

5 Phil. 375

[G.R. No. 1594. December 06, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. SILVINO ROXAS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

The defendant was charged with the crime of robbery in the Court of First Instance of the Province of Bulacan, and found guilty of said crime, and by reason of the aggravating circumstance of nocturnity was sentenced with the maximum grade of *presidio correccional* to *presidio mayor* in its medium grade, according to paragraph 5 of article 503 of the Penal Code, said sentence being six years ten months and one day's imprisonment (*presidio mayor*), to return the property stolen to its owner, or in default thereof to pay the sum of 60 pesos, with the costs, and in case of insolvency to suffer the corresponding subsidiary imprisonment. From this sentence the defendant appealed to this court. The record was received in this court on the 9th day of November, 1903. The attorney for the defendant filed his brief on the 28th of March, 1905, and the Attorney-General filed his brief in said cause on the 15th of August, 1905. The cause was presented to this court on the 4th of October, 1905.

The record discloses the fact that the defendant has been a prisoner in Bilibid since early in the month of October, 1903.

An examination of the evidence adduced during the trial shows beyond peradventure of doubt that the defendant was guilty of the crime of robbery in the manner and form charged in said complaint, and that the judge of the inferior court was justified in his finding that the

defendant was guilty of said crime.

The defendant testified that he was but 16 years of age. The court below found that this statement of the defendant was uncorroborated by other proof. The evidence shows that the prosecution made no attempt to prove that the defendant was more than 16 years of age. We are of the opinion that the statement of the defendant that he was but 16 years of age, until the fact is disproved by other evidence, must be accepted as a fact. There is nothing in the record which shows that the statement of the defendant was untrue. We therefore accept his statement as true and find that the defendant was but 16 years of age. Therefore by virtue of article 85 of the Penal Code, which provides among other things that the penalty imposed upon a person over 15 and under 18 years of age shall be in the proper degree, we impose the penalty next lower than that prescribed by law. The grade of *arresto mayor* is the penalty next lower than that of *presidio correccional*.

Taking into consideration the aggravating circumstance of nocturnity, it is the judgment of this court that the defendant be imprisoned for a period of six months of *arresto mayor*, to return the property stolen to its owner, or in default thereof to pay the sum of 60 pesos, with the costs. So ordered.

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