immediately inferior in degree was determined and then imposed in its minimum degree.

'Pursuant to the foregoing, the Supreme Court of Spain in imposing, in its decisions subsequent to June 13, 1872, the penalty of *arresto mayor* in its medium degree, did so not because this penalty was the next lower than *presidio correccional* in its minimum degree, but because that is the minimum degree of the penalty of *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree, which is the next lower penalty than *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree." (People vs. Co Pao, 58 Phil., 545, 552-554.)

The procedure followed in the decisions subsequent to that of June 13, 1872, cannot be adopted because it would be a deviation from the spirit of our Revised Penal Code which, as already stated, is inferred from articles 166 and 168 thereof. Furthermore, the procedure is defective in that it considers as a penalty next lower in degree one that is not next lower to the prescribed penalty but to another. The prescribed penalty is the medium period of *prision correccional*, a complete penalty, because it has its three periods, and the only penalty because the limits thereof cannot be exceeded. The penalty of *prision correccional* in its medium period to *prision mayor* in its minimum period, from which the lower penalty was reduced, is not the prescribed penalty because it is more severe and is composed of its own periods, two of which, the medium and maximum, cannot be applied whatever and however numerous the aggravating circumstances present in the crime may be.

It is true that, according to the decision of June 13, 1872, the penalty next lower in degree, if the crime were more serious, having been committed with arms, would be lighter. The subsequent decisions, however, give rise to the same anomaly where the prescribed penalty, instead of being the minimum, is the maximum of *prision correccional* in its medium period to *prision mayor* in its minimum period, that is, *prision mayor* in its minimum period, for the reason that the crime was committed in an uninhabited place and in band (art. 300, Revised Penal Code), inasmuch as in such case the penalty next lower in degree, according to said decisions, would be *prision correccional* in its minimum period, and the same penalty, as the one next lower in degree, would be imposed if the crime were lighter, not having been committed in an uninhabited place and in band, if aggravating circumstances were present without any mitigating circumstance, which anomaly would consist in the punishment of the crime with the same penalty both when it is more serious and when it is lighter.

There are other theories on this question, among them being Groizard's, which forms the penalty next lower in degree with the three periods next following that prescribed as penalty, but this gives rise to the same anomaly which is that the penalty next lower in degree is the same both when the prescribed penalty is the minimum period of a divisible penalty and when the latter is imposed in its full extent.

What all of this means is that in this matter there is a defect in legislation which is not in the courts to correct.

The court further sentenced the appellant to six years and one day of *prision mayor* as a habitual delinquent, having been previously convicted thrice of the crime of theft. It appears, however, that the three crimes of which the appellant was previously convicted were committed on the same date. They should not, therefore, be considered, for the purpose of determining whether or not the appellant is a habitual delinquent, as three convictions but as only one (People vs. De los Reyes, G. R. No. 43906, 62 Phil., 963), and as a mere aggravating circumstance of recidivism.

It being understood that the penalty imposed upon the appellant is from six months and one day, as minimum, to two years, eleven months and eleven days of *prision correccional*, as maximum, and eliminating the additional penalty imposed by the court, the appealed judgment is affirmed in all other respects, with costs. So ordered.

Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

VILLA-REAL, J., concurring in part and dissenting in part:

I regret to have to dissent from the majority opinion in so far as it fixes the minimum of the indeterminate sentence at six months and one day.

The crime of robbery with which the herein appellant is charged is that provided for and punished in article 299, paragraph 4, of the Revised Penal Code, the penalty imposed being the minimum period of prision correccional in its medium period to prision mayor in its minimum period, for the reason that no arm had been carried and the value of the property taken by him did not exceed P250. The majority opinion, in reducing the penalty prescribed by law by one period, for the purpose of determining the minimum of the indeterminate penalty, fixes it at prision correccional in its minimum period, that is, from six months and one day to one year and ten days.

According to paragraph 3 of said article 299 of the Revised Penal Code, when the offenders are armed and the value of the property taken does not exceed 250 pesos, the penalty of prision correccional in its medium period to prision mayor in its minimum period shall be imposed. The minimum of the indeterminate sentence in this case would be arresto mayor in its medium period to prision correccional in its minimum period, that is, from two months and one day to two years and four months. By fixing the minimum of the indeterminate sentence at the minimum of the minimum period of the reduced penalty, as was done by the majority opinion in question, we would have two months and one day of arresto mayor. It appears from the foregoing that when the offenders rob with arms and the value of the property taken does not exceed 250 pesos, they are more favored than when they rob property of the same value without arms, which fact does not seem to be just and equitable.

This injustice is precisely what the Supreme Court of Spain wished to avoid in its decision of January 4, 1887, rendered fifteen years after that of June 13, 1873, which the majority has followed preferably to the subsequent decisions of July 5, 1872, September 26, 1872, and October 15, 1872, laying down a different doctrine. The abovecited decision of January 4, 1887, affirming the doctrine laid down in said subsequent decisions, reads as follows:

"Considering that, according to the provisions of article 521 of the Penal Code, offenders who commit robbery in an inhabited house incur the penalty of presidio mayor in its medium period to cadena temporal in its minimum period, when they carry arms and the value of the property taken exceeds 500 pesetas; the penalty lower by one degree, that is, presidio correccional in its medium period to presidio mayor in its minimum period, when the property taken exceeds said amount and the offenders do not carry arms, or when the property taken does (not) exceed said amount and the offenders carry arms, which penalty, by express provision of the last paragraph of the above-cited article, as drafted by virtue of the Royal Decree of January 1, 1871, should be imposed in its minimum period, when the offenders do not carry arms and the value of the property taken does not exceed 500 pesetas;

"Considering that, such being the case of the accused, the penalty corresponding to the crime committed by him, if it had been consummated, would be the minimum period of the penalty constituted by the medium and maximum periods of presidio correccional and the minimum period of presidio mayor, that is, the first of the three periods above-stated;

"Considering that, as the penalty corresponding to the authors of a frustrated crime, pursuant to article 66 of the Penal Code, is the next lower than that prescribed by law for the consummated crime, the one that should be imposed in the case under consideration, according to rule 4 of article 76, is that formed by the medium and maximum periods of arresto mayor and the minimum period of presidio correccional, for the reason that the three periods next higher than these constitute the penalty for the crime serving as standard for the determination of the penalty;

"Considering that, if, as a general rule, when the penalties prescribed by law are constituted by only one or two periods of divisible penalties, the higher and lower ones are formed by the same number of periods immediately following, by reason of analogy prescribed in rule 5 of said article 76, such thing should not be done when, as in this case, the law prescribes the penalty in connection with another composed of three divisible periods, in which case the graduation should be made in accordance with said rule 4;

"Considering that the application of this rule, and not that which seemed to have prompted the trial court to proceed as it did, is furthermore inevitable in principles of strict justice in order to prevent what would happen, were the latter rule to prevail, that the author of a frustrated crime of robbery in an inhabited house, involving an amount exceeding 500 pesetas, would, under the same conditions, have to be punished with a penalty lighter than that of a person directly responsible for a similar crime involving less amount;

"Considering, therefore, that the penalty next lower in degree than that prescribed for the consummated crime under consideration being k in its medium period, the criminal court of Talavera, which sentenced the accused to the penalty of presidio, committed the alleged violations and error of law."

The majority opinion reads:

"It is true that, according to the decision of June 13, 1872, the penalty next lower in degree, if the crime were more serious, having been committed with arms, would be lighter. The subsequent decisions, however, give rise to the same anomaly where the prescribed penalty, instead of being the minimum, is the maximum of prision correccional in its medium period to prision mayor in its minimum period, that is, prision mayor in its minimum period, for the reason that the crime was committed in an uninhabited place and in band (art. 300, Revised Penal Code), inasmuch as in such case the penalty next lower in degree, according to said decisions, would be prision correccional in its minimum period, and the same penalty, as the one next lower in degree, would be imposed if the crime were lighter, not having been committed in an uninhabited place and in band, if aggravating circumstances were present without any mitigating circumstance, which anomaly would consist in the punishment of the crime with the same penalty both when it is more serious and when it is lighter."

In my humble opinion, the alleged anomaly does not exist, because article 800 of the Revised Penal Code, in prescribing the maximum period of the penalty of prision correccional in its medium period to prision mayor in its minimum period, takes into consideration uninhabited place and band as special aggravating circumstances. The same penalty would be imposed if aggravating circumstances were present, without any mitigating circumstance, even when the crime had not been committed in an uninhabited place and in band. In one as well as in the other case the aggravation is made to consist in the presence of aggravating circumstances, with the difference, however, that if ordinary aggravating circumstances were furthermore present in the case of robbery in an uninhabited place and in band, without any mitigating circumstance, the maximum period of the penalty of prision correccional in its medium period to prision mayor in its minimum period, that is prision mayor in its minimum period, would be imposed in its maximum period, which penalty would be more severe in the more serious crime than that which would be imposed in a lighter crime.

The interpretation given by the Supreme Court of Spain in the decision just quoted is not contrary to the spirit underlying articles 166 and 168 of the Revised Penal Code. Said decision distinguishes penalties constituted by only one or two periods of divisible penalties, as that imposed in article 166 above-cited, from those prescribed in connection with other penalties composed of three divisible periods, as in article 299, paragraph 5, of the Revised Penal Code, now under consideration. In the first case, in order to graduate the penalty prescribed in subsection 1 of said article 166, rule 5 of article 61 of the Revised Penal Code would have to be applied, by imposing the penalty of prision mayor in its maximum period upon a person guilty of the crime provided for in article 168 of said Code, which is the penalty next lower in degree than reclusion temporal in its minimum period. In the second case, rule 4 of said article 61 would have to be applied in order to graduate the penalty, as we have done above.

With the doctrine laid down by the Supreme Court of Spain in the above-quoted decision, anomalies and injustices are avoided.

The minimum penalty which, in my humble opinion, should have been fixed in the case under consideration, should have been *arresto mayor* in its medium period, that is, two months and one day, which is the most equitable and just penalty.

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