

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FELIPE RAMA, DEFENDANT AND APPELLANT.

G. R. No. 34886. August 22, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an appeal from the judgment of the Court of First Instance of Cebu in this case in so far as it imposes an additional penalty upon the accused for habitual criminality, and counsel for the appellant relies upon the following grounds: That Act No. 3397 is unconstitutional; that the appellant's convictions of 1918, 1920, and 1927 (Exhibits D, E, F, and G) should not be taken into account because they have not been proved; and that, at any rate no notice should be taken in this case of the defendant's convictions of 1918 and 1920 (Exhibits D, E, F) as they took place ten years before the commission of the crime here prosecuted.

The constitutionality of Act No. 3397 has been repeatedly recognized by this court in the case of *People vs. Salinas* (54 Phil., 39).

With reference to Exhibits D, E, F, and G, while it does not appear from the transcript of the stenographic notes taken during the hearing that they were expressly admitted in evidence, yet it appears that they were presented as evidence and there is nothing to show that any objection was taken to them or that they were rejected by the trial court, which cited them specifically in its decision as evidence which had been presented, and based upon them the additional penalty now in question.

With respect to the convictions ten years before the present crime was committed, it should be noted that the law does not intend to exclude such convictions from a consideration of habitual criminality, provided they be followed at a greater or lesser interval within ten years by any of the crimes mentioned in the law, down to the offense at bar. The law (section 1, Act No. 3397) in fixing the period of ten years, mentions the date of the defendant's release or his last conviction. If counsel for the defense were right in reading the intent of the law, the text of the Act would have expressly excluded from the computation all convictions prior to the aforesaid period of ten years. It should be observed that the law does not punish the accused again for crimes which gave rise to such prior convictions, but merely considers them in ascertaining whether or not the accused is an habitual criminal, with a view to correcting such criminality upon the occasion of his committing another crime; and the Legislature has full power to determine in what cases such persistence in evil should be corrected. This same doctrine is implied in the decision rendered by this court in the case of *People vs. Villafuerte and De la Cruz* (G. R. No. 31805),^[1] where the lower court took into account only two of the prior convictions because the rest had taken place more than ten years before; but upon the recommendation of the Attorney-General, this court, although it did not expressly discuss the point in its opinion, took into account all six prior convictions, though four of them had taken place more than ten years before the crime in question was committed.

Neither may the law be attacked as discriminatory, inasmuch as it equally punishes all offenders who are in the same circumstances.

We find no merit in the assignments of error.

The Attorney-General calls attention to the fact that the present theft falls within subsection 6 of article 518 of the Penal Code, as amended by Act No. 3244, penalized according to case No. 3 of article 520, with *arresto mayor* in its maximum degree to *presidio correctional* in its minimum degree, as the appellant has been a recidivist more than twice, and that such penalty should be imposed in its medium degree (one year and one day to one year and eight months of *presidio correctional*), there being present no modifying circumstance. This is well taken, wherefore, the judgment appealed from is modified and the appellant sentenced to one year and one day of *prision correccional* and the accessory penalties of the law for the crime here prosecuted, and, furthermore, to seventeen years' additional imprisonment for habitual criminality, and the costs of both instances. So ordered.

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

[1] Promulgated November 11, 1929, not reported.

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