

## **DELMAR VENERANDA Y ALIMANGGO AND SERGIO BORJA Y ABAD, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

*G.R. No. L-58637. November 16, 1981*

Ponente: BARREDO, J.

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### **BARREDO, J.:**

Appeal by accused Delmar Veneranda y Alimanggo and Sergio Borja y Abad from the following judgment of the Municipal Court of San Jose, Occidental Mindoro in its Crimi-nal Case No. 6975:

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

"When the above-entitled case was called for arraignment and trial today, the accused Delmar Veneranda y Alimanggo and Sergio Borja y Abad appeared with their lawyer Atty. Juan R. Lazaro. Atty. Juan R. Lazaro manifested that the accused are ready for arraignment and requested that the accused be allowed to enter their plea personally.

"When arraigned, the accused Delmar Veneranda y Alimanggo and Sergio Borja y Abad, assisted by Atty. Juan R. Lazaro, readily entered a plea of guilty to the crime charged. The Court, in order to appraise the accused of the consequences of their plea, asked the following:

"Q: Do you enter a plea of guilty?

"A: Both, yes, sir.

"Q: Why do you enter a plea of guilty Mr. Veneranda and Mr. Borja?

"A: Because, we did it, sir.

"Q: Do you know what will be the consequence of your plea of guilty?

"A: Both, yes, sir.

"Q: What do you know about that?

"A: We understand sir, that we are going to be punished.

"Q: Knowing the fact that you will be punished, do you still affirm your plea?

"A: Both, yes, sir.

"In view of the accused Delmar Veneranda and Sergio Borja's plea of guilty to the crime of Qualified Theft, as charged, this court is well convinced that both of them are guilty as charged beyond reasonable doubt.

"WHEREFORE, this being a case for qualified theft, both accused shall be convicted and sentenced to penalties two degrees higher than those respectively specified in Article 309. Applying the Indeter-minate Sentence Law (Act No. 4103, as amended), the accused Sergio Borja y Abad is hereby CONVICTED AND

SENTENCED TO AN IMPRISONMENT OF FOUR (4) YEARS, NINE (9) MONTHS AND ELEVEN (11) DAYS OF PRISION CORRECCIONAL, AS MINIMUM TO EIGHT (8) YEARS OF PRISION MAYOR, AS MAXIMUM, after considering the attendance of a mitigating circumstance of plea of guilty in his favor. The accused Delmar Veneranda y Alimanggo, however is hereby CONVICTED AND SENTENCED TO AN IMPRISONMENT OF SIX (6) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY, AS MINIMUM TO TEN (10) YEARS OF PRISION MAYOR AS MAXIMUM, after offsetting the aggravating circumstance of recidivism by his plea of guilty. They are likewise ordered to pay, jointly and severally the private offended party Pedro Medalla and/or Pablo Atienza the sum of FORTY (P40.00) PESOS, as actual damages.

"SO ORDERED.

"San Jose, Occidental Mindoro, October 28, 1980.

(SGD) INOCENCIO M. JAURIGUE

Municipal Judge"

(Pp. 18-19, Record.)

The offense charged (qualified theft of property worth P40.00, per the complaint in the subject case, see p. 2 of the record) being within the concurrent jurisdiction of the inferior court and the Court of First Instance, We have accepted the appeal direct to this Court, the question raised being only as to the propriety of the penalty imposed, said accused having pleaded guilty. That portion of Section 45 of the Judiciary Act of 1948 as amended by Republic Acts 2613 and 6031 to the effect that "in cases falling under the concurrent jurisdictions of the municipal and city courts with the courts of first instance, the appeal shall be made directly to the court of appeals whose decision shall be final" must be construed, in relation to Section 17, No. 2 (4) of the same Judiciary Act regarding the exclusive jurisdiction of the Supreme Court over appeals in "all other cases in which only errors or questions of law are involved", to mean that the appeal would be direct to the Court of Appeals only if there are issues of fact, but, where, as in this case, the only question raised is a legal one, this Court has exclusive jurisdiction over such appeal.

With this preliminary point clarified, the instant appeal revolves around the application of the Indeterminate Sentence Law. Both accused-appellants pleaded guilty to the offense of qualified theft of fish worth Forty (P40.00) Pesos. Ordinary theft of such amount is punishable under Article 309 (4) of the Revised Penal Code with arresto mayor. But the subject offense being qualified theft, under Article 310, as amended by C.A. 417 and Rep. Act 120, the penalty has to be two degrees higher, which means prision mayor. With the plea of guilty, the appellant Sergio Borja y Abad should ordinarily be sentenced to prision mayor in its minimum degree which is from six (6) years and one (1) day to eight (8) years. Applying the Indeterminate Sentence Law, however, the indeterminate sentence should be anywhere within the range of prision correccional and the maximum 8 years of prision mayor. Inasmuch as said appellant was sentenced to "an imprisonment of four (4) years, nine (9) months and eleven (11) days of prision correccional, as minimum to eight (8) years of prision mayor as maximum", We hold that he has no reason to complain, the penalty thus imposed upon him being within the range prescribed by law, and We do not believe there is reason for Us, and none has been shown, to disturb the discretion exercised by the trial judge in that respect. (Aquino, Revised Penal Code, Vol. I, p. 664, 1976 ed. cited by the Solicitor General in his Comment, pp. 5-6.)

Anent the accused-appellant Delmar Veneranda y Alimanggo, whose plea of guilty is offset by the aggravating circumstance of recidivism, We agree with the Solicitor General that:

"Appeal of Delmar Veneranda is meritorious.

"Appellant Delmar Veneranda contends that the minimum of his indeterminate sentence should be within the range of prision correccional instead of six (6) years, eight (8) months and one (1) day which is beyond the range of prision correccional.

"We agree with appellant Delmar Veneranda's contention. The imposable penalty or the penalty prescribed by the Revised Penal Code for the crime of qualified theft involving the amount of P40.00 for which appellant was convicted is prision mayor. The penalty next lower in degree is prision correccional which has a range of six (6) months and one (1) day to six (6) years. The minimum of the indeterminate sentence should not be less than six months and one (1) day nor more than six (6) years.

"In the case at bar, the lower court erred in fixing the minimum of the indeterminate sentence imposed on appellant Veneranda." (Pp. 40-41, Record.)

ACCORDINGLY, the judgment against accused-appellant Sergio Borja y Abad is hereby affirmed whereas that against accused-appellant Delmar Veneranda y Alimanggo is modified by reducing the minimum of the indeterminate sentence imposed upon him to six (6) years of prision correccional but maintaining the maximum.

Costs against accused-appellant Sergio Borja y Abad only.

Aquino, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

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