

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. IRINEO IBASCO Y CABARES, DEFENDANT AND APPELLANT.

G.R. No. L-4009. October 19, 1951

Ponente: JUGO, J.

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JUGO, J.:

Irineo Ibasco was charged with the crime of qualified theft under the following information:

"That on or about the 30th day of April, 1948 in the municipality of Caloocan, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named defendant, with intent of gain, did then and there willfully, unlawfully and criminally take, steal and carry away one motor vehicle No. DB-15-6184, owned by Buenaventura R. Nadres and insured by Firemen's Insurance Company and Commercial Casualty Insurance Company, without the knowledge and consent of the said owner, nor of the person in charge thereof, Augusto Ibasco, the said car having been recovered, in a badly damaged condition, on or about May 9, 1948, to the prejudice of its owner and insurers in the sum of P1,280, representing actual and consequential damages.

"That the accused Irineo Ibasco y Cabares was sentenced for the crime of Theft by the Justice of the Peace of Caloocan, on February 21, 1948 to suffer one month and one day imprisonment in Criminal Case No. 12793."

Upon arraignment he pleaded not guilty, but when the case was called for trial on October 21, 1948, the defendant, with the assistance of counsel, withdrew his former plea and pleaded guilty to the charge. The Court convicted him under article 310 of the Revised Penal Code, as amended by Republic Act No. 120, with the mitigating circumstance of plea of guilty but with the aggravating circumstance of recidivism, and sentenced him to suffer an indeterminate penalty of from four (4) years, nine (9) months and eleven (11) days of prision correccional to nine (9) years, four (4) months and one (1) day of prision mayor, to indemnify the offended parties in the sum of P1,280, and to pay the costs.

He appealed to this court, his counsel making the following assignment of errors:

"(1) The lower court a quo erred in finding the presence of the aggravating circumstance of recidivism;

"(2) The lower court a quo erred in sentencing the appellant to an indeterminate penalty of imprisonment for a period ranging from 4 years, 9 months and 11 days of prision correccional, to 9 years, 4 months and 1 day of prision mayor, for qualified theft under article 310 of the Revised Penal Code, as amended by Republic Act No. 120."

Counsel for appellant contends that there is no allegation of recidivism in the information to which the defendant

pleaded guilty, for the reason that there is no statement therein "that the accused is a recidivist." The second paragraph of the information alleges "that the accused Irineo Ibasco y Cabares was sentenced for the crime of Theft by the Justice of the Peace of Caloocan, on February 21, 1948, to suffer one month and one day imprisonment in Criminal Case No. 12793." The fact of recidivism is plainly set forth in the information, without stating the conclusion "that the accused is a recidivist." The averment of former conviction is a sufficient allegation of recidivism, without the conclusion suggested by the appellant. In the Case of U.S. vs. Burlado (42 Phil., 72, 73) it was held that:

"An examination of the complaint above shows that it alleges that the defendant had been convicted for the crime of theft four times before the commencement of the present action."

That the allegation was considered sufficient, without stating the conclusion in the information that the defendant was a recidivist.

The mitigating circumstance of the plea of guilty is offset by the aggravating circumstance of recidivism.

The appellant argues that the information in the present case does not state that the former conviction for theft was by final judgment. In the case above cited, the allegation of recidivism is couched in the following terms:

"That the crime was committed with the aggravating circumstances of the same having been perpetrated in the dwelling of the offended party and in the nighttime, and the further circumstance that the herein accused had been previously convicted four times by this same court of the crime of theft." (p. 73)

Comparing this allegation with that in the present case, it will be seen that the conviction in the two cases are understood to be by final judgments, for as a general rule, when we speak of a previous conviction in an information, it is understood to be by final judgment.

The crime charged comes under the provisions of article 310 of the Revised Penal Code, as amended by Republic Act No. 120, for the property stolen was a motor vehicle.

Although the value of the automobile must have been greater than P1,280 which represents only the actual and consequential damages according to the information, yet inasmuch, as the real value of the car is not alleged, we have to accept said amount of P1,280 as the value.

Applying the provisions of article 310 of the Revised Penal Code, as amended by Republic Act No. 120, we find that the penalty imposed by the trial court is correct and it is hereby affirmed, with costs against the appellant. It is so ordered.

Paras, C.J., Feria, Pablo, Bengzon, Padilla, Tuason and Reyes, JJ., concur.

Judgment affirmed.

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