

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FLAVIANO AGUINALDO, DEFENDANT AND APPELLANT.

G.R. No. 23914. July 29, 1925

Ponente: MALCOLM, J.

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MALCOLM, J.:

In the Court of First Instance of Manila, Flaviano Aguinaldo was charged with the crime of robbery in an information which alleged:

"That on or about March 22, 1923, in the City of Manila, Philippine Islands, the above named accused scaled and entered house No. 21 of Brixton Hill Street of said city, which is the residence of one E. C. Walters, and taking advantage of the darkness of the night deliberately sought for the purpose, did steal and take away with intent of gain several pieces of jewelry of the total value of one thousand two hundred and one pesos (P1,201), Philippine currency, belonging to said E. C. Walters to the damage and prejudice of the latter in the aforesaid sum which is equivalent to 6,005 pesetas.

"That the accused is a habitual recidivist under the provisions of Act No. 3062 of the Philippine Legislature for having already been previously convicted thrice of robbery and twice of theft by virtue of final judgments rendered by competent courts, having committed the crime of which he is now accused after evading service of the sentence rendered against him on February 14, 1919, and while he was a fugitive from justice. Contrary to law."

The learned trial judge found the accused guilty of the crime described in the information. The attorney de oficio for the appellant expresses the opinion that the guilt of the accused has been proved beyond a reasonable doubt. The Attorney-General reaches the same conclusion. The evidence is overwhelmingly demonstrative of the culpability of the appellant.

The only matter remaining is to fix upon a correct penalty. On this point, a difference of views has arisen between the trial judge, counsel de oficio, and the Attorney-General.

The first paragraph of article 508 of the Penal Code, in relation with No. 2 of the same article, cannot be applied since it is neither alleged nor proved that the accused was an "armed person" when he committed the robbery, or that he broke any wall, roof, or floor or forced any door or window of the house robbed. The facts rather fall under case No. 1 of article 508, in connection with the paragraph next following case No. 5 of the same article. In other words, the robber entered the house through an opening not intended for entrance or egress, that is, by "scaling." As it is not shown that the malefactor carried a weapon and as the value of the property taken exceeds 1250 pesetas a penalty next lower in degree should be imposed. Said penalty is presidio correccional in its medium degree to presidio mayor in its minimum degree for the principal of the consummated crime. There are present two aggravating circumstances, namely, that the crime was committed in the nighttime and that the accused is a recidivist. The maximum of the maximum penalty provided by law, or eight years imprisonment

presidio mayor should therefore be imposed.

It was alleged in the information that the accused was a habitual delinquent. This allegation was demonstrated at the trial. The new law covering such a situation is Act No. 3062, entitled "An Act to provide additional penalties for habitual delinquents." It reads:

"Any person who has twice or oftener been convicted of the crime of theft or robbery and who commits either of said crimes within the five years next following the day on which he completed service of his last sentence, shall be deemed a habitual delinquent and shall suffer the penalty provided by law for the last crime committed and an additional penalty equivalent to one-half of the penalty imposed therefor, and the penalty herein provided shall be imposed upon such, habitual delinquent every time thereafter he shall commit either of said misdemeanors prior to the expiration of ten years from and after the date on which he completed serving his last sentence."

The penalties provided by the Penal Code for the crime of theft or robbery as the case may be, must first be applied without reference to the Habitual Delinquency Law. In the exact words of the law, the habitual delinquent "shall suffer the penalty provided by law for the last crime committed." A determination of the penalty is arrived at independently of the provisions of the Habitual Delinquency Law even to the extent of considering recidivism either as a qualifying or an aggravating circumstance. Then to this penalty is added one-half of the penalty imposed so as to carry out the purposes of the law.

The Legislature has required the courts to take into consideration the persistence of the defendant in his criminal course. The prime idea of a Habitual Delinquency Law is to confine the offender for a longer period of time than the ordinary criminal is confined for the protection of society. This intention of the Legislature must be enforced. (People vs. Clemente, No. 22880.^[a])

One-half of the penalty imposed in this instance is four years of presidio mayor. Adding this additional penalty to the regular penalty, a total of twelve years imprisonment results.

The judgment appealed from is modified and in lieu of fifteen years imprisonment presidio mayor, the defendant and appellant is sentenced to twelve years imprisonment presidio mayor, with the accessory penalties provided by law, to return to Mrs. E. C. Walters the articles named in the information or to reimburse her for their value in the amount of P680 and to pay the costs of both instances. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Johns, and Villa-Real, JJ., concur.

[^a] Promulgated January 19, 1925, not reported.

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