

4 Phil. 499

[G.R. No. 1984. April 29, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GREGORIO HERNANDEZ ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

CARSON, J.:

Gregorio Hernandez, Tomas Hernandez, and Apolonio Quiambao, the appellants in this case, were found guilty in the court of Nueva Ecija of the crime of robbery, and sentenced to three years six months and twenty days of *prision correccional* and to the payment of the costs of the proceedings.

The evidence adduced at the trial fully sustains the findings of the trial court and establishes the guilt of the appellants beyond a reasonable doubt.

In fixing the penalty the court failed to take into consideration as aggravating circumstances the fact that the crime was committed at night, and the further fact that the complaining witness was robbed in his own house (pars. 15 and 20 of art. 10 of the Penal Code), and imposed the penalty in its medium degree, but the commission of the offense being marked with two aggravating and no extenuating circumstances, the penalty should have been imposed in its maximum degree.

We therefore reverse the sentence appealed from and instead thereof we sentence the said Gregorio Hernandez, Tomas Hernandez, and Apolonio Quiambao and each of them to seven years' *presidio mayor*, with the accessory penalties prescribed in article 56 of the Penal Code, and jointly and severally to pay to the complaining witness the sum of P27.75, Philippine currency, being the value of the stolen property, and to the payment respectively of one-third of the costs in both instances. So ordered.

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

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