

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SANTIAGO VELASQUEZ Y GUINTO, DEFENDANT AND APPELLANT.

G. R. No. 33899. February 17, 1931

Ponente: OSTRAND, J.

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OSTRAND, J.:

The appellant was prosecuted before the Court of First Instance of Manila upon the following information:

"That on or about the 3d day of June, 1930, in the City of Manila, Philippine Islands, the said Santiago Velasquez y Guinto did then and there willfully, unlawfully, and feloniously, with intent of gain and without the consent of the owner thereof take, steal, and carry away the following personal property belonging to Brias Roxas, Inc., to wit:

"One pair of silk brown stockings, value P2.50 to the damage and prejudice of the said owner in the total sum of two pesos and fifty centavos (P2.50), equivalent to 12 1/2 pesetas.

"That the accused was four (4) times previously convicted of theft and once of robbery in final judgments by competent courts, and is a habitual delinquent within the contemplation of Act No. 3397, his last release being July 18, 1928."

After trial the court below found the accused guilty of simple theft with the aggravating circumstance of recidivism and sentenced him to suffer four months and one day of arresto mayor with the accessory penalties prescribed by law, to pay the costs, to return the silk stockings to Brias Roxas, Inc. The appellant being a habitual delinquent under subsection (d) of section 1 of Act No. 3397, as amended by Act No. 3586, the trial judge imposed upon him an additional penalty of twenty-one years in accordance with the aforesaid Acts.

The appellant is guilty of qualified theft defined under case 1 of article 517 and penalized under case 6 of article 518, as amended by Act No. 3244, in connection with case 3 of article 520 of the Penal Code, the value of the stolen pair of stockings being 12 1/2 pesetas. The penalty provided in case 6 of article 518 is arresto mayor in its minimum and medium degrees. The penalty next higher in degree to that prescribed in case 6 of said article 518 should be arresto mayor in its maximum degree to prision correctional in its minimum degree. The defendant-appellant should therefore have been sentenced to suffer one year and one day to one year and eight months of prision correctional and the court below erred in imposing the penalty of only four months and one day of arresto mayor.

The appealed judgment is therefore modified by increasing the original penalty to one year and one day of prision correctional with accessory penalties and costs. The additional penalty of twenty-one years' imprisonment is in accordance with law and was properly imposed by the court below. So ordered.

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

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