

7 Phil. 285

[G.R. No. 2957. January 03, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN BOGEL (ALIAS CATALIN) ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

CARSON, J.:

The guilt of the accused of the crime of robbery with which they were charged was proven beyond a reasonable doubt. It was further proven that one of the accused, on the occasion of the robbery, stabbed a woman named Fabiana in one eye, and that as a result of the wound thus inflicted she lost the use of the eye.

The trial court imposed the penalty prescribed in paragraph 2 of article 503 of the Penal Code, but we are of opinion that the penalty which should have been imposed is that prescribed in paragraph 3 of said article.

Paragraphs 2 and 3 of article 503 are as follows:

“One guilty of robbery with violence or intimidation to the person will be punished:

* * * * *

“2. With *cadena temporal* in its medium degree to *cadena perpetua* when the robbery was accompanied by rape or intentional mutilation, or when for the purpose of or on occasion of the robbery any of the wounds are inflicted which are penalized in paragraph 1 of article 416 of the Penal Code, or when the person who was robbed was held prisoner for ransom or for a period longer than one day.

“3. With *cadena temporal* when for the purpose of or on occasion of the robbery

any of the wounds are inflicted which are penalized in paragraph 2 of article 416 of the Penal Code.”

Paragraphs 1 and 2 of article 416 of the Penal Code provide that he who wounds, strikes, or maltreats another will be punished for the crime of grave injuries.

“1. With *prision mayor* if as a result of the wounds the offended person became an imbecile, impotent, or blind.

“2. With *prision correccional* in its medium and maximum degrees if as a result of the wounds the offended person lost an eye or some principal member, or has been incapacitated or unfitted for the work in which prior thereto he was habitually engaged.”

Unless the putting out of an eye by stabbing is a mutilation in the sense in which this word is used in the above set out paragraph 2 of article 503, it is manifest that the penalty to be imposed in this case is that prescribed in paragraph 3 and not paragraph 2 of said article. Viada, in his commentary on article 415, which penalizes intentional mutilations, points out that by mutilation (*mutilacion*) is understood, according to the *Diccionario de la lengua*, the lopping or clipping off (*cercenamiento*) of some part of the body, and it is evident that the putting out of an eye does not fall under this definition.

The commission of the offense was marked with the aggravating circumstances mentioned in paragraphs 15, 20, and 8 of article 10 of the Penal Code, the robbery having taken place at night and in the house of the offended party, and the robbers having disguised themselves for the purpose of committing the crime with greater security to themselves. The penalty which should be imposed in accordance with the provisions of the above-cited paragraph 3 of article 503 of the Penal Code is that of *cadena temporal* in its maximum degree, which was the penalty imposed by the trial judge, he not having taken into consideration the above-cited aggravating circumstances and imposed the penalty prescribed in paragraph 2 of article 503 in its medium degree.

The sentence of the trial court should be and is hereby affirmed, with the costs of this instance against the appellants. After expiration of ten days let judgment be entered in accordance herewith and in due time thereafter the record remanded to the court from whence it came for proper action. So ordered.

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

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