

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. IGNACIO ORTEZUELA, DEFENDANT AND APPELLANT.*G.R. No. 29316. August 14, 1928*

Ponente: STREET, J.

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This appeal has been brought with a view to the reversal or modification of a judgment of the Court of First Instance of the Province of Cebu finding the appellant, Ignacio Ortezuella, guilty of the offense of theft and sentencing him, under article 518 of the Penal Code, to imprisonment for four months and one day, *arresto mayor*, and imposing on him an additional term of ten years imprisonment as an habitual delinquent, under paragraph (b) of Act No. 3397 of the Philippine Legislature, and requiring him to pay the costs.

It appears that the appellant was charged upon an information, filed on February 9, 1928, in the Court of First Instance of Cebu, with the offense of robbery, in having broken, on January 29, 1928, into a locked suitcase of Andres Momongan, abstracting the contents therefrom and appropriating the same to his own use. As stated in the information the contents of said suitcase consisted of clothes and other things of the total value of P81.40, or 407 pesetas. It was also alleged in the information that the accused is an habitual delinquent, as contemplated in Act No. 3397 of the Philippine Legislature, by reason of having been thrice previously convicted of the crime of theft in the Court of First Instance of Cebu. Upon arraignment in court the accused offered a plea of guilty of theft (not of robbery). The fiscal accepted this qualification of the crime, and the court thereupon imposed upon the appellant the penalties mentioned in the first paragraph of this opinion.

From what has been said it will be seen that the appellant admits himself to be guilty of the offense of theft under the conditions stated in the information, and that he also admits the further fact, alleged in the information, that he had been three times convicted of the offense of theft, said convictions having occurred in December, 1926. It results that the only question now open to consideration has reference to the propriety of the penalty imposed by the trial court.

The value of the property which was the subject of this offense is stated in the information at P81.40, or 407 pesetas. For larceny of this amount the law provides the penalty of *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree (No. 4 of article 518, Penal Code, as amended by Act No. 3244). But as the appellant has been more than twice reincident in the commission of the offense of theft, he is guilty of qualified theft under No. 3 of article 520 of the same Code. There being neither mitigating nor aggravating circumstance to be considered, the penalty that should be imposed upon him for said offense (independently of Act No. 3397) is *presidio correccional* in its maximum degree, which extends from four years, two months and one day to six years. The trial court therefore erred in imposing on the appellant the primary penalty of imprisonment for four months and one day, *arresto mayor*; and in accordance with the recommendation of the Attorney-General, it will be necessary to raise this penalty to four years, two months and one day.

To the primary penalty imposed by the trial court there was added the penalty prescribed in paragraph (b) of Act

No. 3397 of the Philippine Legislature. Said provision requires an additional penalty of imprisonment for not less than ten nor more than fifteen years upon a fourth conviction of any of the crimes mentioned in the opening paragraph of section 1 of said Act. The offense of theft is one of the crimes there enumerated. Following the enumeration of the offenses to which the provisions of the Act are to be applied we find a series of four paragraphs, lettered from (a) to (d), defining the particular penalties to be applied upon the third, fourth, fifth, and sixth (or any additional conviction) of said crimes. The paragraph applicable upon a fourth conviction is found in paragraph. (b), which reads as follows in English and Spanish:

"(b) Upon a fourth conviction of any of said crimes he shall be sentenced to the penalty provided for the last crime committed and, in the discretion of the court, to an additional penalty of not less than ten nor more than fifteen years of imprisonment."

"(b) Al ser condenada por la cuarta vez por cualquiera de dichos delitos se le impondra la pena correspondiente al ultimo delito cometido y ademas se le impondra, a discrecion del tribunal, una pena adicional que no sera menor de diez ni mayor de quince anos de prision."

In a motion for reconsideration interposed on behalf of the accused in the trial court, the question was raised whether the discretionary power given to the court in the provision cited was intended to be exercised with reference merely to the duration of the additional penalty, when imposed, or with reference to the fundamental point of the imposition of any such penalty at all.

In disposing of this motion the trial judge stated that, if the provision was to be understood as giving him a discretion with respect to the imposition of the additional penalty and not a mere discretion as to the duration of the additional penalty when imposed, he wished to be understood as exercising said discretion in the imposition of the additional penalty which he had imposed, in view of the dangerous antecedents of the offender. But his Honor further stated that he was of the opinion that the discretion which is confided to the court in the provision quoted has reference to the duration of the additional penalty and not to the point of the imposition of the additional penalty. In this connection he observed that the history of the legislation with respect to habitual criminals in the Philippine Islands shows an intention on the part of the Legislature to make the path of the habitual offender constantly harder, in conformity with the tendency of legislation in other countries: whereas, if the law should be interpreted as giving to the courts a discretionary power to refrain from imposing any additional penalty at all, the situation with respect to habitual delinquents would be ameliorated and not made more severe.

Other considerations in support of the view entertained by the trial judge readily suggest themselves. In the first place, we note that, if the law be interpreted as giving the court complete discretion with respect to the imposition of the additional penalty instead of merely a discretion with reference to the duration of the penalty when imposed, the result would be anomalous: for what sense could there be in declaring that the additional penalty in the different situations contemplated shall not be "less" than the period specified when the court is given complete discretion to impose no additional penalty at all? In the second place, the title of the Act itself indicates an intention on the part of the Legislature to establish additional penalties for habitual criminals; and the title would be really misleading if the Act be interpreted as giving the court complete discretion with respect to the imposition of the additional penalty: for it must be remembered that, under Act No. 3062, the imposition of the additional penalties provided in that Act was inexorable in the cases therein defined.

It is true that the position of the expression "in the discretion of the court," in the provision now under consideration, would seem to indicate that the discretion therein contemplated should be exercised in determining whether any additional penalty or not should be added; and this inference is more easily deduceable in the English version of the Act, since it is a well known fact in linguistics that the English permits of much less freedom than the Spanish in the matter of the location of qualifying phrases. But the Act in question went through the

Legislature in all its stages in Spanish, and the Spanish version must here be given more weight than the English version. It results in our opinion that the trial judge was right in assuming that the imposition of the additional penalty was necessary in the case now before us; and in view of the rigor of the provision to be applied he was undoubtedly justified in imposing the minimum period of imprisonment which the law allowed.

It being understood, therefore, that the principal penalty of four months and one day, *arresto mayor*, imposed upon the appellant by the trial court, is raised to four years, two months and one day, *presidio correccional*, with its proper accessories, the judgment will in other respects be affirmed. So ordered, with costs.

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

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