

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. WALFREDO CORNELIO Y SARMIENTO, DEFENDANT AND APPELLANT.

*G. R. No. 34108. October 26, 1931*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

The appellant and two others were charged in the municipal court of the City of Manila with the crime of theft, committed according to the information as follows:

"That on or about the 27th day of May, 1930, in the City of Manila, Philippine Islands, the said accused conspiring and confederating together and helping one another 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 Ponciano Austria, to wit: One bolt of English woolen cloth, brown color, with fine linings of red and blue, 30 yards long, valued at P144, to the damage and prejudice of the said owner in the total sum of one hundred forty-four pesos (P144), Philippine currency, equivalent to 720 pesetas.

"That at the time of the commission of said crime, the said accused have heretofore been convicted by virtue of final judgments of competent court, as follows, to wit:

\* \* \*, and Walfredo Cornelio y Sarmiento, once of qualified theft, once of frustrated theft, and three times of theft, the last dates of their respective service of sentence, being March 19, 1929, November 27, 1929, and November 27, 1929, and are therefore habitual delinquents under Act No. 3397, as amended by the Philippine Legislature.

"All contrary to law."

The accused were found guilty and sentenced by the municipal judge. Walfredo Cornelio y Sarmiento was sentenced to suffer six months and one day of presidio correccional and to pay the costs, and an additional penalty of sixteen years' imprisonment for being a habitual delinquent. From that sentence he appealed to the Court of First Instance, where the above-quoted information was reproduced.

Upon arraignment the defendant pleaded not guilty, was tried, found guilty of the crime of theft and of being a habitual delinquent, in violation of Act No. 3397, as amended and sentenced to suffer four years, two months and one day of presidio correccional with the accessory penalties of the law and to pay the costs. As an habitual delinquent, he was also sentenced to suffer the additional penalty of three years' imprisonment. From that sentence he appealed, and now presents a question of fact only.

This case was submitted to the court in division, and because a question of jurisdiction of the division was suggested, it was referred to the court in banc. The question of jurisdiction of the division was this: When the decision of the lower court clearly gives a division jurisdiction to hear and determine the questions submitted on appeal, and the division finds from the evidence of record that the sentence of the lower court should be modified and a larger sentence should be imposed than that which the division has authority to impose, can the division

retain jurisdiction of the case for the purpose of deciding the same?

The court in *bane*, after giving that question full consideration, decided that if a division has jurisdiction to consider the case on appeal, it may retain that jurisdiction for the purpose of deciding the appeal, even though the record shows that a penalty of more than ten years' imprisonment should be imposed. That is the rule, with one exception, to wit, the division, under the law, may never impose the death penalty for the reason that the law expressly requires that cases involving death sentence be always decided by the court in *bane*. (*People vs. Rodriguez*, G. R. No. 35285, October 15, 1931.[1])

Turning now to the merits of this appeal, the evidence clearly shows that the appellant is guilty of the crime of theft beyond a reasonable doubt, and that he committed the same in the manner and form described in the information. It also appears that he is a habitual delinquent, having been previously convicted three times of the same offense.

The Attorney-General in a carefully prepared brief, in which reference is made to all of the important facts of the case, reached the conclusion that the appellant was guilty as found by the lower court. He recommends, however, that this being the appellant's fourth conviction, an additional penalty of ten to fifteen years' imprisonment should be imposed upon the appellant, and that the additional penalty of three years imposed by the lower court should be modified.

With the recommendation of the Attorney-General we fully agree. Therefore, the sentence appealed from is hereby modified, and this being the fourth conviction of the appellant of the crime of theft within ten years from the date of his last conviction, he is hereby sentenced to suffer an additional penalty of ten years\* imprisonment, under the provisions of Act No. 3397, as amended. With that modification the sentence appealed from is hereby affirmed, with costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Romualdez, Villa-Real, and Imperial, JJ., concur.

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[1] See p. 799, post.

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