

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSE NAVALES Y CALALANG (ALIAS JOSE N. CRUZ), DEFENDANT AND APPELLANT.

G. R. No. 40390. February 14, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

In this appeal, the appellant contends that it is discretionary on the part of this court to impose or not the additional penalty prescribed in article 62 of the Revised Penal Code upon a habitual delinquent.

From the evidence of record and the confession of guilt of the appellant, it appears that on August 11, 1933, he took a piece of ham valued at P3.20 in the Quinta Market of the City of Manila, without the knowledge and consent of Ong Siong, the owner thereof; that said appellant had already been convicted once of estafa and four times of theft; and that he finished serving his last sentence only on March 14, 1931, that is, scarcely two years and five months before the commission of the offense of which he pleaded guilty.

The appellant's contention is erroneous in view of the express and unequivocal provisions of said article 62 of the aforesaid Code. Said provisions enjoin that in all cases the habitual delinquent should be punished not only with the penalty prescribed for the offense of which he was last found guilty but also with the additional penalty prescribed therein, which penalty varies according to the circumstances and the number of times said delinquent has been convicted of any of the offenses therein enumerated. The only discretionary power granted by the law to the courts is to fix said additional penalty within the limits specified in the aforesaid article, taking into consideration all the facts and circumstances of each case. (People vs. Tanyaquin, 57 Phil., 426; and People vs. Chua Buan, p. 106, ante,)

According to paragraph (c) of rule 5 of said article 62 of the Revised Penal Code, the additional penalty which should be imposed upon the appellant, taking into consideration the fact that he is a recidivist for the sixth time and that he is furthermore a habitual delinquent, is prision mayor in its maximum period to reclusion temporal in its minimum period, that is, from ten years and one day of prision mayor to fourteen years and eight months of reclusion temporal.

Wherefore, taking into consideration the fact that the aggravating circumstance of recidivism, which was present in the commission of the crime of which the appellant has pleaded guilty, is compensated by the mitigating circumstance of a voluntary confession of guilt, the judgment appealed from should be as it is hereby modified, sentencing said appellant to two months and one day of arresto mayor with the corresponding accessory penalties (article 309, 6th case of the Revised Penal Code), instead of one month and one day of said, penalty, and being a habitual delinquent, to suffer the additional penalty of ten years and one day of prision mayor and to pay the costs. So ordered.

Street, Abad Santos, Imperial, and Butte, JJ., concur.

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