

5 Phil. 563

[G.R. No. 2300. January 22, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANTONIO ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

CARSON, J.:

Antonio Mallari, Juan Salas, Maximo Salas (alias Temo), Ambrosio de los Reyes, Oamilo Mercado, Eusebio Peliciano, and Severo Panlilio, the appellants in this case, were charged with the crime of "robbery in an armed band," and were convicted of the simple crime of robbery, as defined and penalized in paragraph 5 of article 503 of the Penal Code.

Juan Salas and Camilo Mercado having died pending their appeal to this court, the complaint as to them should be dismissed, with their proportionate part of the costs de oficio.

We find no error in the proceedings prejudicial to the rights of the appellants, and the evidence adduced at the trial establishes their guilt of the crime with which they were charged beyond a reasonable doubt.

We are of opinion, however, that the accused having been charged with "robbery in an armed band," and it having been proven that the robbery was in fact committed by an armed band, the penalty imposed should have been the maximum degree of the penalty of "*presidio correccional to presidio mayor* in its medium degree" in accordance with the provisions of article 504 of the Penal Code—that is to say, from eight years eight months and eleven days to ten years of *presidio mayor*.

We therefore reverse the judgment and sentence of the trial court and find the appellants, except the said Juan Salas and Camilo Mercado, deceased, guilty as charged of the crime of "robbery in an armed band," with the aggravating circumstance of having committed the

offense at night and in the house of the person robbed, and with the further aggravating circumstance as to the appellants Maximo Salas, Severo Panlilio, and Ambrosio de los Reyes that they took advantage in the commission of the offense of their official position as municipal policemen, and we sentence the said Antonio Mallari, Maximo Salas (*alias* Temo), Ambrosio de los Reyes, Eusebio Feliciano, and Severo Panlilio and each of them to ten years' imprisonment (*presidio mayor*) with the accessory penalties prescribed by law, to the payment respectively of one-ninth of the costs of the proceedings in both instances, and jointly and severally to the return of the stolen property or to the indemnification of the persons from whom it was taken in the sum of P727, Philippine currency. So ordered.

Arellano, C. J., Mapa, Johnson, and Willard, JJ., concur.
