

3 Phil. 312

[G.R. No. 1464. February 11, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MAXIMO OANGOANG ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MAPA, J.:

The evidence plainly shows that the defendants are guilty of the robbery of 80 Mexican pesos of which they are charged, and that they committed the crime by exercising violence upon the persons of Tita Porfirio and Dionisia Barut, whom they beat and kicked until the former showed them the place where the said money was kept, whereupon they took the same.

This case falls within the provisions of paragraph 5 of article 503 of the Penal Code, as the crime was not committed under any of the circumstances indicated in the first four paragraphs of said article.

The aggravating circumstance of nocturnity must be considered against the defendants, but this circumstance is offset by the mitigating circumstance of drunkenness with respect to Julian Jimenez, for we consider it to have been proven that the latter was intoxicated at the time the crime was committed, and that intoxication was not habitual with him. For these reasons the penalty prescribed by the law should be imposed upon the said Jimenez in its medium degree, and upon the other defendant, Maximo Oangoang, in its maximum degree; as with respect to the latter there are no mitigating circumstances to be considered.

The motion filed on behalf of the defendant Oangoang for release on bail is denied.

We therefore affirm the judgment appealed, the penalty imposed upon Maximo

Oangoang to be ten years of *presidio mayor* and that imposed upon Julian Jimenez to be six years, also *presidio mayor*, the defendants to pay the costs of this instance equally between them. So ordered.

Arellano, C. J., Torres, Cooper, Willard, McDonough, and Johnson, JJ., concur.

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