

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. CARLOS TAPANG Y SANGALANG, DEFENDANT-APPELLANT.

G. R. No. L-3345. May 18, 1951

Ponente: FERIA, J.

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FERIA, J.:

The accused was charged in the Court of First Instance of Manila with the crime of theft committed, according to the following information filed on September 8, 1949, as follows:

"The undersigned accuses Carlos Tapang y Sangalang, a minor 17 years of age, of the crime of theft, committed as follows:

"That on or about September 7, 1949, in the City of Manila, Philippines, the said accused 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 from the shirt's pocket of one Paulino Dimalanta one men's white gold ring studded with 4 diamond stones, valued at P250, to the damage and prejudice of said owner in the aforementioned amount of P250, Philippine currency" (p. 1, rec).

The defendant pleaded not guilty. However, at the trial held on September 12, 1949, the accused, through his counsel de oficio Atty. Jose M. Yacap, moved to change his plea of not guilty to one of guilty of frustrated theft on the ground that the ring was recovered from the accused at or about the time it was taken from him. The fiscal did not oppose the petition and upon the plea of guilty to the charge which was made with the assistance of counsel, the Court sentenced the accused to suffer 6 months of arresto mayor with the accessory penalties provided by law and to pay the costs.

From this decision, the accused interposed this appeal, and contends that the lower court failed to appreciate minority as a mitigating circumstance notwithstanding the fact that circumstance is alleged in the information.

The Solicitor General argues that, "while it is true that the information states that the accused is 17 years of age, it also alleges that the crime was committed on September 7, 1949, when Republic Act No. 47 was already in force. Said Act, which was approved on October 3, 1946, amended article 80 of the Revised Penal Code by reducing the age limit of the minor from 18 to 16 years, and must have also reduced by necessary implication the age limit provided for in paragraph 2, article 13 of the Revised Penal Code, in relation with article 68 of the said Code." The Solicitor General quotes in support of his contention the decision of the Court of Appeals in the case of *People vs. Eugenio, C.A.-G. R. No. 2722-R*, promulgated on November 23, 1949, which according to him, has some persuasive effect.

This contention of the appellant is well taken and the opposition of the appellee is not, because this Court has already decided in the case of *People vs. Garcia et al.*, 47 Off. Gaz., 4188, that Republic Act No. 47 did not amend impliedly the provisions of article 13, paragraph 2, of the Revised Penal Code. Said Act, which reduced the age limit in article 80 of the said Code for the purpose of the suspension of sentence of minor delinquents, has nothing to do with the mitigating circumstances provided for in article 13, paragraph 2, of the Revised Penal Code.

The appellant also assigns that the lower court erred in finding the latter guilty of frustrated theft, just because "he was advised by his attorney de oficio to plead guilty without taking into consideration that the accused, admittedly a minor, was not of sufficient age to comprehend the meaning of the plea of guilty." This assignment of error is without merit.

The advice of the appellant's counsel de oficio to the accused to confess guilty of the crime not of consummated theft as alleged in the information but only of frustrated theft, cannot be a ground for new trial as contended by the appellant's attorney. Said advice, far from being prejudicial, was beneficial to the accused, because the fact that the ring was recovered from the appellant at or about the time it was taken by him, does not make the offense he had already committed a frustrated theft. The fiscal did not object to the change of the offense charged because of the defendant's plea of guilty.

In view of the foregoing, the judgment appealed from is modified by declaring the defendant guilty of frustrated theft with the principal mitigating circumstance that he was under eighteen years of age at the time of the commission of the offense, and besides, he voluntarily confessed his guilt before the court, and sentencing the defendant to twenty-one days of arresto menor, with the accessory penalties and costs. So ordered.

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

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