

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANSELMO MORALES (ALIAS ARSENIO PABLO), DEFENDANT AND APPELLANT.

G.R. No. 42924. March 12, 1935

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Appellant was charged with the crime of estafa committed, according to the information, as follows:

"That on or about the 8th day of October, 1932, in the municipality of Mariquina, Province of Rizal, Philippine Islands, the said accused, Anselmo Morales (alias Arsenio Pablo), through false representations, that is, posing himself as a physician, diagnosed the ailment of one Remedios Suarez and induced, convinced, received and took from the latter the amount of P3 for which he pretended to purchase the necessary drug for the said Remedios Suarez, but the said accused, once in possession of the said amount, far from complying with his obligation to purchase and deliver to the offended party herein the medicine which he promised to buy, with intent to defraud, did then and there wilfully and feloniously, appropriate the said sum to his own personal use and benefit, to the damage and prejudice of the said Remedios Suarez in the aforesaid amount of P3.

"That the herein accused is a habitual delinquent under the provisions of article 62 of the Revised Penal Code, paragraph 5 (c), in that he has been five times convicted of the crime of estafa by virtue of final judgments handed down by competent courts, the last one herein complained of having been committed within the period of 10 years from the date of his last conviction"

Upon arraignment he pleaded guilty of the crime thus charged, and was sentenced to two months and one day of arresto mayor, to indemnify the offended party in the sum of P3, and to pay the costs. He was further sentenced to an additional penalty of ten years of prision mayor for habitual delinquency.

On this appeal the only question raised relates to the additional penalty imposed for habitual delinquency, counsel de oficio for the appellant contending that appellant's plea of guilty did not amount to an admission that he was a habitual delinquent.

While it is well settled that a plea of guilty admits all the material allegations in the information, including that of habitual delinquency, in the case before us the information failed to allege the date of appellant's last conviction or release. It simply averred that the crime herein complained of was "committed within the period of 10 years from the date of his last conviction". Apart from the fact that such averment is a mere conclusion of fact, the law specifically provides that a person shall be deemed a habitual delinquent if within a period of ten years from the date of his release or last conviction, he is found guilty of the crime of estafa a third time or oftener. It is thus clear that what is material is not the date of commission of the subsequent offense, but that of his conviction thereof, in relation to the date of his release or last conviction. As stated by this court in *People vs. Siojo* (G. R. No. 36835, 57 Phil., 1005), "it is true that there is an admission that the appellant had previously been convicted four times of the crime of theft, but there is no showing that the judgment appealed from was rendered within the period of ten

years from appellant's last conviction or from his last release." Moreover, the record shows that the five previous convictions of the appellant took place on the same day. Upon the authority of *People vs. Kaw Liong and Yu Siong* (57 Phil., 839); *People vs. Santiago* (55 Phil., 266) ; *People vs. De la Cruz* (G. R. No. 33786, promulgated February 7, 1931, not reported), and *People vs. Ventura* (56 Phil., 1), and others the said five convictions should be considered as only one conviction. It follows that the appellant can not be deemed a habitual delinquent, but only a recidivist.

The offense committed falls within the purview of article 315, subsection 2 (a), of the Revised Penal Code. The penalty prescribed is *arresto mayor* in its medium and maximum periods. Inasmuch as the aggravating circumstance of recidivism is offset by the mitigating circumstance of plea of guilty, the prescribed penalty should be imposed in its medium degree, that is, from three months and eleven days to four months and twenty days of *arresto mayor*. Appellant is therefore sentenced to three months and eleven days of *arresto mayor*, and to indemnify the offended party in the sum of P3, with subsidiary imprisonment in case of insolvency.

Modified as above indicated, the judgment appealed from is affirmed with costs de oflcio in this instance. So ordered.

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

Judgment modified.

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