

6 Phil. 411

[ G.R. No. 2767. August 30, 1906 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GORGONIO DE LOS SANTOS, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**MAPA, J.:**

The defendants in this case were thirteen, of whom two only were convicted in the Court of First Instance, the others having been acquitted. The defendants convicted were Gorgonio de los Santos and Iñigo de los Santos. The latter died before being notified of this judgment. Gorgonio appealed from said judgment.

The crime of which he was convicted was that of robbery in an armed band alleged to have been committed on the night of the 4th of May, 1904, at the parish house of Piddig, Province of Ilocos Norte, the property stolen including money and jewelry valued at 3,296 pesos, more or less. Taking into consideration the value of the property and in view of the fact that the crime was committed with intimidation of the person and in an inhabited house, the court below held that the case was covered by the provisions of articles 508 and 509 of the Penal Code and sentenced the defendant and appellant to fourteen years and eight months' imprisonment (*cadena temporal*), with the accessories of the law proper in such cases.

The findings of the court below in regard to the participation of the appellant in the robbery in question is fully supported by the evidence of record and should therefore, be sustained. The same can not be said with respect to the penalty imposed upon the defendant. The crime having been committed with intimidation of the person as the court properly found, should be punished in accordance with paragraph 5 of article 503 in connection with article 504 of the Penal Code, the robbery having been committed in a band. The greater or less value of the property stolen could have no bearing on the penalty to be inflicted, nor can such penalty be affected by the fact that the robbery was committed in an inhabited house, because although the facts may determine, as they do in fact determine, the greater or

lesser penalty that should be imposed in cases where robbery has been committed by the employment of force, yet where such robbery is committed with violence, or intimidation of the person or persons robbed, as in the present case, this would be immaterial.

The Attorney-General says in his brief that the robbers employed unnecessary intimidation in the commission of the crime by binding the hands, kidnaping, and beating one of the persons robbed with the butt of a gun, and that the penalty which should be inflicted is the one provided in paragraph 4 of article 503 of the Penal Code above referred to. In our opinion this view of the Attorney-General is not well founded. The beating of one of the persons robbed was for the purpose of compelling him to show, as he did show to the robbers, the place where he kept his money, something he refused to do at first, and which the robbers would not have been able to ascertain had they not resorted to this violence. The kidnaping of this person was probably for the purpose of obtaining a ransom, as may be inferred from the fact that he was subsequently set at liberty unharmed by the robbers, as soon as they considered themselves beyond the reach of the authorities.

It can not therefore, be maintained, that the violence exercised upon the person robbed was absolutely necessary for the execution of the crime.

The appellant is hereby sentenced to ten years' imprisonment (*presidio mayor*), and with this modification, the judgment of the court below is, in all other respects, affirmed, with the costs of this instance against the appellant. After the expiration of ten days let judgment be entered in accordance herewith, and ten days thereafter the case be demanded to the court below for execution. So ordered.

*Arellano, C. J., Torres, Carson, Willard, and Tracey, JJ., concur.*