

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO SORIANO Y SISON, DEFENDANT AND APPELLANT.

G. R. No. 35346. September 10, 1931

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

Pedro Soriano y Sison was charged in the Court of First Instance of Manila with the crime of frustrated theft committed as follows, to wit:

"That on or about the 6th day of March, 1931, in the City of Manila, Philippine Islands, the said accused willfully, unlawfully, and feloniously, with intent of gain and without the consent of the owner thereof, took and was in the act of carrying away the fighting rooster valued at P15 belonging to Antonio Borja, thus performing all the acts of execution which should produce the crime of theft as a consequence, but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, the timely arrival of the said Antonio Borja, who having surprised the said accused in the criminal act caused the accused to let loose the said rooster and to leave the same in the premises of the said owner.

"That the said accused is a habitual criminal within the purview of Act No. 3586, he having previously been convicted by final judgments of competent courts seven (7) times of the said crime of theft and once (1) of attempted robbery within a period of ten (10) years from the date of his last conviction on June 9, 1924."

After the hearing, during which the defendant had the benefit of counsel, he was found guilty of the crime of attempted theft, and was sentenced to pay a fine of 325 pesetas or P65, with subsidiary imprisonment in case of insolvency, and to pay the costs ; he was further sentenced to the additional penalty of twenty-one years' imprisonment as an habitual criminal in accordance with subsection (d) of Act No. 3586. The defendant appealed.

The record shows that in the early morning of March 6, 1931, the aforementioned appellant went to the veranda of the complainant, Antonio Borja, and tried to carry away his game cock; he was untying the cock with the evident intent of taking it away, when Borja approached and foiled his attempt to steal it. When the appellant became aware of Borja's presence, he let go of the cock and ran away, with Borja and one Aquino in pursuit; he was finally caught and arrested by policeman Arcadio Rivero who had also appeared upon the scene and assisted in the capture of the appellant.

The appellant has been seven times convicted of the crime of theft and once of attempted robbery, his last two convictions having taken place on June 9, 1924, within ten years immediately preceding his conviction in the instant case.

The defense raises two questions, one of fact and the other of law. The first is that the evidence is not sufficient to sustain a conviction of the crime of which he has been found guilty. The facts, as established by the evidence, fully support the finding of the defendant's guilt. The second question is that the Law on Habitual Delinquency is unconstitutional as being ex post facto, discriminatory, and imposes a double penalty for the same offense. Not

one of these contentions is supported by the law. We have already held in *People vs. Sierra* (G. R. No. 28516, April 21, 1928)¹; *People vs. Ortezueta* (51 Phil., 857); *People vs. Madrano* (53 Phil., 860) ; and *People vs. Montera* (55 Phil., 933), that the law in question is valid and constitutional and suffers from none of the defects attributed to it by the defense; and in the case of *People vs. Abuyen* (52 Phil., 722), it was further held that the said law is applicable to both consummated and frustrated or attempted crimes.

The judgment appealed from being in accordance with the law, it is hereby affirmed in its entirety, with costs against the appellant. So ordered.

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

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