

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CO CHANG, DEFENDANT AND APPELLANT.

G. R. No. 41308. August 09, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

The defendant and appellant was charged in the Court of First Instance of Manila with the crime of robbery in an inhabited house, committed as follows:

"That on or about the 18th day of November, 1933, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully and feloniously break into and enter house No. 411 Soler, Manila, the dwelling place of Catalino Ho and his family, by then and there forcibly opening the padlock of the principal door, which was then locked, by means of a piece of galvanized iron wire and once inside forcibly opened the lock wardrobe and after having thus opened the said wardrobe in the manner above set forth, the said accused willfully, unlawfully and feloniously, with intent of gain, took, stole and carried away without the consent of the respective owners, the following personal property belonging to:

"PACITA YAP

One (1) tan leather handbag, size 6" x 4", valued at.....

2.50

Containing 1"4 consisting of two P2 bills.....

4.00

One (1) gold Ultra wrist watch, rectangular shape, Arabic numbers on dial, with black ribbon wrist band, valued at....

40.00

One (1) gold lady's finger ring, with four (4) diamonds, valued at

30.00

One (1) pair of gold eyeglasses with bows celluloid with case, valued at.....

18.00

One (1) gold necklace with silver cross and other small

medals
 20.00
 One (1) gold bracelet for baby, valued at..... . 2.50
 One (1) finger ring, set with one blue Made' stone, valued at..
 6.00
 One (1) gold finger ring, set with one large pearl, valued at..
 5.00
 One (1) pair of a gold earrings, set with two diamonds
 each, valued at.....
 35.00

"RAMON HO Y. CHAN

One (1) navy bine coat, valued at.....
 10.00

"CATALINO HO

One (1) woolen light blue coat, double breasted, valued at....

P20.00

all of the total value of one hundred ninety-three pesos (f»193), to the damage and prejudice of the above-named owners, in the total sum of one hundred ninety-three pesos (V19B), Philippine currency,

"That, at the time of the commission of said offense, the said accused was a habitual delinquent, he having been previously convicted twice (2) of the crime of theft by virtue of final judgments rendered by competent courts, his last date of conviction being on September 2, 1930, and date of release therefor, on May 4, 1933."

The lower court found the defendant guilty, and in accordance with article 299 of the Revised Penal Code sentenced him to two years, eleven months, and eleven days of prision correccional, to return to Pacita Yap the pair of earrings and to Ramon Ho and Catalino Ho the two coats, or the stolen goods not recovered, and to suffer an additional penalty for being a habitual delinquent, in accordance with rule 5 of article 62 of the Revised Penal Code, of seven years, four months, and one day of prision mayor, and to pay the costs.

The appellant now alleges that the lower court erred:

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C.J.:QUISUMBING, J.:REYES, R.T., J.:SANDOVAL-GUTIERREZ, J.:Sirs/Mesdames:TINGA, J.:VELASCO JR., J.:YNARES-SANTIAGO, J.:GENTLEMEN:LEONARDO-DE CASTRO, J.:GentlemenVITUG, J.:BRION, J.:BELLOSILLO, J.:QUISUMBING, ACTING C.J.:MENDOZA, J.:ACTING, C.J.:QUISUMBING, Acting C.J.:PERALTA, J.:BERSAMIN, J.:DEL CASTILLO, J.:REGALA, J.:DE LEON, JR., J.:BENGZON, C.J.:CONCEPCION, J.:MAKALINTAL, J.:DIZON, J.:PADILLA, J.:MELO, J.:PARDO, J.:LABRADOR, J.:BARRERA, J.:BAUTISTA ANGELO, J.:PAREDES, J.:REYES, J.B.L., J.:NATIVIDAD, J.:GONZAGA-REYES, J.:DE LEON, J.:DEL CASTILLO, J.:BUENA, J.:KAPUNAN, J.:PARAS, C.J.:GUTIERREZ DAVID, J.:QUISUMBING, ACTING C.J.:ABAD, J.:BENGZON, J.:ENDENCIA, J.:MONTEMAYOR, J.:PADILLA, J.:PER CURIAM:CONCEPCION, C.J.:RUIZ CASTRO, J.:SMITH, J.:REYES, A., J.:BENGZON, ACTING C.J.:FELIX, J.:SANCHEZ, J.:ZALDIVAR. J.:BENGZON, J.P., J.:PERFECTO, J.:PARAS, J.:JUGO, J.:FERIA, J.:PABLO, J.:TUASON, J.:REYES, J.:MORAN, C.J.:PURISIMA, J.:WILLARD, J.:TORRES, J.:MAPA, J.:MCDONOUGH, J.:JOHNSON, J.:ARELLANO, C.J.:COOPER, J.:BRIONES, J.:HILADO, J.:TRENT, J.:DIAZ, J.:AVANCEÑA, C.J.:IMPERIAL, J.:ABAD SANTOS, J.:VILLA-REAL, J.:CARSON, J.:MORELAND, J.:LAUREL, J.:DE JOYA, J.:MORAN, J.:OZAETA, J.:BOCOBO, J.:VILLARAMA, JR., J.:JARANILLA, J.:HULL, J.:BUTTE, J.:MALCOLM, J.:RECTO, J.:GODDARD, J.:ARAULLO, J.:VICKERS, J.:LADD, J.:VICKERS, J.:STREET, J.:OSTRAND, J.:JOHNS, J.:ROMUALDEZ, J.:VILLAMOR, J.:PEREZ, J.:YULO. C.J.:AVANCEÑA, J.:FISHER, J.:PABLO, M.:MOIR, J.:CARPIO, ACTING C.J.:TRACEY, J.:VILLA-REAL J.:AVANCEÑA, C.J.:ARAULLO, C.J.:ELLIOTT, J.:HORRILLEN, M.:AVANCEÑA, J.:LOBINGIER, J.:BRIONES, M.:GOMEZ, J.:NARVASA, C.J.:HERMOSISIMA, JR., J.:FRANCISCO, J.:TORRES, JR., J.:J. STEVENS-ACTING CLERK OF COURTHORRILLEN, J.:V. ALBERT, CLERK, SUPREME COURT, P.I.DIOKNO, M.:PADILLA, M.:CRUZ, J.:NOCON, J.:FELICIANO, J.:

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"1. In finding the appellant responsible for the alleged loss of a 'par de pendientes' said to belong to Pacita Yap, and for the alleged loss of two coats said to belong to Ramon Ho and Catalino Ho, and for requiring the appellant to return the properties above mentioned to their alleged owners.

"2. In failing to find and consider, with respect to the charge of habitual delinquency in this case, the existence of one mitigating circumstance, that of voluntary confession of former conviction; and in imposing upon the appellant an additional penalty of seven (7) years, four months, and one (1) day of prision mayor, instead of only six (6) years and one (1) day of prision mayor, for appellant's being a habitual delinquent."

All the stolen articles were found in the possession of the appellant and recovered, except the pair of earrings and two coats mentioned in the first assignment of error. The evidence shows that when the accused jumped out of the window Ramon Ho cried "thief, thief!"; that Pascual Gatdula pursued and captured the defendant and brought him back to the house of the complaining witnesses within five or six minutes after the robbery was perpetrated. The articles now in question were not found on the person of the defendant, nor does it appear that the defendant had dropped them or thrown them away, and under these circumstances we are constrained to think that the evidence is insufficient to prove beyond a reasonable doubt that said articles were taken by the defendant, and the decision of the lower court is accordingly modified with respect thereto.

In the second assignment of error it is contended that as to the habitual delinquency the defendant was entitled to one mitigating circumstance because he voluntarily confessed his former convictions. There is clearly no merit in this contention. The seventh mitigating circumstance mentioned in article 13 of the Revised Penal Code is that the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

In the case at bar the defendant did not plead guilty or confess his guilt prior to the presentation of the evidence for the prosecution, but after the fiscal had presented his evidence as to the crime in question, the defendant admitted that he had been twice convicted as alleged in the information. Furthermore, we have held in the case of *People vs. Tanyaquin* (57 Phil, 426), that in imposing the penalty for habitual delinquency the trial judge is not bound by the usual rules respecting the mitigating and aggravating circumstances prescribed by the Code as to the principal penalty.

The defendant is a recidivist because of his prior convictions, and this fact must be taken into consideration in fixing the principal penalty as well as for the purpose of proving habitual delinquency. (*People vs. Melendrez*, 59 Phil., 154.)

The defendant is not entitled to the benefit of the Indeterminate Sentence Law, because he is a habitual delinquent.

The appellant is therefore sentenced to suffer a principal penalty of three years, six months, and eleven days of prision correccional, and an additional penalty of seven years, four months, and one day of prision mayor.

With the modifications herein above stated, the decision appealed from is affirmed, with the costs against the appellant.

Street, Abad Santos, Hull, and Diaz, JJ., concur.

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