

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. RUFINO JAVIER Y SANTOS, DEFENDANT AND APPELLANT.

G. R. No. 33817. January 22, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On April 8, 1930, the defendant presented himself at the complainant Francisco Barredo's barber shop, situated at No. 1950 Rizal Avenue, Manila, in search of employment. Barredo answered that he could not take him because the only job for an assistant was filled. As it was meal time he invited the accused to eat. The latter answered that he had already eaten, and offered to watch the barber shop. When Barredo returned after eating, he found that the defendant had gone, and with him an electric fan and some scissors that were in the barber shop.

He then set about inquiring of his neighbors the where-abouts of that man, and Toribio Rivera and Luis Pablo informed him that they had seen a man carrying an electric fan, leave the barber shop and get into a carromata. Barredo reported the matter to the police, and after some search, the electric fan was found in the "Palace Barber Shop" belonging to one Pedro Bunac, who said he had bought it of the defendant for P20. A brother of the accused later took the scissors to the complainant's home. The electric fan and the scissors were worth P84.

The defendant had previously been convicted six times of theft by competent court, the last conviction having taken place on April 6, 1926.

In view of the facts set forth above, the defendant was accused of the crime of theft before the municipal court, convicted and sentenced to suffer four years, two months, and one day of prision correctional, to return the stolen goods to the owner, and to defray the costs. The court also imposed upon him the additional penalty of twenty-one years for being an habitual offender.

The defendant appealed to the Court of First Instance and the latter also found him guilty of the crime charged in the information, and sentenced him to suffer four months and one day of arresto mayor, the accessories of law and the costs, besides an additional penalty of sixteen years in accordance with subsection (c) of Act No. 3586. The court also ordered him to return the stolen goods to the owner.

From this judgment also the defendant appealed, contending that the lower court erred in finding that he had already been previously convicted four times, and in imposing upon him the penalty of sixteen years imprisonment.

The evidence shows beyond reasonable doubt that the accused is guilty. That he had been previously convicted six times of theft is also shown by Exhibit G, of the record, which is the defendant's criminal record in the Manila police department.

In view of the evidence of record, the court below sentenced the accused to the penalty of four months and one day of arresto mayor, and sixteen years' additional imprisonment. We hold that the court below erred in both

penalties. As above stated, the information charged the accused with the theft of goods valued at P84. The case, therefore, falls under article 518, case 4 of the Penal Code, as amended by Act No. 3244; but in view of the; recidivism, the defendant must be punished in accordance with article 520, No. 3, of said Code, which prescribes the penalty next higher in degree to that of article 518, case 4 of the Code, or four years, two months, and one day of prison, correctional, with the accessories of law. And it is not a bar to this conclusion that the defendant, being an habitual criminal, is also to be punished with the additional penalty assigned by the law, for in *People vs. Aguinaldo* (47 Phil., 728), the rule was laid down that:

"The penalties provided by the Penal Code for the crime of theft or robbery as the case may be, must first be applied without reference to the Habitual Delinquency Law. A determination of the penalty is arrived at independently of the provisions of the Habitual Delinquency Law even to the extent of considering recidivism either as a qualifying or an aggravating circumstance. Then to this penalty is added an additional penalty of one-half of the penalty imposed as provided by the Habitual Delinquency Law."

The court below also erred in imposing the additional penalty of sixteen years, for, under Act No. 3397, subsection (d), as amended by Act No. 3586, the defendant must serve twenty-one years' imprisonment, by way of additional penalty.

With these modifications, the judgment appealed from must be, as it is hereby, affirmed, with costs against the appellant. So ordered.

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

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