

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DOMINGO SIOJO Y MESINA, DEFENDANT AND APPELLANT.

G. R. No. 40468. March 03, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

The herein appellant, having been charged and convicted of theft of a watch valued at P8.25, was sentenced by the Court of First Instance of Manila, on September 18, 1933, to two months and one day of arresto mayor, with the corresponding accessory penalties, and to pay the costs of the proceedings, and furthermore to suffer the additional penalty of ten years and one day of prision mayor, being eight times a recidivist and at the same time a habitual delinquent. From this judgment the defendant appeals.

The evidence of record conclusively shows that on August 27, 1933, the appellant, having seen the Chinaman named Ang Hap place his wrist watch in a drawer in his store situated at 101 Juan Luna, Manila, and believing that the said Chinaman would not notice him as the former was busy washing his hands, opened the aforesaid drawer and took the wrist watch in question together with a bottle of sauce valued at P0.25, which was within his reach, and started to run away with the said articles. Ang Hap pursued the defendant as far as the China Bank, in which direction he was headed, but before the said defendant was overtaken, he threw the two articles in question into a receptacle for rubbish.

The evidence likewise shows, by the appellant's own admission, that he had already been convicted twice of estafa and five times of theft, and that he was last released from Bilibid on November 25, 1932. The appellant's testimony relative to his previous convictions appears from the following cross-examination of the said appellant taken at the trial, to wit:

"Q.

Is it not true that prior to this occasion you have many times been in Bilibid for theft and estafa?

—

A.

It is true that I was imprisoned, but, upon my release, I finally resolved to be good.

"Q.

Is it not true that your last release from Bilibid was on November 25, 1932?

—

A.

Yes, sir.

"Q.

Is it not true that you had been there at least twice for estafa?

—

A.

I admit that.

"Q.

And also five times for the crime of theft committed on different occasions?

—

A.

Yes, sir, it is true, but after I have been released from prison, I already behaved well."

If the above quoted testimony of the appellant were not sufficient to destroy his contention that he is not a habitual delinquent, the record affords additional proof thereof. The certificate of the said appellant's criminal record appearing on page 4 of the aforesaid record shows that in March, 1915, and in February, 1916, he was convicted of estafa; that on September 15, 1917, October 22, 1919, September 16, 1922, August 29, 1924, January 16, 1925, December 18, 1931, and December 17, 1932, he was also convicted of consummated and of attempted thefts; and that he was released from Bilibid only on March 29, 1933, scarcely five months before committing his last crime.

According to article 309, subsection 5, in connection with article 308 of the Revised Penal Code, the penalty, which the appellant deserves, is arresto mayor in its maximum period, and there being no other circumstance to be taken into consideration except that of recidivism, the above stated penalty should have been imposed upon him in its maximum period, that is, four months and one day to six months. By reason of his habitual delinquency and this being his tenth conviction of the same offense, he also deserves the additional penalty of prision mayor in its maximum period to reclusion temporal in its minimum period (from ten years and one day to fourteen years and eight months) prescribed in article 62, subsection 5, paragraph (c), of the Revised Penal Code.

Wherefore, the judgment appealed from is hereby modified in the sense that the penalty of two months and one day imposed therein be changed to four months and one day of arresto mayor and affirmed in all other respects, including the additional penalty of imprisonment, with costs against the appellant. So ordered.

Street, Villa-Real, Abad Santos, and Butte, JJ., concur.

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