

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE,
GAUDENCIO DE JOYA Y CAPACIA, ET AL., DEFENDANTS, RICARDO
HORNALES Y YAMBAO, DEFENDANT AND APPELLANT.**

G.R. No. L-6587. January 27, 1956

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

On November 5, 1951, Gaudencio de Joya, Nicanor Reyes, Julian Sumaway, Cesar Manipola, and Ricardo Hornales were charged in the Court of First Instance of Manila with the crime of theft (Criminal Case No. 17088) under the following information:

"That on or about the 5th of October, 1951, at night time purposedly sought to better accomplish their ends, the said accused conspiring and confederating together and mutually helping one another did then and there willfully, unlawfully, and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away a mooring rope approximately 160 meters, 3 inches in diameter, valued at P4,000, belonging to the United States Lines, to the damage and prejudice of the said owner in the aforesaid amount of P4,000, Philippine currency" (Appellant's Brief, pp. 1-2)

Upon arraignment, each of the accused at first pleaded not guilty to charge. On the date of the trial, however, all five defendants, with the assistance of counsel, moved to withdraw their respective pleas of "not guilty" in order to substitute the same with that of "guilty," which motion the Court granted. The accused were then rearraigned, and after having been informed of the nature and consequences of a plea of guilt, all pleaded guilty to the charge. Thereupon, the trial Court rendered judgment sentencing the accused as follows:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS the Court finds each and everyone of the above-mentioned defendants. guilty beyond reasonable doubt of the crime of theft, with the aggravating circumstance of nocturnity but which was offset by the plea of guilty and, therefore, sentences each and everyone of them to suffer an indeterminate penalty ranging from four (4) months of arresto mayor as minimum to one (1) year, eight (8) months and twenty-one (21) days of prision correccional as maximum, with the accessory penalties prescribed by- the law, and to pay the costs. No indemnity was awarded to the complainant, The United States Lines, in view of the manifestation of the prosecution made in open court, that the property stolen was recovered." {Appellant's Brief, Appendix, pp. 9-10} .

From this Judgment, one of the defendants, Ricardo Hornales, appealed to this Court, questioning the correctness of the minimum, period of his penalty.

Appellant admits that the maximum, term of his, sentence is correct. He likewise admits that its minimum term (4 months of arresto mayor) is within the range prescribed by the Indeterminate Sentence Law in this case, which is arresto mayor in its minimum and medium periods, or from 2 months and 1 day to 4 months. His only argument in support of the appeal is that (1) the properties stolen having been recovered, (2) this being his first offense, and (3) he having pleaded guilty to the charge, which shows repentance for his act and lack of perversity in defying the law, the lower Court should have imposed upon him as the minimum of his indeterminate sentence, the lowest

range of *arresto mayor*, which is 2 months and 1 day.

We see no reason to disturb the judgment of the Court below with respect to the minimum of appellant's penalty. The determination of the minimum term of the indeterminate sentence within the range provided by law is left entirely within the discretion of the trial court, and this discretion should not be interfered with except in case of abuse. Appellant's arguments fail to show any such abuse. The fact that the properties stolen were recovered merely exempts appellant from civil liability, but has no bearing on the determination of his penalty; while his plea of guilt is required to be considered (by way of mitigation) only in the imposition of the maximum term of his sentence, and in this case, it had already been taken into account as offsetting the aggravating circumstance of nocturnity, so that appellant was given only the medium period of the proper penalty as the maximum term of his sentence. As to the fact that the present offense is the first committed by this appellant, suffice it to say that the penalty fixed by the Code is usually for the first offense; for otherwise, the aggravating circumstances of recidivism or of reiteration (Article 14, Nos. 9 and 10, RPC) would come into play and operate to increase the penalty.

The minimum penalty of appellant's sentence being within the range fixed by law, the same should be, as it is hereby, affirmed.

Wherefore, the judgment appealed from is affirmed, with costs against appellant Ricardo Hornales. So ordered.

Parás, C. J., Montemayor, Reyes, A., Bautista, Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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