

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SEGUNDO MARQUEZ Y CASTRO, DEFENDANT AND APPELLANT.*G. R. No. L-20139. May 19, 1965*

Ponente: ZALDIVAR. J.

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This is an appeal from the decision of the Court of First Instance of Manila in its Criminal Case No. 53242, which questions the correctness of the penalty imposed by the trial court upon the appellant. This case was originally appealed to the Court of Appeals, but because the question involved in the appeal relates purely to a question of law the Court of Appeals forwarded to this Court the records of this case pursuant to the provisions of Sections 17 and 31 of the Judiciary Act of 1948, as amended.

In the Court of First Instance of Manila Reynaldo Layog y Cadayday, Segundo Marquez y Castro and Fermin Caiña y del Mundo were charged of the crime of theft, for having stolen equipments, materials and tools belonging to the Manila Electric Railroad & Light Co. (Meralco), valued at P3,500.00. Upon arraignment the three accused entered a plea of not guilty, but on the day set for the hearing of the case the said accused asked permission from the court to withdraw their former plea of not guilty and to substitute the said plea with the plea of guilty as accessories to the crime of theft as alleged in the information. This plea of guilty to less serious offense was not objected to by the prosecution, and, as a matter of fact, the prosecution recommended that the minimum penalty prescribed by law for the offense to which the accused had pleaded guilty be imposed upon said accused. Thereafter, the trial court declared the said accused guilty as accessories after the fact of the crime of theft as charged in the information, and thereby sentenced each of them to suffer the penalty of four (4) months and one (1) day of arresto mayor and each to pay one-third of the costs. The properties stolen having been recovered, the same were ordered returned to their owner.

Only the defendant Segundo Marquez y Castro appealed from the decision of the trial court. He was allowed to appeal as a pauper. In his lone assignment of error the appellant maintains that the lower court erred in imposing on him the penalty of four (4) months and one (1) day of arresto mayor and not the penalty of destierro, pursuant to the provisions of Article 309, par. 3, in relation to Articles 53 and 27, paragraph 4, of the Revised Penal Code.

It is the contention of the appellant that inasmuch as the value of the properties stolen is more than two hundred pesos, (P200.00) but does not exceed six thousand Pesos (P6,000.00), the penalty for the commission of the offense as charged in the information should be prision correccional in its minimum and medium periods, or an imprisonment of from six (6) months and one (1) day to four (4) years and two (2) months pursuant to the provisions of paragraph 3 of Article 309 of the Revised Penal Code; and that since the appellant, along with his co-accused, had pleaded guilty to a lesser offense—that of accessory after the fact—the penalty that should be imposed on each of them should be "lower by two degrees than that prescribed by law for the consummated felony", as provided in Article 53 of the Revised Penal Code.

The contention of the appellant finds support in the ruling of this Court in the case of Jose Cristobal vs. The

People of the Philippines, 84 Phil, 473; (47 Off. Gaz., 711), which resolved a question that was more or less identical to the one now before Us. The pertinent portion of the decision reads:

"* * * The penalty provided by Article 309, paragraph 3, of the Revised Penal Code where the value of the property stolen is more than P200 but does not exceed P6,000 is prision correccional in its minimum and medium periods. The penalty lower by two degrees than this should be imposed upon the accused as accessory to the commission of a consummated felony (Art. 53). Two degrees lower than prision correccional in its minimum and medium periods is destierro in its maximum period to arresto mayor in its minimum period. (See article 61, par. 5, in relation to article 71, Revised Penal Code, as amended by Com. Act No. 217). The medium degree of this penalty should be imposed, there being neither aggravating nor mitigating circumstances. Destierro in its maximum period is from four years, two months, and one day to six years of banishment; while arresto mayor in its minimum period is one month and one day, to two months of imprisonment. There is no medium or middle ground between these two penalties. So we think one month and one day of arresto mayor is preferable or more favorable to the accused."

The Solicitor General agrees with the appellant that the penalty imposed by the trial court on the appellant and his co-accused was above the legal range, and he recommends that instead the penalty to be imposed be that of one (1) month and one (1) day of arresto mayor.

We find that the appeal of the appellant, Segundo Marquez y Castro, is well-taken, and that the recommendation of the Solicitor General for the reduction of the penalty imposed is in accordance with law and the applicable decision of this Court.

Wherefore, the decision appealed from is modified in so far as the appellant Segundo Marquez y Castro is concerned, in the sense that the penalty to be imposed on said appellant be one (1) month and one (1) day of arresto mayor, and not four (4) months and one (1) day of arresto mayor as imposed by the lower court. No pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Makalintal and Bengzon, J. P. JJ., concur.

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