

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ISABEL BINUYA ET AL., DEFENDANTS. CONCEPCION CAPALUNGAN, APPELLANT.

G.R. No. 41953. February 27, 1935

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Appellant was prosecuted for theft in the justice of the peace court of Laoag, Ilocos Norte. Having pleaded guilty, she was sentenced to one month and fifteen days of *arresto menor*. The judgment of conviction was rendered on November 20, 1933, and on the same date appellant was committed to the provincial jail. On December 4, 1933, she interposed an appeal to the Court of First Instance of Ilocos Norte, and was thereupon released on bail. In the latter court she again pleaded guilty, whereupon judgment was rendered which required her to pay a fine of twenty pesos, and to suffer subsidiary imprisonment in case of insolvency. Claiming that she was entitled to have credited against the subsidiary imprisonment thus imposed, the time she spent in the provincial jail from November 20 to December 4, 1933, appellant filed a motion in the court below for the purpose of having her claim recognized. From an order denying such motion, this appeal was taken.

Counsel for the appellant contends that article 29 of the Revised Penal Code is not applicable to this case, because the time spent by the appellant in the provincial jail was not preventive imprisonment. It may be added that appellant having been convicted of theft, she is not entitled to the benefit granted under said article in any case. Counsel, however, invokes the provision of the last paragraph of article 30 of the old Penal Code, and, in support of his view, cites the following authority:

"161. Por el Codigo anterior se establecia, que si por consecuencia del recurso de casaci6n se reducía la pena, la duracion de esta debia contarse desde que se hubiese publicado la sentencia anulada o casada. Y juzgamos que esto es lo que procede aunque el reformado guarda silencio acerca de este punto." (3 La Serna, Derecho Civil y Penal, 99.)

It will be noticed that the authority relied upon by appellant contemplates a case where an amendatory code was silent as to a point expressly covered by the original code. In such a situation, the applicable rule is that in the construction of penal statutes, repeal by implication is not favored. (U. S. vs. Reyes, 10 Phil., 423; U. S. vs. Academia, 10 Phil., 431; Nichols vs. Squires, 5 Pick. [Mass.], 167; People vs. Bussell, 59 Mich., 104; Teople vs. England, 91 Hun. [N. Y.], 152; 1 Lewis' Sutherland Statutory Construction, 2d edv 461; 5 Phil. Dig., 4208.) In the case before us-, however, the penal code now in force is a complete revision of the old one and the rule is that where a statute is revised, or a series of legislative acts on the same subject are revised and consolidated into one, all parts and provisions of the former act or acts, that are omitted from the revised act, are repealed. (1 Lewis' Sutherland Statutory Construction, 519; 59 C. J., 922, 923.) And what is more, article 367 of the Revised Penal Code expressly repeals the old Penal Code. It follows that the omission in the Revised Penal Code of the last paragraph of article 30 of the old Penal Code is fatal to appellant's contention.

The order appealed from is, therefore, affirmed with costs against the appellant. So ordered.

Avanceña, C.J., Street, Hull, and Vickers, JJ., concur.

Order affirmed.

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