

4 Phil. 185

[G.R. No. 1459. February 02, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOHN MACK,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

The defendant here was charged with the crime of robbery, tried by the Court of First Instance of the Province of Pampanga, and sentenced on the 15th day of July, 1903, to be imprisoned for a period of eight years and eleven months of *presidio mayor* with the accessories provided for in article 57 of the Penal Code, to return to the agent of the Manila and Dagupan Railroad at the pueblo of Angeles the sum of 143.56 pesos, Mexican, and in failure of which to suffer subsidiary imprisonment in accordance with the provisions of the Penal Code. At the time the defendant was arrested the sum of 21 pesos was recovered, and was in the hands of the clerk of the court at the time of the trial.

The evidence shows that upon the 2d day of November, 1902, the defendant, together with other persons, two of whom were armed with revolvers, entered the railroad station in the pueblo of Angeles, in the Province of Pampanga, and by threats and intimidation did then and there appropriate to themselves and carry away the sum of 165.47 pesos of the money of the said agent.

He who, with intent of profiting thereby, shall take possession of the personal property of another, with violence or intimidation of the person, or by employing force with regard to the personal property, is guilty of the crime of robbery, and if neither death, violation, nor

mutilation of the person robbed occurs, or if no more force was used than was necessary for the perpetration of the crime, the guilty party shall be punished with the penalty of *presidio correccional to presidio mayor* in its medium degree.

The aggravating circumstance of nocturnity occurred in the commission of the offense charged against the defendant.

There were no extenuating circumstances. Therefore, by virtue of subsection 3 of article 81, the maximum penalty provided for in subsection 5 of article 503 of the Penal Code must be imposed.

The evidence adduced during the trial of said cause under the provisions of the Penal Code justified the sentence imposed by the trial court. It is therefore affirmed. So ordered.

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