

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BENITO HIPOLITO, DAVID PABLO AND VICTORINO REYES, DEFENDANTS. VICTORINO REYES (ALIAS VICTORINO DE LOS REYES), A...

G.R. No. 30869. July 16, 1929

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 11th day of October, 1928, one of the prosecuting attorneys of the City of Manila filed an information against the above-named defendants, charging them with the crime of robbery. The information alleged:

"That on or about the 10th day of September, 1928, in the City of Manila, Philippine Islands, the said accused, confederating together and helping one another, by climbing the wall of inhabited house No. 444 Tejeron Street and thereby gaining entrance to the said house through a hole made by the accused in the wall, did then and there willfully, unlawfully, and feloniously, with intent of gain and without the consent of the owner thereof, take and carry away from said house the following personal property belonging to Ong Chip, to wit:

"Fifty pesos (P50) in different denominations, to the damage and prejudice of the said owner in the said sum, equivalent to and of the value of 250 pesetas;

"That the accused Victorino Reyes is an habitual criminal within the purview of Act No. 3397 of the Philippine Legislature, he having previously been convicted by final judgment of competent courts twice of theft and once of the crime of estafa the last conviction being that of qualified theft on March 1, 1927."

Benito Hipolito and David Pablo were tried first. Victorino Reyes was not included in their trial because his arrest was not effected until a later date. His two co-accused were found guilty of the crime charged, without any mitigating or aggravating circumstances, and sentenced by Judge C. A. Imperial, each to suffer two years, eleven months and eleven days of presidio correctional, to indemnify jointly and severally the offended person, Ong Chip, in the sum of P50, with subsidiary imprisonment in case of insolvency, and to pay a proportional part of the costs. From that sentence Benito Hipolito and David Pablo did not appeal.

Upon arraignment Victorino Reyes pleaded not guilty. At the opening of the trial, however, he withdrew his former plea and entered a plea of guilty. In view thereof, the Hon. C. A. Imperial, judge, sentenced him to suffer two years and five months of prisidio correccional, with the accessory penalties of the law, to indemnify the offended person in the sum of P50 or any part thereof remaining unpaid, with subsidiary imprisonment in case of insolvency, and to pay a proportional part of the costs. The dispositive part of the decision reads as follows:

"Por tanto, el Juzgado halla al acusado Victorino Reyes alias Victorino de los Reyes culpable del delito de robo tal y conforme esta alegado en la querella y le condena a dos anos y cinco meses de prision correccional, a indemnizar al ofendido en la cantidad de cincuenta pesos (P50), o la parte de ella que no lo hubiese sido por los otros co-acusados, con prision subsidiaria correspondiente en caso de insolvencia, en (con) las demas accesorias aplicables de la ley y al pago de la parte proporcional de las costas del juicio. Asi se ordena." From

that sentence Victorino Reyes appealed.

The appellant having pleaded guilty, the only question for determination is whether the penalty imposed by the lower court is in accordance with the law. The attorney for the appellant recommends confirmation of the penalty.

The Attorney-General recommends that the penalty of imprisonment be raised to its maximum degree in view of the aggravating circumstance of recidivism resulting from the appellant's former convictions; and that an additional penalty of not less than ten nor more than fifteen years of imprisonment be also imposed because of his being an habitual criminal, under the provisions of Act No. 3397, section 1, paragraph (b).

We agree with the recommendation of the Attorney-General as to the imposition of the additional penalty under the provisions of Act No. 3397. The appellant having pleaded guilty of the acts recited in the information, including his being an habitual criminal, the penalty provided by Act No. 3397 should also be imposed upon him. We also agree with the Attorney-General that the appellant's former convictions should be considered as an aggravating circumstance, and that the penalty of imprisonment should be imposed in its maximum degree. (People vs. Aguinaldo, 47 Phil., 728.)

The penalty imposed by the lower court (2 years and 5 months of prisign correccional), is in the minimum degree. The same should be raised to the maximum degree or 3 years, 6 months, and 21 days of presidio correccional, in view of the aggravating circumstance of reclusion.

In view of all of the foregoing, the sentence appealed from is hereby modified, and the appellant is hereby sentenced to suffer three years, six months and twenty-one days of presidio correccional, with the accessory penalties of the law, to indemnify the offended person in the sum of P50 or any part thereof remaining unpaid, with subsidiary imprisonment in case of insolvency, and to pay a proportional part of the costs. The appellant is hereby further sentenced to suffer an additional penalty of ten years of imprisonment in accordance with the provisions of section 1, paragraph (b) of Act No. 3397. With costs. It is so ordered.

Avancena, C. J., Street, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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