

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DEMETRIO FRANCISCO Y GAAC, DEFENDANT AND APPELLANT.

G.R. No. 35270, February 24, 1932

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

There is no question of fact involved in the present case, for the defense counsel admits that all the allegations of the information have been established, and that the sentence imposed upon the defendant is justified.

Counsel insinuates, however, though without insistence, that the case should be remanded to the trial court, because the judgment contains no finding of facts, citing *United States vs. Avillar* (28 Phil., 131). That ruling is not applicable to the present case where the penalty imposed by the trial court is clear and definite. While the judgment is brief, it contains the finding that the accused is guilty of the offense charged. Moreover, failure to make findings upon the facts does not necessarily require a reversal, if the facts found are sufficient to support the judgment. (*Pastor vs. Gaspar*, 2 Phil., 592.)

Although both the principal and the additional penalty for habitual delinquency are less severe under the Revised Penal Code than under the laws in force when the crime was committed (vide art. 309, No. 4, Revised Penal Code as against art. 518, No. 4, Penal Code; and art. 62, rule 5, subdivision (a), Revised Penal Code as against Act No. 3586), still, inasmuch as the defendant is an habitual criminal and therefore does not come under the favorable provisions of article 22 of the new Penal Code, there must be applied to the defendant the penal laws in force when he committed the crime.

We agree with the Attorney-General's recommendation as to the proper penalty to be imposed upon the appellant.

For the crime here prosecuted, which is defined and penalized in article 518, No. 4 of the Penal Code in force at the time it was committed, as it was amended by Act No. 3244, in connection with article 520 of said Code, the appellant deserves the medium degree of the corresponding penalty, in view of the absence of any modifying circumstance.

And for the habitual criminality, consisting in two rather than three prior convictions, considering two of them as one in the light of the ruling set forth in *People vs. De la Cruz* (G. R. No. 33786), there must be imposed upon the appellant the additional penalty of three to nine years' imprisonment.

Wherefore, the judgment appealed from is modified, the appellant being sentenced to four years, two months, and one day of prision correccional, and three years' additional imprisonment for his habitual delinquency, together with the costs of both instances. So ordered.

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

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