

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CONRADO MANALO Y GUANLAO, DEFENDANT AND APPELLANT.

G.R. No. L-8586. May 25, 1956

Ponente: JUGO, J.

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JUGO, J.:

Conrado Manalo y Guanlao was accused before the Municipal Court of Manila of the crime of theft by means of the following information:

That on or about January 19, 1954, in the City of Manila Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the accuse thereof, take, steal and carry away one (1) fountain pen "Sheaffer" with gold cap and black body, valued at P30, belonging to one Benito Mauricio, to the damage and prejudice of the said accuse, in the sum of P30, Philippine currency. "That the said accused Conrado Manalo y Guanlao is a habitual delinquent, he having been previously convicted eleven (11) times of the crime of theft, by virtue of final judgment rendered by competent courts, to wit:

Date of
commission

Date of
conviction

Crime (including trial
court and case No.)

Sentence or disp.

Date of
release

6-14-47

9-5-47

Theft, p. pocket MC-B-

4 mos. Imp.

6-16-47

9-5-47

Theft, p. pocket MC-B-

26184

2 mos. imp.

1-13-50

3-28-50

Theft, p. pocket MC-B-
25117

2 mos. & 1 day

5-23-52

1-17-50

2-28-50

Theft, p. pocket MC-III-
54131

1 mo. & 1 day imp.

5-23-63

1-17-50

2-28-50

Theft, p. pocket MC-III-
B-54288

1 mo. & 1 day

6-23-52

1-17-50

2-28-50

Theft, p. pocket MC-III-
B-54289

1 mo. & 1 day imp.

1-21-50

5-8-50

Theft, p. pocket MC-III-

P30 ind.

5-23-52

B-54290

B-54494

2-9-50

2-28-50

Theft non-appearance

6 mos. arresto mayor & P39 ind.

5-23-52

MC-B-55031

2 mos. & 1 day

3-19-58

9-11-52

1-19-53

Theft, p. pocket MC-

1 mo. & 1 day

5-23-52

88671

2-17-52

Theft Nof 88813

1 mo. & 1 day & costs

1-16-53

p. 2, rec.)."

The accused pleaded not guilty.

After trial, he was convicted and sentenced to suffer 1 month and 1 day of arresto mayor, and to pay the costs, plus 10 years and 1 day of prision mayor for habitual delinquency.

He appealed to the Court of First Instance of Manila, where he waived his right to the assistance of counsel.

Upon being arraigned, he pleaded not guilty, but when the case was called for hearing, he asked permission to withdraw his plea of not guilty and substitute it with that of guilty. After the permission was granted, he pleaded guilty.

The court then imposed upon him the principal penalty of 6 months and 1 day of prision correctional and to pay the costs, and for habitual delinquency, an additional penalty of 30 days of reclusion temporal.

The defendant appealed to this Court, assigning as erroneous the penalty imposed.

The principal penalty imposed is not correct, for the value of the article stolen is over P5 but does not exceed P50,

and, consequently, falls under paragraph 5 of Article 309 of the Revised Penal Code, which fixes the penalty of arresto mayor to its full extent.

The plea of guilty should not be considered as a mitigating circumstance, because to be so considered, it should have been made prior to the presentation of the evidence for the prosecution. There is the aggravating circumstance of recidivism which should be considered separately from that of habitual delinquency. (People vs. Melendrez, et al., 59 Phil., 154; People vs. Espina, 62 Phil., 607). It is in the imposition of the additional penalty that recidivism should not be considered as an aggravating circumstance. (People vs. De Jesus, 63 Phil., 760). The principal penalty should, therefore, be arresto mayor in its maximum degree, which is from 4 months and 1 day to 6 months. The penalty of 6 months and 1 day of prision correctional imposed by the lower court is 1 day in excess of that which should have been imposed. We, therefore, correct the principal penalty by imposing 6 months of arresto mayor.

With regard to the additional penalty for habitual delinquency, we quote with approval what assistant Solicitor General Jose G. Bautista says in the Government's Brief:

"We are also in accord with the defense that the additional penalty of 30 years of reclusion temporal is not only excessive but is even beyond the range of this penalty as reclusion temporal ranges only from 12 years and 1 day to 20 years of imprisonment. Moreover, in determining the number of convictions for the imposition of the additional penalty, the trial court failed to take into account the rule that the last conviction must precede the offense for which the accused is tried. In other words, when a habitual criminal has committed several crimes without being first convicted of any of them before committing the others he cannot be sentenced for each of said crimes to the gradually increasing penalty, and for the purposes of said law said crimes must be considered as one applying the additional penalty to one of them, and ignoring the last (Gf. People vs. Santiago, 55 Phil. 266; People vs. Bernal, 63 Phil., 750; People vs. Caw Liong and Yu Siong, 57 Phil., 839; People vs. Lopido, 38 Off. Gaz., p. 1907; People vs. De Jesus, 68 Phil., 517; People vs. Albuquerque, 69 Phil., 698).

"Examining now the information in question and applying the rule above adverted to, the first two convictions on September 5, 1947, should be considered as one because the second offense was committed two days after the commission of the first and before the date of conviction for the first crime. The third, fourth, fifth, sixth, seventh, and eight convictions listed in the information should also, for the same reason, be considered as equivalent to one for the purpose of imposing the additional penalty under Article 62, paragraph 5 of the Revised Penal Code. The eleventh conviction should not be counted as the date of commission in said offense is not stated in the information and it has been held that averment of the commission of the previous crime is essential and habitual delinquency be taken into account for insufficiency of allegation on this point (People vs. Venus, 435; People vs. Masonson, 63 Phil. 866; People vs. Topel, 63 Phil 464; People vs Ocbina, 63 Phil., 528). All in all (including the ninth conviction) there are three convictions properly to be considered in the imposition of the additional penalty. As the case at bar is appellant's fourth conviction, pursuant to Article 62, Case No. 5 paragraph (b), appellant should be sentenced to an additional penalty of prision mayor in its minimum and medium periods. In imposing this additional penalty, recidivism should not be taken into account (People vs. De Jesus, supra) the same being inherent in habitual delinquency (People vs. Bohol, 40 Off. Gaz., 3114). The additional penalty should therefore be imposed in its medium period or from 7 years, 4 months and 1 day to 8 years and 8 months of prision mayor,

We, therefore, correct the additional penalty for habitual delinquency by imposing 8 years of prision mayor.

The fountain pen, which was stolen, should be ordered returned to the offended party, or, in lieu thereof, the accused should be ordered to pay him P30 without subsidiary imprisonment in case of insolvency.

In view of the foregoing, the decision appealed from is modified, as above indicated, without costs. It is so

ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

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