

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. TEOFILO MARI Y DURAN, DEFENDANT AND APPELLANT.

*G.R. No. L-2822. October 13, 1949*

Ponente: BENGZON, J.

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### BENGZON, J.:

Teofilo Mari y Dnran and Joven Guevarra y Castro were prosecuted for qualified theft in the court of first instance of Manila, the information alleging that on or about January 2, 1943, both accused conspiring together stole the Ford civilian jeep of Sy Chit, valued at P1,500.

A joint trial was had in January, 1949; and after two witnesses for the prosecution had testified, Teofilo Mari decided to give up, withdrew his plea of not guilty, and entered a plea of guilty. The case continued as to the other accused. After the trial, the court found Guevarra guilty of having stolen the jeep in connivance with Marl. The latter, in view of his plea of guilty was sentenced to suffer from 4 years 2 months and 1 day of prision correccional to 8 years and 1 day of prision mayor. He appealed.

Only a question of law is involved, namely, whether the sentence imposed on this accused-appellant accords with the statute.

Republic Act No. 120, effective June 14, 1947, amended article 310 of the Revised Penal Code as amended, by classifying as qualified theft the taking away of a motor vehicle, and by further increasing the penalty for that criminal offense. The article now reads:

"ART. 310. Qualified theft.—The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, or fish taken from a fishpond or fishery."

An ordinary theft of property worth P1,500 (as the jeep here was valued) is punished with prision correccional in its minimum and medium periods. (Article 309, paragraph 3, Revised Penal Code). The penalty two degrees higher than this is prision mayor in its medium and maximum degrees. It should be imposed in its medium period because there is no mitigating nor aggravating circumstance. The defendant's plea of guilt is not a mitigation, it having been submitted after two persons had taken the stand for the prosecution. This Court has held time and again that for a voluntary confession to be taken into account as a mitigating circumstance, it is necessary that it be made before the presentation of any evidence for the prosecution.[1]

Wherefore, applying the Indeterminate Sentence Law, the appellant is sentenced to be imprisoned for not less than four (4) years two (2) months and one (1) day of prision correccional nor more than nine (9) years four (4) months and one (1) day of prision mayor. He should not be required to pay indemnity, because the vehicle has been recovered and it is not claimed that it suffered any damage.

Modified as to the penalty, the appealed decision is affirmed, with costs.

Moran, C.J., Ozaeta, Paras, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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[1] People vs. De la Cruz, 63 Phil., 874; People vs. Hermino, 64 Phil., 403; People vs. Salapare, 40 Off. Gaz., (3rd.) No. 7, p. 193, Padilla, Revised Penal Code, p. 137.

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