

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARIANO LAPUZ Y VALENZUELA (ALIAS MARIANO DE LA CRUZ Y LAPUZ), DEFENDANT AND APPELLANT.

G.R. No. 31562. November 12, 1929

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The information in this case is as follows:

"That on or about the 17th day of February, 1929, in the City of Manila, Philippine Islands, the said accused Mariano Lapuz y Valenzuela did then and there willfully, unlawfully, and feloniously, with intent to gain and without the consent of the owner thereof take, steal, and carry away the following personal property belonging to Liao Chan, to wit: One box of powder, Pompeia, P0.60, to the damage and prejudice of said owner in the total sum of sixty centavos (P0.60), Philippine currency, equivalent to 3 pesetas.

"The accused has heretofore been convicted of theft six times and he is an habitual delinquent within the provisions of Act No. 3397"

The accused was "found guilty by the municipal court, and upon appeal to the Court of First Instance of Manila, he was likewise found guilty of the crime of theft and was sentenced to two months and one day of imprisonment and to an additional imprisonment of twenty-one years, this being his sixth conviction of the crime of theft within the period of ten years from his last conviction.

The accused appealed from this judgment. The evidence shows beyond doubt that the accused, on February 17, 1929, in the City of Manila, took, with intent of gain, from the store of the Chinaman Liao Chan a box of Pompeia powder worth P0.60, without the consent of its owner. Upon being apprehended by the detective Donato Pacheco who was then on duty in Tabora Street, he asked him what he had done, and the accused answered:

"It is a necessity only. Have pity on me," and he immediately pocketed the box of powder Exhibit A. The owner of the store confirmed the loss of one of the boxes placed in a certain part of his show window, whereupon, the detective, Pacheco, produced the box Exhibit A, and the Chinaman recognized it as one of the boxes placed in his show window.

To prove that the accused is a recidivist and habitual criminal, the fiscal introduced criminal cases Nos. 21761, 22332, 23660 of the Court of First Instance and criminal cases Nos. 36138 and 52776 of the municipal court of Manila, which show that he was convicted of the crime of theft by final judgments, the last of which was dated May 9, 1927.

The accused is an habitual criminal under Act No. 8397, and deserves the additional penalty of twenty-one years' imprisonment.

As to the principal penalty, the lower court sentenced the accused to two months and one day of imprisonment; but the Attorney-General recommends the modification of this penalty, in view of the fact that the case falls under

article 518, paragraph 6 of the Penal Code, as amended by Act No. 3244, in connection with paragraph 3 of article 520 of said Code, the penalty for which is arresto mayor in its maximum degree to presidio correccional in its minimum degree. There being no circumstance modifying the criminal liability, the medium degree of this penalty, that is, one year and one day of presidio correccional, must be imposed upon the accused.

We agree with the recommendation of the Attorney-General, and the judgment appealed from is hereby affirmed, with the modification that the principal penalty imposed upon the accused should be one year and one day of presidio correccional, with costs against the appellant. So ordered.

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

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