

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. RAFAEL SALINAS Y AGAS, DEFENDANT AND APPELLANT.

G.R. No. 32070, November 19, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The accused was found guilty of qualified theft and a habitual criminal.

The additional penalty of twenty-one years imposed upon the accused, as well as the constitutionality of Act No. 3397, is questioned in this instance.

It is contended that the five thefts by the accused before the one at bar were perpetrated when Act No. 3397 was not yet in force, hence, they cannot be affected by this Act. There is no attempt, however, to again penalize the former crimes which had already been prosecuted, but the habitual delinquency shown by the accused in committing the crime at bar after the enforcement of said Act. In similar terms, the special division of this court held, in deciding the case of *People vs. Sierra* (G. R. No. 28516),^[1] referring to the former act regarding habitual delinquency, Act No. 3062, that:

"* * * the crime prosecuted in the complaint was committed when said Act was already in force. In fact, this Act does not punish the crimes previously committed by the appellant, but the habituality involved in that committed after its enforcement, because habituality does not consist of the former crimes but of the last one committed by the appellant. Habituality consists in the repetition of an act."

With regard to the constitutionality of Act No. 3397, it suffices to say that such question, referring to acts of similar import had already been resolved by the Supreme Court of the United States in the case of *Graham vs. West Virginia* (56 Law. ed., 917), wherein it was held:

"The propriety of inflicting severer punishment upon old offenders has long been recognized in this country and in England. They are not punished the second time for the earlier offense, but the repetition of criminal conduct aggravates their guilt and justifies heavier penalties when they are again convicted. Statutes providing for such increased punishment were enacted in Virginia and New York as early as 1796 and in Massachusetts in 1804; and there have been numerous acts of similar import in many states. This legislation has uniformly been sustained in the state courts."

The foregoing doctrine was cited and quoted with approval in the case decided by this court on September 21, 1923, regarding the former Act No. 3062, as well as in the case of *People vs. Nayco* (45 Phil., 167), with reference to habitual delinquency.

It does not constitute a violation of any constitutional guaranty for the state to repress depravity in those cases where its efforts at reform, by means of ordinary penalties, have failed. Modern legislation against habitual delinquency, as stated above, provides punishment only for the last crime committed by the accused, for which he

is prosecuted; and it is within the power of the Legislature to direct that, in fixing the corresponding penalty for such crime, the degree of depravity of the accused, as shown by his persistence in his criminal career, be taken into consideration.

"Aside from the offender and his victim there is always another party concerned in every crime committed—the state; and it does no violence to any constitutional guaranty for the state to rid itself of depravity when its efforts to reform have failed. The true ground upon which these statutes are sustained is, that the punishment is awarded for the second offense only, and that in determining the amount or nature of the penalty to be inflicted, the legislature may require the courts to take into consideration the persistence of the defendant in his criminal course."

"8. Herndon vs. Com., 105 Ky., 197; 48 S. W., 989; 88 A. S. R., 303; State vs. Le Pitre, 54 Wash., 166; 103 Pac., 27; 18 Ann. Cas., 922.

"Notes: 64 A. S. R., 378; 18 Ann. Cas., 923, 925.

"9. Graham vs. West Virginia, 224 U. S., 616; 32 S. Ct. 583; 56 U.S. (Law. ed.), 917.

"Note: 37 A. S. R., 589." (8 R. C. L., 271.)

There being no merit in the assignment of errors, the judgment appealed from is hereby affirmed, with the understanding that the accused should suffer the accessory penalties provided in article 58 of the Penal Code in this case, with costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, and Johns, JJ., concur.

[1] Promulgated April 21, 1928, not reported.

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