

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCELO LORIA, DEFENDANT AND APPELLANT.

G.R. No. 4558. September 07, 1908

Ponente: CARSON, J.

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CARSON, J.:

The accused was convicted of the crime of robbery as charged in the information upon which he was tried, and sentenced to ten years and one day of presidio mayor with the accessory penalties prescribed by law.

The trial court was of opinion that the aggravating circumstance of nocturnity should be taken into consideration in imposing the penalty, but compensated this aggravating circumstance with the extenuating circumstance of race set out in article 11 of the Penal Code. Neither the aggravating nor the extenuating circumstance thus found by the trial judge should have been taken into consideration. We do not think that the evidence of record conclusively establishes the alleged fact that the offense was committed at night; so far as can be gathered from the testimony, the robbery may have taken place either during the daylight on the Sunday preceding the night on which it is alleged to have been committed, or upon the morning of the day following; and this court has uniformly declined to consider the extenuating circumstance of race in cases of conviction of the crime of robbery.

We find no other errors in the record of the proceedings at the trial prejudicial to the rights of the accused, and his guilt as charged was conclusively established by the evidence of record except in so far as it is alleged that the offense was committed by night.

The sentence imposed by the trial court is in excess of that prescribed by law. The penalty for the crime committed is prescribed in paragraph 2 of article 508 of the Penal Code, it appearing that the value of the property stolen exceeded 1,250 pesetas, but it not appearing that the robber was armed; the penalty to be imposed is, therefore, that immediately inferior to that of presidio mayor in its medium degree to cadena temporal in its minimum degree, that is to say, presidio correccional in its medium to presidio mayor in its minimum degree. This latter penalty ought to be imposed in its medium degree, there being no aggravating or extenuating circumstances, and we, therefore, reverse the judgment and sentence imposed by the trial court and find the accused guilty of robbery as defined and penalized in paragraph 2 of article 508 of the Penal Code, and sentence him to six years of presidio correccional together with the accessory penalties prescribed by law; to the restitution of the property stolen and not recovered, or the payment to its owner of its value, amounting to P400.50; and in case of insolvency to subsidiary imprisonment as prescribed by law, for a period not to exceed one year; and to the payment of the costs in first instance, the cost in this instance to be de oficio, in view of the substantial reduction in penalty to which it appears the accused is entitled on appeal. So ordered.

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

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