

**EL PUEBLO DE LAS ISLAS FILIPINAS, QUERELLANTE Y APELADO,
CONTRA RICARDO MELENDREZ Y NIETO ET AL., ACUSADOS,
RICARDO MELENDREZ Y NIETO, ACUSADO Y APELANTE.**

R. G. No. 39913. December 19, 1933

Ponente: AVANCEÑA, J.

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AVANCEÑA, J.:

La siguiente es textualmente la querella presentada en esta causa, contra Ricardo Melendrez y Nieto y Elias Martinez:

"That on or about the 15th day of Juune, 1933, in the municipality of Pasay, Province of Rizal, Philippine Islands, within two and one-half (2½) miles from the limits of the City of Manila and within the jurisdiction of this court, the said accused conspiring together and helping each other willfully, unlawfully and feloniously forcibly broke open the door of the store located at No. 85 Cementina, Pasay, an inhabited house belonging to and occupied by Tin Bun Boc, and once inside the said store, with intent of gain and without the consent of the owner thereof, took, stole and carried away therefrom the following personal properties of the said Tin Bun Boc:

"Money amounting to

P30.26

"One (1) Elgin watch, gold plated and a gold-filled chain, valued at

25.00

"One (1) Chinese ring, signet solid gold, valued at

13.50

"One (1) buntal hat, valued at

4.50

"Nine (9) small packages of "camel" cigarettes

1.35

"Nine (9) small packages of "chesterfield" cigarettes

1.26

"Three (3) cans of Milkmaid, valued at

.81

P76.68

to the damage and prejudice of the said Tin Bun Boc in the total sum of seventy-six pesos and sixty-eight centavos (P76.68), Philippine currency.

"That the accused Ricardo Melendrez y Nieto is a habitual delinquent, he having been previously convicted by final judgment of competent courts twice of the crime of theft and one of the crime of estafa and having been last convicted of the crime of estafa on September 3, 1932."

En la fecha de la vista de esta causa Elias Martinez no habie sido habido aun, por lo que solamente fue informado de la querella anterior el otro acusado Ricardo Melendrez y Nieto quien declaro ser culpable. El Juzgado en su consecuencia declaro al acusado Ricardo Melendrez y Nieto culpable del delito de robo alegado en la querella y le condeno a 8 años y 1 dia de prision mayor y ademas, por ser un delincuente habitual, a otra pena adicional de 6 años y 1 dia de prision mayor. Ricardo Melendrez y Nieto apelo contra esta sentencia.

En esta instancia el abogado del apelante sostiene que debe estiuarse en la comision del delito como circunstancia atenuante la falta de instruccion del apelante. Pero, a parte de que, segun repetidas sentencias de esta Corte, no cabe apreciar la circunstancia atenuante de falta de instruccion en los delitos de robo, no hay en los autos de la causa base ninguna para juzgar sobre la instruccion del apelante, toda vez que por haber declarado ser culpable no se practico ninguna prueba en la causa.

Pero, el haber el apelante declarado ser culpable al ser informado de la querella es una circunstancia atenuante que debe apreciarse en su favor.

Por su parte el ministerio fiscal sostiene que debe estimarse en contra del apelante la circunstancia agravante de reincidencia. Esta pretension del ministerio fiscal esta de acuerdo con la decision de esta Corte en la causa Pueblo contra Aguinaldo (47 Jur. Fil., 766) dictada en pleno estando vigente el antiguoCodigo Penal. Pero, la vigencia del Codigo Penal Revisado dio lugar sobre esta cuestion a diferencia de criterio en el seno del Tribunal. Por esta razon, despues de haber revisado todas las decisiones sobre la materia dictadas en pleno y en division, declaramos ahora que la circunstancia agravante de reincidencia debe ser tenida en cuenta para imponer la pena principal en el grado correspondiente, no obstante de que por razon de esta reincidencia el acusado es ademas condenado a pena adicional como delincuente habitual.

Los hechos acusados en la querella constituyen el delito de robo en casa habitada ejecutado sin armas, siendo el valor de lo robado menor de P250. Con arreglo al art. 299 del Código Penal Revisado la pena del delito es la de prisión correccional en su grado medio. Concurriendo una circunstancia atenuante y una agravante debe imponerse esta pena en su grado medio.

Por tanto, entendiéndose de 2 años, 11 meses y 11 días la pena principal que se impone al apelante, se confirma en lo demás la sentencia apelada, con las costas.

Así se ordena.

Street, Malcolm, Villa-Real, Santos, Hull, Vickers, Imperial, Butte, y Diaz, MM., conformes.

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