

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TOMAS TAPEL Y VARGAS, DEFENDANT ANDI APPELLANT.

G.R. No. 31409, November 11, 1929

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant was sentenced by the Court of First Instance of Manila for the crime of qualified theft, denned in article 520, paragraph 3, of the Penal Code, to two years, four months and one day of presidio correccional, and an additional penalty of ten years' imprisonment pursuant to the provisions of Act No, 3397; to suffer the accessories of the law provided in article 58 of said Code; to pay the costs, and to return to the offended party the bolt of silk Exhibit A.

The accused appealed from this judgment. He alleges that the testimony of the witnesses Daniel Joson and Apolonia Hernandez is insufficient to support the judgment, in view of his clear testimony that another person dropped the bolt of pongee silk while passing by his side. This contention of the appellant is untenable. The testimony of said witnesses, especially that of Apolonia Hernandez, leaves no room for doubt as to the guilt of the accused. Hernandez, who has a store in front of the offended party's store, was an eyewitness of the fact that the accused took the bolt of silk Exhibit A, valued at P26. She saw the accused take it, wrap it up in a piece of newspaper, place it under his arm, and afterwards hurriedly leave the offended party's store. When Joson caught the appellant, the bundle of silk Was still under his arm, although he dropped it on one side of the sidewalk as soon as he was caught by his pursuer. There can be no doubt that the evidence of the prosecution conclusively establishes the guilt of the accused.

Moreover, it appears from the record that the accused is a recidivist, having been previously convicted four times of the crime of qualified theft; and inasmuch as he committed the crime for which he is now prosecuted within ten years from his last conviction, on November 12f 1924, said accused is an habitual criminal under Act No. 3397, and must suffer the additional penalty prescribed by said law.

The judgment appealed from being in accordance with law, the same should be, as it is hereby affirmed, with the costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.

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