

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. HERMENEGILDO SANTOS, DEFENDANT AND APPELLANT.

*G.R. No. 29241. August 27, 1928*

Ponente: OSTRAND, J.

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### OSTRAND, J.:

The defendant, Hermenegildo Santos, is charged with qualified theft upon the following information:

"That on or about the 9th day of January, 1928, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully, and feloniously, with intent of gain and without the consent of the owner thereof take, steal, and carry away the following personal property belonging to one Primo Arambulo to wit: Fourteen (14) pieces of Dhobe rocks (batong Guadalupe) for use in concrete construction, 50 cm. x 6" x 6" valued at.....P1.68

to the damage and prejudice of the said owner in the total sum of one and 68/100 pesos (P1.68), Philippine currency, equivalent to 8.4 pesetas.

"That the said accused has heretofore been twice convicted of the crime of theft and once of robbery, by virtue of final judgments of competent courts, his last sentence having been served on August 28, 1926, and is an habitual delinquent under the provisions of Act No. 3397 of the Philippine Legislature."

Upon trial the Court of First Instance found the accused guilty of theft under the second subdivision of article 518 of the Penal Code and sentenced him to suffer two months and one day of *arresto mayor*, with the accessory penalties prescribed by law, and an additional penalty of ten years' imprisonment in accordance with paragraph (b) of section 1 of Act No. 3397, and to pay the costs. In our opinion, the guilt of the defendant is conclusively proven by the testimony of Luis Talia and the defendant's own confession that he stole the fourteen pieces of Dhobe rock from Arambulo and donated them to Luis Talia.

But counsel for the defendant argues that the confession of the accused was inadmissible because it was not affirmatively proven that it was made freely and voluntarily. This contention has been decided adversely to counsel's contention in the case of *People vs. Buda Singh* (45 Phil., 676 [see also *U. S. vs. Zara*, 42 Phil., 308]).

It is also contended that the accused cannot be held guilty of theft because there is no proof that he took the stones with intent of gain, whereas it is apparent from the testimony of Luis Talia that he took possession of them for the purpose of using them in the construction of the latter's stable. This contention merits no serious consideration. The accused took the stones from Arambulo's lot without the owner's knowledge and consent for the purpose of giving them to Luis Talia. This act constitutes theft.

Attorney for the appellant also argues that the certificates of previous convictions, Exhibits C, C-1 and C-2, are inadmissible in evidence, there being no proof that the accused is the Hermenegildo Santos referred to therein. This argument is also without merit. The identity of person is presumed from the identity of name when that fact

is uncontradicted by evidence and this rule is applicable in criminal as well as in civil cases (U. S. vs. Adolfo, 12 Phil., 296).

The additional penalty of ten years' imprisonment may seem severe considering the insignificant value of the goods stolen, but it is in accordance with the provisions of the statute and is a reformatory measure rather than a penalty for the offense committed in the present case.

The Attorney-General calls attention to the fact that the present case falls under paragraph 6 of article 518 as amended by Act No. 3244 in relation to article 520 of the Penal Code and that the corresponding penalty is *arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree. It follows that the penalty imposed by the court below of two months and one day of *arresto mayor* must be increased to one year and one day of *presidio correccional* with the additional penalty of ten years' imprisonment. With this modification the judgment appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

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

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