

ALFONSO MANAHAN, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R No. 47899. September 30, 1942

Ponente: MORAN, J.

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MORAN, J.:

As found by the Court of Appeals, petitioner, in the night of January 28, 1937, armed with a revolver and with five companions, by means of threat and intimidation against Catalino Padayao, one of the servants of Meliton Carlos, took from the latter's camarin about fifteen sacks of palay through an opening made on the floor of said camarin. In the following night, petitioner and his companions, by the same means employed against Catalino Padayao and Felicidad Cabungcal, the latter also a servant of Meliton Carlos, again took six sacks of palay through the same opening.

Upon these facts, the Court of Appeals declared the petitioner guilty of robbery under Article 294, No. 5, of the Revised Penal Code, with the aggravating circumstance of nocturnity, and sentenced him to an indeterminate penalty of from 6 months and 1 day of prision correccional to 6 years, 10 months and 1 day of prision mayor with the accessory penalties provided by law, and a proportionate part of the costs. Indemnity is reserved to a separate civil action due to the uncertainty of evidence in that regard.

Disregarding questions of fact, petitioner maintains that, as the property stolen consists of cereals, the lighter penalty provided in Article 303 of the Revised Penal Code should have been applied. It is to be noted, however, that this provision refers to robbery committed through the use of force upon things, and the robbery charged here is one with violence against or intimidation of persons. It is true that the opening of a hole on the floor of the camarin implies force upon things; but, as we have once held, when the robbery committed with force upon things is also accompanied with violence against or intimidation of persons, "the latter element supplies the controlling qualification" since, with that circumstance, "there is greater disturbance to the order of society and the security of the individual". (U. S. vs. Baluyot, 40 Phil., 89. 90.)

The penalty provided in Article 294, No. 5, of the Revised Penal Code is prision correccional to prision mayor in its medium period. The minimum, therefore, of the indeterminate penalty to be imposed should be within arresto mayor.

With the only modification that the minimum of the indeterminate penalty imposed upon the petitioner be 6 months of arresto mayor, the judgment of the Court of Appeals is affirmed in all other respects, with costs against petitioner.

Yulo, C. J., Bocobo, Generoso, and Lopez Vito, JJ., concur.

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