

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ARCADIO TANYAQUIN Y RICO (ALIAS ARCADIO RICO), ET AL., DEFENDANTS. ARCADIO TANYAQUIN Y RICO (ALIAS ARCADIO RICO...

G. R. No. 37124. October 28, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal by the accused Arcadio Tanyaquin y Rico (alias Arcadio Rico) from the judgment of the Court of First Instance of Manila, finding him guilty of the crime of theft and sentencing him to four months and one day of arresto mayor, to pay the proportional part of the costs, to return the stolen articles to the respective owners, and, being an habitual delinquent, to suffer an additional penalty of ten years and one day of prison mayor.

In support of his appeal, the appellant assigns the following alleged errors committed by the trial court in its judgment, to wit:

"The lower court erred in not taking into account the mitigating circumstance of the appellant's having pleaded guilty of the crime charged; and in imposing upon him the penalty of four months and one day of arresto mayor, for the crime of theft with which he is charged in the information, and the additional penalty of ten years and one day of imprisonment, as an habitual criminal, instead of two months and one day of arresto mayor and eight years and one day of prison mayor, respectively."

With regard to the first assignment of error, the crime of theft committed and admitted by the accused is provided for in article 309, paragraph 4, of the Revised Penal Code, in connection with article 308 of the same Code, inasmuch as the amount is greater than P50 and less than P200, that is P160, which is the value of the articles stolen, and the penalty provided is arresto mayor in the medium degree to prison correccional in the minimum degree, or, two months and one day to two years and four months'. In fixing the penalty we must take into consideration that the defendant spontaneously pleaded guilty, which is a mitigating circumstance according to paragraph 7, article 13 of the Code, although it is set off by the aggravating circumstance of recidivism, according to paragraph 9, article 14 of the Code; for which reason the penalty must be imposed in the medium degree, or four months and one day to six months, as if there were no circumstance to modify the criminal liability, in accordance with paragraph No. 1, article 64, of the Revised Penal Code.

Inasmuch as the penalty of four months and one day of arresto mayor imposed by the trial court is within the medium degree of the penalty assigned by the law, the court did not commit the first error mentioned.

With reference to the second assignment of error, the appellant's criminal record shows that for the crimes of qualified theft and robbery committed from 1924 to 1926, the sentence was suspended in some and the criminal action in others, and he was ordered committed to the boys' reformatory in accordance with section 3 of Act No. 1438, which took effect on January 11, 1906, and section 3 of Act No. 3203, which took effect on December 3,

1924, for which reason the sentence in the former cannot be taken into account for the purpose of treating him as an habitual criminal according to the last paragraph of case 5 of article 62 of the Revised Penal Code, inasmuch as the sentences were suspended in them, and no sentence was imposed in the latter.

The only convictions that may be taken into consideration for the purpose of determining whether he is an habitual criminal are those of February 13, 1931, for simple theft, and February 14, 1931, for domestic theft, which must be regarded as only one conviction because the second was committed before he was convicted of the first. The convictions of November 13, 1931, and November 19, 1931, for qualified theft; of November 24, 1931, for theft; of December 5, 1931, for robbery, and of December 19, 1931, for simple theft, must be regarded as one conviction also for the same reason. Wherefore, only two convictions must be counted against him, the third being the subject matter of the present appeal, within the ten years following the last conviction. Consequently, the additional penalty to be imposed upon him must be that provided in subparagraph (a), paragraph 5, of article 62 cited above, which is prison correctional in the medium and maximum degrees, or two years, four months, and one day to six years.

The appellant contends, and the prosecution agrees, that in fixing the additional penalty provided in article 62, paragraph 5, of the Revised Penal Code for habitual delinquency, the circumstances modifying the criminal liability must be taken into account, and the rules prescribed in article 64, applied.

Both aggravating and mitigating circumstances are established in the Revised Penal Code for the purpose of increasing or decreasing the penalty to be imposed, according to the greater or lesser seriousness of the crime committed, either by itself or arising from the defendant's moral attributes. The generic aggravating and mitigating circumstances modifying the criminal liability for the offense being prosecuted having nothing to do with the habitualness, they cannot be taken into account to increase or decrease the additional penalty imposed for such habitual delinquency, as they had no influence whatever in the formation of said condition. Furthermore, if they were taken into account to aggravate the additional penalty, they should be considered twice, in fixing the penalty for the crime prosecuted, and in fixing the additional penalty, which the law does not authorize; consequently, it could not have been the intention of the legislator that mitigating and aggravating circumstances should be taken into account in fixing the degree in which the additional penalties provided for habitual criminal should be imposed, and which has been left to the sound judgment of the courts.

In view of the foregoing considerations, the additional penalties provided in paragraph 5, article 62 of the Revised Penal Code, must be imposed according to the sound judgment of the trial court without taking into account the modifying circumstances present in the commission of the crime last prosecuted.

In view of the circumstances of the case, we hold that the additional penalty of four years, nine months, and ten days of prison correctional must be imposed upon the herein accused-appellant.

By virtue whereof, the judgment appealed from is affirmed with reference to the principal penalty and its accessories, and modified with reference to the additional penalty, which is hereby reduced to four years, nine months, and ten days of prison correctional, with costs against the appellant. So ordered.

Malcolm, Ostrand, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

DISSENTING

AVACEÑA, C. J.,

I do not agree with the majority decision in this wherein it is held that the modifying circumstances present in the last crime should not be taken into account in fixing the additional penalty provided for habitual delinquency in article 62, No. 5, of the Revised Penal Code. In my opinion these circumstances should be taken into account, and the penalty applied in the proper degree, like the principal penalty.

Article 62, paragraph 5, provides an additional penalty for habitual delinquency, which is, according to the degrees of habitualness, prison correctional in the medium and maximum degrees, prison mayor in the minimum and medium degrees, and prison mayor in the maximum degree to reclusion temporal in the minimum. It will be noticed that these additional penalties are divisible and comprise two degrees each.

Article 65, in connection with article 64, provides that divisible penalties should be imposed in the proper degree, according to the circumstances modifying the criminal liability. The law does not in these provisions make any distinction between the principal penalty and the additional penalty, and the fact that it fixed the penalty in degrees indicates the intention that they should be applied in the same manner as the principal penalty.

The consideration that, if the modifying circumstances of the last crime are taken into account in the application of the additional penalty, they would be considered twice, would seem to have but little weight. The very act constituting the last crime is and must be considered twice in applying the principal penalty, and in imposing the additional penalty, inasmuch as the latter is not imposed only for the crimes formerly committed, but principally for the last crime. To take away the last crime, the additional penalty ceases to have a reason for existing.

Furthermore, if the additional penalty is to be imposed at the court's discretion, such discretion may only be exercised taking into account the circumstances of the act. As has been stated, the additional penalties consist of degrees and extend over a considerable period of time, and it would not be possible to determine in each case the specific penalty that should be imposed unless the circumstances of the act were considered, because otherwise there would be no basis for the use of this discretion. In such case the penalty would necessarily be arbitrary. No circumstance extraneous to the last crime could be allowed to guide the use of this discretion. Now, all the circumstances connected with the act must already have been considered in imposing the principal penalty: those modifying the criminal liability, in applying the penalty in the corresponding degree, and those which are not modifying, but in some way indicating the greater or lesser perversity of the culprit, to impose a greater or lesser penalty within the corresponding degree. If such circumstances could not be taken into account because they had already been considered in fixing the principal penalty, the reasonable use of the discretion in imposing the additional penalty would be impracticable.

Villamor, J.:

I concur in the opinion of Chief Justice Avanceña.

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