

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VICTORINO SILVESTRE, DEFENDANT AND APPELLANT.

*G.R. No. 29947. February 16, 1929*

Ponente: ROMUALDEZ, J.

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### ROMUALDEZ, J.:

This is a case of qualified theft. The appellant was sentenced by the Court of First Instance of Manila for said crime to two years, four months and one day presidio correctional, plus sixteen years of additional imprisonment, for habitual delinquency.

Counsel for the defendant does not discuss the sufficiency of the evidence and only attacks the propriety of the punishment imposed, alleging it to be cruel and inhuman. This contention is untenable, as already held by this court in the case of *People vs. Nayco* (45 Phil., 167), and in *People vs. Ortezueta* (51 Phil., 857).

As to the contention that the two first penalties imposed upon the accused in the year 1917 cannot be taken into account in considering<sup>1</sup> his habitual delinquency, the fact is that the defendant admits that he was convicted over six times before and according to the transcript of the stenographic notes, not only Exhibits C, D, E, F and G, were presented, but also Exhibits H and I, which are copies of the judgments of the Court of First Instance convicting the defendant.

The 'lower court's conclusion that four out of these seven convictions took place within the ten years fixed by Act No. 3397, must be accepted, because, as we have not Exhibits H and I before us, which it was the appellant's duty to have forwarded to this court, we have no justification in the case for changing said conclusion of the lower court.

The judgment appealed from being in accordance with the evidence and the law, the same is affirmed in all its parts, with costs of both instances against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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