

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FELIPE CRUZ, JR., ET AL., DEFENDANTS, VICENTE AQUINO Y PEREZ,
DEFENDANT AND APPELLANT.**

G.R. No. L-20797. April 27, 1967

Ponente: DIZON, J.

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DIZON, J.:

In an information filed with the Court of First Instance of Bulacan, Felipe Cruz, Jr. and Vicente Aquino y Perez were charged with having violated Section 174 of Commonwealth Act 446, otherwise known as the National Internal Revenue Code, as amended, as follows:

"That on or about the 28th day of June, 1960, in the municipality of Hagonoy, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Felipe Cruz, Jr. and Vicente Aquino y Perez did then, and there wilfully, unlawfully and feloniously have in their possession articles, to wit: 39 cases and 38 cartoons of Union Blue Seal cigarettes, which were subject to the payment of specific taxes in the amount of no less than P10,444.00 and without the said taxes thereon having been paid in accordance with law."

Accused Felipe Cruz, Jr., - after pleading not guilty - moved for the reinvestigation of his case and, no opposition having been interposed by the prosecution, the Court granted the same.

On the other hand, after entering a plea of not guilty, Aquino, through counsel, moved that he be allowed to withdraw his plea of not guilty and to substitute it with that of guilty of the crime charged. The motion was granted and upon being arraigned anew, Aquino pleaded guilty and was forthwith sentenced to suffer imprisonment of six (6) months and to pay a fine of P5,000.00, with subsidiary imprisonment in case of insolvency at the rate of one day for each P2.50 but not to exceed 1/3 of the term of the sentence, and to pay 1/2 of the costs. From this decision Aquino appealed claiming that the penalty of six months imprisonment and P5,000.00 fine with subsidiary imprisonment in case of insolvency imposed upon him by the Court is excessive and not in accordance with law. His argument is that, having pleaded guilty, only a fine of not more than P5,000.00 should have been imposed upon him. This contention is entirely without merit because - even giving appellant the benefit of the mitigating circumstance of plea of guilt - the penalty imposed is still within the range of the penalty provided for by Section 174 of the National Internal Revenue Code, as amended, as follows:

"Any person who is found in possession of articles subject to specific tax, the tax on which has not been paid in accordance with law, or any person who is found in possession of articles which are exempt from specific tax other than those to whom the same is lawfully issued excepting persons in possession of an article resulting from a single isolated transaction done in good faith shall be punished by a fine of not less than three times the amount of the specific tax due on the articles found but not less than two hundred pesos nor more than five thousand pesos or by imprisonment of from four months and one day to four years and two months, or both."

WHEREFORE, the decision appealed from is affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.
Ruiz Castro, J., took no part.

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