

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LEONCIO VILLEGAS Y TULIAO (ALIAS LUCIO VILLEGAS AND FRANCISCO BRAVO), DEFENDANT AND APPELLANT.

G. R. No. 34039. January 16, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The defendant was prosecuted for attempted robbery in an inhabited house upon the following information:

"The undersigned accuses Leoncio Villegas y Tuliao (alias) Lucio Villegas (alias) Francisco Bravo of the crime of attempted robbery in an inhabited house, committed as follows:

"That on or about the 9th day of July, 1930, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully and feloniously, with intent of gain and against the consent of the owner thereof, enter the dwelling house (first floor) of Miss S. H. Olson, situated at No. 558 San Luis Street, of said city, by means of force upon things, to wit: by cutting off and forcibly breaking open the wire screen of a window of said premises, an opening not intended for entrance or egress, thru which said accused gained entrance to said house, thus commencing the commission of the crime of robbery directly by overt acts; that if said accused did not accomplish his unlawful purpose, that is, to take, steal and carry away by means of force upon things, personal property valued at P1,000 contained in the said dwelling house, it was not because of his own and voluntary desistance, but because of the timely detection and intervention by third persons who caused the arrest of said accused.

"That the said accused has heretofore been convicted eight (8) times of the crime of theft and twice (2) of estafa, by virtue of final judgments rendered by competent courts, the last date of conviction being on February 3, 1925, and is therefore a habitual delinquent under the provisions of Act No. 3586 of the Philippine Legislature.

"All contrary to law." (Pp. 2 and 3, record.)

The defendant appeared in the court below and upon arraignment, pleaded not guilty. On the following day, however, accompanied by his lawyer, the accused withdrew his plea of not guilty and entered one of guilty. The trial court found him guilty of the crime charged and as recidivist and habitual criminal, as alleged in the information, and sentenced him to suffer two months' arresto mayor, under paragraph 2, subsection 5, article 508 of the Penal Code, plus twenty-one years' imprisonment under Act No. 3586, with costs.

The instant appeal has been taken from that judgment, based upon the following assignments of error:

- In finding the defendant guilty of the crime of robbery in an inhabited house.
- In sentencing the defendant to the additional penalty of twenty-one years, in addition to the two months, because the information alleged that the defendant had been a recidivist ten times."

In support of the first assignment of error, the defense contends that the crime to which the defendant pleaded

guilty was not attempted robbery in an inhabited house, but, at most, trespass to dwelling. When the defendant pleaded guilty, he admitted certain facts alleged in the information. It is contended that the allegation in the information touching the defendant's purpose in breaking into the house, together with subsequent statements, are mere conclusions drawn by the fiscal. We think otherwise. That part of the information explains the defendant's intent of gain, setting forth as facts that he proposed to take, steal, and carry away by means of force upon things, personal property valued at P1,000 contained in the dwelling house, and that if he failed to accomplish said purpose, it was not because of his own voluntary desistance, but because of the timely detection and intervention by third persons who caused the arrest of said accused. Perhaps the information could have been drawn up with greater clearness, but considering its Contents, we deem it sufficient. The use of the words of the law in the information is not a defect. (U. S. vs. Salcedo, 4 Phil., 234; U. S. vs. Grant and Kennedy, 18 Phil., 122; U. S. vs. Go Changco, 23 Phil., 641.) The absence of a detailed list of the personal property found in the house on that occasion, the value of which is specifically alleged in the information, vitiates neither the proceedings nor the judgment, not being jurisdictional in nature. The defendant could have demanded such a detailed list, but he failed to do so and thereby waived the objection, and, therefore, that question cannot be raised for the first time in the present instance. (U. S. vs. Del Rosario, 2 Phil., 127; U. S. vs. Mack, 4 Phil., 185 and 291; U. S. vs. Sarabia, 4 Phil., 566; U. S. vs. Paraiso, 5 Phil., 149; U. S. vs. Aldos, 6 Phil., 381; U. S. vs. Eusebio, 8 Phil., 574; U. S. vs. Lampano and Zapanta, 13 Phil., 409.)

The second assignment of error is based upon the fact that Act No. 3586, by virtue of which the appellant was sentenced to twenty-one years of additional imprisonment, took effect in the year 1929 (the original Act, No. 3397, was passed in 1927), and upon the contention that said Act should not be given retroactive effect unless therein expressly provided; and, that the former offenses alleged in the information had been punished by judgments rendered prior to the enforcement of said Act. It must be borne in mind that it is a principle of law in this jurisdiction, unless otherwise provided by statute, that in order to apply such a law as Act No. 3586, it is not necessary that the former felonies constituting the habitual criminality have been committed after the law regarding habitual criminals took effect; it is sufficient that the crime, the prosecution of which gives rise to the application of the additional penalty for habitual criminality, has been committed after said law became effective. And this rule is in accord with the North American jurisprudence:

"Unless otherwise provided by statute, in order to authorize the infliction of a more severe penalty upon conviction for a second or a subsequent offense, it is not necessary that the first conviction should occur subsequent to the enactment of the statute." (16 C. J., 1341.)

The judgment appealed from is affirmed, with the understanding that the appellant is further condemned to the accessory penalties, and the costs of both instances. So ordered.

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

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