

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. RICARDO MELENDREZ Y NIETO ET AL., DEFENDANTS. RICARDO MELENDREZ Y NIETO, APPELLANT.

G.R. No. 39913. December 19, 1933

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The text of the information filed against Ricardo Melendrez y Nieto and Elias Martinez in this case, reads as follows:

"That on or about the 15th day of June, 1933, in the municipality of Pasay, Province of Rizal, Philippine Islands, within two and one-half (2½) miles from the limits of the City of Manila and within the jurisdiction of this court, the said accused conspiring together and helping each other willfully, unlawfully and feloniously forcibly broke open the door of the store located at No. 85 Cementina, Pasay, an inhabited house belonging to and occupied by Tin Bun Boc, and once inside the said store, with intent of gain and without the consent of the owner thereof, took, stole and carried away therefrom the following personal properties of the said Tin Bun Boc:

Money amounting to

P30.26

One (1) Elgin watch, gold plated and a gold-filled chain, valued at

25.00

One (1) Chinese ring, signet solid gold, valued at

13.50

One (1) buntal hat, valued at.

4.50

Nine (9) small packages of "Camel" cigarettes

1.35

Nine (9) small packages of "Chesterfield" cigarettes

1.26

Three (3) cans of Milkmaid, valued at

.81

Total

76.68

to the damage and prejudice of the said Tin Bun Boc in the total sum of seventy-six pesos and sixty-eight centavos (P76.68), Philippine currency.

"That the accused Ricardo Melendrez y Nieto is a habitual delinquent, he having been previously convicted by final judgment of competent courts twice of the crime of theft and once of the crime of estafa and having been last convicted of the crime of estafa on September 3, 1932."

On the date of the trial of this case, Elias Martinez had not yet been apprehended, for which reason only the other defendant Ricardo Melendrez y Nieto, who pleaded guilty to the charge, was arraigned. Whereupon, the court found him guilty of the crime charged in the information and sentenced him to eight years and one day of prision mayor, and to serve an additional penalty of six years and one day of prision mayor for being a habitual delinquent. From this judgment Ricardo Melendrez y Nieto appealed.

In this instance, counsel for the appellant contends that lack of instruction on the part of the appellant should be considered as a mitigating circumstance in the commission of the crime. However, aside from the fact that this court has repeatedly held in its various decisions that lack of instruction cannot be considered as a mitigating circumstance in crimes of robbery, the records of the case do not afford any basis on which to judge the degree of instruction of the appellant inasmuch as no evidence was taken relative thereto, he having pleaded guilty.

However, the fact that the appellant pleaded guilty upon arraignment is a mitigating circumstance which should be considered in his favor.

On the other hand, the fiscal contends that the aggravating circumstance of recidivism should be taken into account against the appellant. This claim of the fiscal is in accordance with the judgment rendered by this court in bane in the case of *People vs. Aguinaldo* (47 Phil., 728) while the old Penal Code was in force. But the enforcement of the Revised Penal Code has resulted in a difference of opinion regarding this point on the part of the members of this court. For this reason, after reviewing all the decisions affecting this matter, rendered by this court both in banc and in division, it is now held that the aggravating circumstance of recidivism should be taken into account in imposing the principal penalty in its corresponding degree, notwithstanding the fact that the defendant is also sentenced to suffer an additional penalty as a habitual delinquent.

The facts alleged in the information constitute the crime of robbery committed without the use of arms in an inhabited house, the value of the articles- taken being less than P250. In accordance with article 299 of the Revised Penal Code, the penalty prescribed for said crime is prision correccional in its medium degree. Inasmuch as there is a concurrence therein of one mitigating and one aggravating circumstance, this penalty should be imposed in its medium degree.

Wherefore, it being understood that the principal penalty imposed upon the appellant is two years, eleven months and eleven days, the judgment appealed from is hereby affirmed, in all other respects with costs. So ordered.

Street, Malcolm, Villa-Real, Hull, Vickers, Imperial, Butte, and Diaz, JJ., concur.

CONCURRING IN PART AND DISSENTING IN PART

ABAD SANTOS, J.:

I can not give my assent to the proposition that in the imposition of the penalty prescribed by law for the crime committed by the appellant, the aggravating circumstance of recidivism should be taken into consideration. The appellant is a habitual delinquent, and under our law and upon the facts of this particular case, recidivism is an inherent element of habitual delinquency.

Article 14, paragraph 9, of the Revised Penal Code, defines a recidivist as follows:

"A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code."

And article 62, paragraph 5 (c), of the same Code, defines a habitual delinquent as follows:

"For the purposes of this article, a person shall be deemed to be habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of robo, hurto, estafa, or falsificacion, he is found guilty of any of said crimes a third time or oftener."

It seems clear from the provisions of law above quoted that if, within a period of ten years from the date of his release or last conviction of the crime of robo, hurto, estafa, or falsificacion, a person be found guilty of the same crime for the second time, he would be a recidivist; and if he be found guilty for the third time or oftener, he would be deemed a habitual delinquent. The law determines the effect to be given to a second conviction, and it also determines the effect of a third, fourth, and fifth conviction. In imposing the penalty prescribed for the third, fourth or fifth conviction of any of the crimes mentioned, it seems to me beyond the purpose of the law to take again into consideration the legal effect of the previous, second conviction.

Except as above stated, I agree with the decision of the court.

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