

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FACUNDO AGUSTIN, DEFENDANT AND APPELLANT.

G.R. No. 7635. October 18, 1912

Ponente: CARSON, J.

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CARSON, J.:

The guilt of the defendant of the crime of robbery with which he was charged, was established at the trial beyond a reasonable doubt. The trial court sentenced the defendant to ten years and one day of imprisonment, together with the accessory penalties prescribed by law.

It appearing that the criminal was armed at the time when the robbery was committed, and that he secured entry to the house which he robbed "through an opening not intended for ingress or egress," but that the value of the property taken did not exceed 1,250 pesetas, the penalty which should have been imposed was that of presidio correccional in its medium degree, to presidio mayor in its minimum degree, that being the penalty next lower in degree than the penalty prescribed in the first paragraph of article 508, which is as follows:

"Any armed person who shall commit a robbery in an inhabited house, public building or edifice devoted to religious worship shall suffer a penalty ranging from presidio mayor in its medium degree to cadena temporal in its minimum degree, if the value of the property taken shall exceed one thousand two hundred and fifty pesetas, and the robber shall have entered the house or building in which the robbery was committed, or any dependency thereof, by any of the following means:

"1. Through any opening not intended for entrance or egress."

The evidence disclosing that the commission of the crime was marked with one aggravating circumstance (nocturnity), and no extenuating circumstance, this penalty should have been imposed in its maximum degree, that is to say, the penalty to be imposed is from six years and one day to eight years of presidio correccional. Modified by substituting for so much of the sentence of the court below as imposed ten years and one day's imprisonment, the penalty of eight years of presidio correccional, the judgment of conviction and the sentence imposed by the trial court should be and are hereby affirmed, with the costs of this instance against the appellant.

Arellano. C. J., Torres, Mapa, Johnson, and Trent, JJ., concur.

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