

EL PUEBLO DE FILIPINAS, QUERELLANTE Y APELADO, CONTRA CONRADO L. ZULUETA, ACUSADO Y APELANTE.

G.R. No. L-724. April 30, 1947

Ponente: PABLO, J.

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PABLO, J.:

Conrado L. Zulueta fue acusado en el Juzgado de Primera Instancia de Manila del delito de hurto cualificado por haberse apoderado de una camara fotografica avaluada en P350. En la vista se declaro no culpable, y la acusacion termino sus pruebas con el testimonio de un solo testigo. El acusado en vez de presentar su defensa pidio la continuacion de la vista para otro dia. Al reanudarse la vista en 28 de Junio de 1946, la defensa presento una mocion pidiendo permiso para que se permita al acusado retirar su declaracion de no culpable y sustituirla con la de culpable con la condicion de que el valor de la camara fotografica se redujese a P200. El ministerio fiscal se conformo. El acusado se declaro culpable del delito de que se le acuso con reduccion del valor del efecto hurtado. Inmediatamente el Juzgado le condeno a seis (6) meses de arresto mayor, como minima, a dos (2) años, cuatro (4) meses y un (1) dia de prision correccional, como maxima, con las costas. El acusado apelo.

El abogado de oficio admite que la pena impuesta esta dentro del limite prescrito por la ley; sin embargo, pide que se acredite a favor del acusado la declaracion de culpabilidad como circunstancia atenuante. Es insostenible esta peticion porque el acusado no ha hecho "confesion espontanea de culpabilidad ante el tribunal antes de practicarse las pruebas de la acusacion." (Articulo 13, parrafo 7.) Al contrario, se declaro culpable bajo condicion: de que se redujese el valor del efecto hurtado. No hay espontaneidad en una declaracion de culpabilidad condicional, y dada despues de presentadas las pruebas de la acusacion. Si el ministerio fiscal se conformo fue, no hay duda alguna, para reducir la pena que habia de imponerse al acusado: no fue porque en realidad la camara no valia P350. Con la reduccion del valor del efecto hurtado se redujo automaticamente la pena. La pena correspondiente al hurto de un efecto avaluado en P350 de acuerdo con el articulo 309, parrafo 3, delCodigo Penal Revisado, es de prision correccional en sus grados minimo y medio y la pena correspondiente al parrafo siguiente, (Articulo 309, parrafo 4)—cuando el valor es de P50 a P200—es de arresto mayor en su grado medio a prision correccional en su grado minimo. Y la pena inmediatamente superior a esta que debe imponerse al acusado segun el articulo 310 delCodigo Penal Revisado, porque se trata de hurto cualificado, es la de prision correccional en su grado medio a prision mayor en su grado minimo. De acuerdo con las disposiciones de la Ley de Sentencia Indeterminada, la pena seria de arresto mayor en su grado medio a prision correccional en su grado medio.

Con modificacion de la sentencia apelada, se condena al acusado a seis (6) meses de arresto mayor, como pena minima, a cuatro (4) años, dos (2) meses y un (1) dia de prision correccional, como maxima, con las costas.

Bengzon, M., esta conforme.

Padilla, y Tuason, MM., estan conformes con la parte dispositiva.

PARAS, J.:

I vote to consider defendant's plea after the reading of the amended information as a mitigating circumstance.

DISSENTING

PERFECTO, J.:

Appellant raised two questions in his appeal: first, one of jurisdiction, whether the provisions of Section 2433 of the Revised Administrative Code, granting the courts of Manila concurrent jurisdiction with those of the province of Rizal, to try crimes and misdemeanors committed within the zone surrounding the city on land of two and a half miles in width; and second, one on penalty, whether appellant is entitled to the benefits of the mitigating circumstance of having "voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution," as provided in Section 7 of Article 13 of the Revised Penal Code.

On the first question, which is not touched upon in the majority decision, appellant advances the theory that Executive Order No. 400, issued by President Quezon on January 1, 1942, increasing the territory of Manila, to include Caloocan, San Juan, Mandaluyong, Makati, Pasay, Parañaque and Quezon City, had the effect of repealing Section 2433 of the Revised Administrative Code. The theory is based on an interpretation of the fact that Executive Order No. 58, issued by President Osmeña on July 26, 1945, in repealing Executive Order No. 400, had expressly provided for the continuation of the extraterritorial jurisdiction of Manila for police purposes, by keeping silent as to the extraterritorial jurisdiction of its courts.

Appellant's contention is mistaken. The mention made in Executive Order No. 58 regarding the retention of jurisdiction for police purposes was unnecessary, and such surplusage may not serve as a basis to conclude that the omission of another surplusage should be interpreted as a repeal of an unrepealed provision of law.

There is absolutely nothing in Executive Order No. 400 to repeal or modify Section 2433 of the Revised Administrative Code. The sole effect of the increase of territory of the City of Manila provided in said Executive Order on the extraterritorial jurisdiction zone of the capital was to move it out so as to surround the increased territory. Executive Order No. 58 had the effect of shrinking said zone to its former location before the issuance of Executive Order No. 400.

The crime upon which appellant pleaded guilty having been committed within said zone, our conclusion is that the lower court had jurisdiction to try and sentence the accused.

Regarding the second question raised by appellant, it is important to take into consideration the fact that at the hearing of June 28, 1946, in which appellant pleaded guilty, after the lower court denied the motion to quash the information for qualified theft of a camera valued at P350, the fiscal made the statement that the value of the stolen camera was, in fact, P200, being a used one and in a worn out condition, and that the amount of P350 given in the information was the price of a new one. The lower court asking the fiscal whether the amount of P200 given by him was the reasonable one, the fiscal answered in the affirmative.

"Court: Is that the reasonable price for it?"

"Fiscal: Yes, sir."

Immediately after, upon question of the court, appellant pleaded guilty of the new charge.

There is no question that the difference in value of the stolen camera implies a substantial difference between two

offenses, for which two distinct penalties are provided in the Revised Penal Code. The fact that both offenses belong to the same category as theft and that the object stolen is the same, are not enough to identify and confuse the two offenses as if they are but one. The difference of penalties provided by law are conclusive evidence that in the lawmakers' mind they are two different offenses. We are not allowed to suppose, even for a moment, that the authors of the law will provide two distinct penalties for exactly the same offense, granting courts the arbitrary power to select those accused upon whom they may bestow the lighter penalty and those upon whom they may inflict the heavier one. Such an absurd supposition assumes a clear violation of the constitutional guarantee of equal protection of the law.

When appellant pleaded guilty, he did it with the new offense in mind, but not the one alleged in the original information, which must be understood to have been superseded by a new one or, at least, amended so as to allege a different offense than the one originally alleged. The new or amended information initiated a new case and, under this circumstance, the evidence presented in the first case, which was automatically dismissed, cannot be considered as presented in the second case and, therefore, when appellant pleaded guilty, he did it fulfilling the conditions provided in Section 7, Article 13 of the Revised Penal Code, thus entitling him to the benefits of the mitigating circumstance of voluntary plea of guilty.

We cannot agree with the statement in the majority decision that there was no spontaneity in appellant's plea of guilty and much less with the following reckless pronouncement:

"Si el ministerio fiscal se conformo fue, no hay duda alguna, para reducir la pena que habia de imponerse al acusado: no fue porque en realidad la camara no valia P350."

This pronouncement imputes unjustly to the fiscal a deliberate falsehood, to circumvent the law, and to the lower court, voluntary blindness, in not seeing it and allowing an illegal scheme to defeat the purposes of the law, with the resulting travesty of the administration of justice. The record shows that the value of P200 given for the stolen camera was the reasonable one and, therefore, in conformity with truth. Common sense, based on universal experience, teaches us that used and worn out articles have far less value than new ones.

We conclude that appellant is entitled to the benefits of the mitigating circumstance in question and, therefore, that he is entitled to the lower penalty recommended by his counsel.

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