

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FAUSTINO SOBREVILLA, DEFENDANT AND APPELLANT.

G.R. No. 30360. July 24, 1929

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The appellant was found guilty of the theft of P12 by the Court of First Instance of Occidental Negros, and sentenced to four months, and one day of arresto mayor, and, being considered a recidivist under Act No. 3397, was sentenced to an additional penalty of eighteen years' imprisonment, with costs.

According to the evidence, there is no doubt whatever as to the appellant's guilt. At about 10 o'clock in the morning of April 8, 1923, while the appellant was behind Mariano de Oca, the offended party, in the midst of a crowd in front of the public market, he abstracted from said De Oca's trousers, the pocket-book containing P12, which the latter carried. The defendant already had the pocket-book, when, De Oca perceiving the theft, caught hold of the appellant's shirt-front, at the same time shouting for a policeman after a struggle he recovered his pocket-book and let go of the defendant, who was afterwards caught by a policeman.

It is contended in this instance that these facts only constitute the crime of frustrated, and not consummated, theft. We believe such a contention is groundless. The appellant succeeded in taking the pocket-book, and that determines the crime of theft. If the pocket-book was afterwards recovered, such recovery does not affect the appellant's criminal liability, which arose from the appellant having succeeded in taking the pocket-book.

We agree with the Attorney-General that the facts proven constitute the crime of qualified theft denned in article 517, paragraph 1, of the Penal Code, in connection with article 520, paragraph 3, of the same Code. The value of the stolen article being, more than 25 and less than 250 pesetas and there being no circumstance modifying the criminal liability, the penalty fixed by law should be imposed in its medium degree, that is, two years, four months and one day of presidio correctional.

On the other hand, the Attorney-General is of the opinion that the trial court erred in applying Act No. 3397. We believe this opinion is not well founded and that the decision appealed from is correct in this respect.

The information filed in this case alleges that the defendant is a recidivist, having been previously convicted four times of the crime of theft; to wit, on March 29, 1919, on April 7, 1919, on April 15, 1919, and on September 26, 1919. The Attorney-General believes that this allegation is not sufficient to apply Act No. 3397. Section 1 of said Act reads:

"Any person who within a period of ten years from the date of his release or of his last conviction by the courts of this country of the crimes of robo, hurto, estafa, embezzlement, or forgery, or of a violation of the laws against vagrancy or prostitution, is found guilty of any of said crimes a third time, or oftener, shall be deemed an habitual criminal and shall be sentenced as follows:

* * * * *

"(c) Upon a fifth 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 sixteen nor more than twenty years of imprisonment; * * *"

It is thus seen that the information contains all the necessary allegations to bring the case within the purview of the above-quoted legal provision. It appears from these allegations that the defendant had been previously convicted four times of the crime of theft, and that the theft with which he is charged in the instant case was committed on April 8, 1928, that is, within ten years. from the date of his last conviction, which took place on September 23, 1919.

The Attorney-General bases his opinion on the decision rendered by this court in the case of *People vs. Nayco* (45 Phil., 167). But we believe that the doctrine laid down in that case is not applicable to the case at bar. In that case, the information alleged that "the herein accused has heretofore been twice (2) convicted of theft in the Municipal Court, by virtue of final judgments." The question then was, whether by virtue of said allegation, Act No. 3062 was applicable.

Said Act, which was afterwards amended by Act No. 3397, provides:

"SECTION 1. 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."

In that case this court held the information filed therein to be insufficient for the application of that Act. As may be noticed, in order to apply that Act, the crime prosecuted must have been committed within five years from the day when the defendant completed service of the last sentence for the similar crimes he had theretofore committed. This circumstance was not alleged in the information, and, therefore, the latter was held insufficient. The court said that it would have been sufficient to allege "that the defendant is an habitual delinquent under the terms and provisions of Act No. 3062;" but it did not mean that such an allegation was necessary,—only that it would have sufficed, in the absence of another or others specifically mentioning the circumstances required by said Act No. 3062 for its application. It is clear that if the information had alleged, in addition, that the crime therein charged had been committed within the five years from the day on which the defendant completed service of the last sentence passed upon him for the crime of theft, the court would not have held that information to be insufficient.

In view of these considerations, the appellant is hereby convicted of the crime charged, being sentenced for said crime to two years, four months and one day presidio correccional, and being, besides, an habitual criminal under the terms and provisions of Act No. 3397, he is hereby sentenced, pursuant to the provisions of said Act, to a further and additional penalty of sixteen years' imprisonment, with costs. So ordered.

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

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