

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MELCHOR ALCARAZ Y TANYAG (ALIAS MELCHOR ALCAZAR), DEFENDANT AND APPELLANT.

G.R. No. 35762. February 13, 1932

Ponente: MALCOLM, J.

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MALCOLM, J.:

On May 6, 1931, Melchor Alcaraz stole from the tienda of Haw Paw in the City of Manila an imitation concha necklace valued at P0.25. Alcaraz was caught in the felonious act by the policeman Bolado and the trinket found in the possession of Alcaraz was identified as belonging to the tienda by Haw Paw. Thereafter, Alcaraz was prosecuted for the crime of qualified theft and as an habitual delinquent. At the trial the accused admitted to three previous convictions for the crime of theft committed within a period of ten years prior to 1931, and the records of the police department of the City of Manila showed twelve convictions to the credit of the accused, beginning in 1919, when the accused must have been a youthful offender, and ending on June 27, 1929, when he was released from prison. Convicted in the municipal court of the City of Manila which clearly had jurisdiction of the offense, and again in the Court of First Instance of Manila, under the circumstances of the case, the guilt of the accused can admit of no doubt, and the only question for determination relates to the imposition of the appropriate penalty.

When the theft was committed and when the decisions of the trial courts were handed down, the Spanish Penal Code and the Habitual Delinquent Laws, Acts Nos. 3397 and 3586, were effective and were naturally applied to the case. The Revised Penal Code took effect on January 1, 1932, just before the case was submitted for decision in this court. The latter Code expressly repealed the Spanish Penal Code and the two recidivist laws. Article 366 of the Revised Penal Code specifically provided that "without prejudice to the provisions contained in article 22 of this Code, felonies and misdemeanors, committed prior to the date of effectiveness of this Code shall be punished in accordance with the Code or Acts in force at the time of their commission." Article 22 hereinbefore mentioned provided: "Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same." With these provisions of the new law in mind, we find the present provisions for the crime of theft and habitual delinquency more favorable to the accused than were provisions on the same subjects in the Spanish Penal Code and the Habitual Delinquent Laws. The question is, should the controlling provisions of the Spanish Penal Code and the ancillary laws pertaining to habitual delinquency be applied, or should the provisions on the same topics to be found in the Revised Penal Code be applied.

On examination, it will be noted that article 366 of the Revised Penal Code contains an exception to the rule when it begins with the clause "without prejudice to the provisions contained in article 22 of this Code." In general, therefore, this court will give retroactive effect to the provisions of the penal laws including the Revised Penal Code in so far as they favor the person guilty of a felony, in all pending cases. But the exception, article 22 of the Revised Penal Code, in turn, contains an exception when there is introduced the clause "who is not a habitual

criminal, as this term is defined in rule 5 of article 62 of this Code." This innovation means that the habitual delinquent is excepted from the benefits to be derived from the provisions of article 22 of the Revised Penal Code.

In accordance, therefore, with the Spanish Penal Code and the Habitual Delinquent Laws, the accused should be sentenced to one year and one day, presidio correctional, with the accessories of the law, and as a habitual delinquent to ten years additional imprisonment. These penalties may appear extraordinarily severe and out of all proportion to the magnitude of the offense, which consisted simply in the unlawful misappropriation of an imitation necklace valued at P0.25, but as to this it is only for the courts to interpret and apply the law as they find it. Wherefore the judgment appealed from will be affirmed with the modifications above indicated, with the costs of all instances against the appellant.

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

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