

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FAUSTO EDEN Y CABALONA, DEFENDANT AND APPELLANT.

G.R. No. 46842. December 01, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

The defendant took an appeal from the judgment of the Court of First Instance of Manila imposing on him the penalty of two years, four months and one day of prision correccional, the payment of indemnity of P204 with costs, plus the corresponding accessories, and the additional penalty of three years, six months and twenty one days for habitual delinquency.

The attorney designated to defend the appellant de officio, reports that the judgment appealed from is, in his opinion, in accordance with law, and, therefore, recommends its affirmance.

The facts alleged in the information constitute the crime of robbery of P204.60 in an inhabited house, perpetrated without the use of arms, on the date and place mentioned in the information referred to with the circumstance that the appellant who committed it, by his own confession, is a recidivist for the third time, being, consequently, a habitual delinquent, in accordance with article 62, rule 5, paragraph (b), of the Revised Penal Code.

Robberies of the nature of that committed in this case are punished with prision correccional in its medium period, that is, two years, four months and one day to four years and two months, according to the penultimate paragraph of article 299 of the Revised Penal Code. Inasmuch as the appellant admitted his crime upon arraignment, the benefit of the mitigating circumstance of voluntary confession must be allowed him. However, since there appears in said information the express allegation that he was a recidivist for the third time, said mitigating circumstance is nullified and compensated by the aggravating one of recidivism (art. 64, rule 4), for the reason that the latter cannot be disregarded because the appellant, by his confession, should have understood that he necessarily admitted it. Viewing the question from this stand point, it is found that the principal penalty to which said appellant should be sentenced is that of two years, eleven months and eleven days of prision correccional. The judgment appealed from must, therefore, be modified as to the principal penalty in the manner just expressed.

In view of the foregoing, the principal penalty to which the appellant has been sentenced by the lower court is modified, and in its place, that of two years, eleven months, and eleven days is imposed. In all other respects, the judgment appealed from is affirmed without any pronouncement as to costs. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, and Concepcion, JJ., concur.

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