

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DEMETRIO CASTRO, DEFENDANT AND APPELLANT.

G.R. No. 31883. December 03, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The self-confessed accused, Demetrio Castro, having been charged and convicted of the crime of theft and habitual delinquency in the lower court, was sentenced to six months and one day of presidio correccional, to pay an indemnity of P6.18, to suffer subsidiary imprisonment in case of insolvency, to pay the costs, and to an additional imprisonment of sixteen years.

He appeals to this court from said judgment. His attorney de oficio, in his brief presented therein, and the accused himself, in a letter addressed to this court, without discussing the merits of the case, limit themselves to imploring this court not to impose upon him the additional penalty under Act No. 3397, because he pleaded guilty, he has a family, and his co-accused have already served their sentences.

The plea of guilty is not, under our existing penal laws, a cause for mitigating the criminal liability. Even granting for a moment that the provisions of the Penal Code are applicable to Act No. 3397 (they are not, according to the Code itself and to the ruling of this court: article 7, Penal Code; *U. S. vs. Calaguas*, 14 Phil., 739; *U. S. vs. Lao Lock Hing*, 14 Phil, 86), the truth is that the plea of guilty is not one of the circumstances impliedly recognized in article 9, No. 8, of the Penal Code. (Decision of the Supreme Court of Spain of February 23, 1872; *I-Hidalgo*, Penal Code, 175; *U. S. vs. Ablaza*, 1 Phil., 740.)

Neither may the courts consider the fact that the accused has a family as a mitigating circumstance, just as neither old age nor being deaf and dumb is considered as such. (Decisions of the Supreme Court of Spain of December 23, 1872, and March 20, 1903; *I-Hidalgo*, Penal Code, 175, 178-179.)

The fact that the co-accused of the appellant have already served their sentences is no reason for not applying to him the law in accordance with the result of the prosecution against him.

The Attorney-General recommends that, there being no circumstance modifying the act, the penalty should be imposed in its medium degree and the indemnity should be P6.28, pursuant to the information to which the accused pleaded guilty. We find these considerations well-founded.

Wherefore, the judgment appealed from is modified, and the appellant is hereby sentenced to two years, four months and one day of presidio correccional, with the accessories provided in article 58 of the Penal Code; to indemnify the offended party in the sum of P6.28, with subsidiary imprisonment in case of insolvency; to pay the costs, and to suffer an additional imprisonment of sixteen years. So ordered.

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

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