

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SALVADOR BERNARDINO Y FLORES, DEFENDANT AND APPELLANT.

G. R. No. 45703. November 29, 1937

Ponente: DIAZ, J.

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DIAZ, J.:

Charged with robbery in an inhabited house, without arms, and convicted thereof, Salvador Bernardino y Flores was sentenced to an indeterminate penalty of from four months and one day of *arresto mayor* to two years, four months and one day of *prision correccional*, with the accessory penalties, to indemnify Victorino de Dios in the sum of P109.97, to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs. Not agreeing to the judgment, said accused appealed to this court for the review of his case.

After examining the record, this court finds that the appellant, immediately after arraignment, entered a plea of guilty of the crime charged in the information, which is no other than that of robbery in an inhabited house, without arms, during which the value of the property taken was only P109.97, defined and punished in article 299, paragraph (a), subsection 2, having forced open padlocks or locks and door, for which the law prescribes the penalty of *prision correccional* in its medium period (from two years, four months and one day to four years and two months), which is the minimum of *prision correccional* in its medium period to *prision mayor* in its minimum period, the latter being the penalty next lower than that prescribed in the first paragraph of said article (article 299 [a], No. 2, last paragraph),

Inasmuch as the aggravating circumstances of recidivism and nighttime alleged in the information, and not denied, but, on the contrary, were admitted implicitly by the appellant by virtue of his voluntary confession of guilt, should be taken into consideration against him (*People vs. Masonson* [1936], 35 Off. Gaz., 1589; *People vs. Alcantara*, G. R. No. 39505, September 20, 1933 [58 Phil., 950]; *U. S. vs. Burlado*, 42 Phil., 72; and many other cases), the penalty which should have been and should be imposed upon him as his confession in question is insufficient to offset said two aggravating circumstances, is the maximum period of *prision correccional* in its medium period, or three years, six months and twenty-one days. In view of the foregoing and of the provisions of the Indeterminate Sentence Law, Act No. 4103, as amended by Act No. 4225, the minimum penalty which should also be imposed upon him is *prision correccional* in its minimum period, or from six months and one day to two years and four months (*People vs. Haloot*, G. R. No. 45490, September 15, 1937).

For the foregoing, the judgment appealed from is hereby modified in the sense of imposing upon the appellant an indeterminate penalty of from six months and one day to three years, six months and twenty-one days of *prision correccional*, affirming it in all other respects, with costs to the appellant. So ordered.

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

VILLA-REAL, J., dissenting in part:

I agree to the majority opinion in so far as it imposes upon the appellant the maximum penalty of three years, six

months and twenty one days; but I do not agree thereto in so far as it imposes the minimum penalty of six months and one day upon him. This minimum penalty should be taken from *arresto mayor* in its maximum period to *prision correccional* in its minimum period, because it is the penalty next lower than *prision correccional* in its medium and maximum periods, for reasons analogous to that stated by me in my dissenting opinion in the case of *People vs. Haloot*, G. R. No. 45490, promulgated on September 15, 1937.

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