

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. HONORATO ESPINA Y REAL, DEFENDANT AND APPELLANT.*G.R. No. 43556. December 18, 1935*

Ponente: AVANCEÑA, C.J.

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The appellant was charged in the lower court with the crime of theft of articles valued at P585.15 and, having pleaded guilty, was sentenced to six months and one day of prison correctional and, being a habitual delinquent, to an additional penalty of two years, four months and one day of prison correctional.

The principal penalty imposed by the court is not correct. The amount stolen is more than P200 but does not exceed P6,000 and, under article 309, subsection 3, of the Revised Penal Code, the penalty to be imposed should be prison correctional in its minimum and medium periods. Being a recidivist and having pleaded guilty, both circumstances should compensate each other and the penalty should be imposed in its medium period, that is, one year, eight months and twenty-one days. As the appellant is a habitual delinquent, this being his third conviction, the additional penalty of two years, four months and one day of prison correctional should also be imposed upon him.

The question whether, in imposing the additional penalty on the appellant as an habitual delinquent, recidivism, as an aggravating circumstance inherent in habitual delinquency, should still be taken into consideration in fixing the principal penalty, has already been expressly decided in the affirmative by this court in *People vs. Melendrez* (59 Phil., 154).

There is no doubt that the purpose of the law in imposing additional penalty on a habitual delinquent is to punish him more severely. However, the result would be otherwise if, for imposing the additional penalty, recidivism could not be considered as aggravating circumstance in fixing the principal penalty. This may be clearly understood from the following example.

An accused who has already been previously convicted twice of the crime of theft, having served the sentences imposed upon him commits, within ten years after service of his last sentence, the crime of robbery, inflicting on occasion thereof some of the physical injuries punished in subsection 1 of article 263 (article 294, subsection 2, of the Revised Penal Code). This crime is punished with reclusion temporal in its medium period to reclusion perpetua. Being a habitual delinquent, the penalty of two years, four months and one day of prison correctional should be imposed upon him in addition to the principal penalty. Without taking into consideration the aggravating circumstance of recidivism, the principal penalty to be imposed upon him would be seventeen years, four months and one day. Adding the additional to this principal penalty, the resulting penalty would be nineteen years, eight months and two days. However, if the additional penalty for habitual delinquency were not imposed, by imposing the principal penalty, taking into consideration the aggravating circumstance of recidivism, the penalty would be reclusion perpetua which is the maximum period of the penalty prescribed by law, or thirty

years, if he is pardoned thereafter.

Let us suppose that a mitigating circumstance was present in the foregoing example. If the aggravating circumstance of recidivism is not; to be taken into consideration for imposing the additional penalty for habitual delinquency, the mitigating circumstance would require that the penalty prescribed by law be imposed in its minimum period, or fourteen years, eight months and one day. Adding to this the additional penalty of two years, four months and one day, the penalty would be seventeen years and two days. If the additional penalty is not imposed and the aggravating circumstance of recidivism is taken into account, the latter would compensate the mitigating circumstance and the penalty should have to be imposed in its medium period, or seventeen years, four months and one day, which would be four months more severe.

Let us suppose that instead of one mitigating circumstance, two were present in this same example. Considering the aggravating circumstance of recidivism, it would have to be compensated by one mitigating circumstance, leaving another, and the penalty to be imposed would be the minimum period, or fourteen years, eight months and one day of reclusion temporal. If the aggravating circumstance of recidivism were not taken into consideration for imposing the additional penalty, the two mitigating circumstances would have to be taken into consideration and the penalty next lower in degree imposed in any of its periods, which may be the minimum, according to the circumstances of the case, or eight years and one day. Adding to this the additional penalty of two years, four months and two days, or two years, three months and twenty-nine days less.

Applying these examples to other cases of habitual delinquency, the result would, more or less, be the same.

According to this, if the theory counter to that adopted by this court in *People vs. Melendrez*, supra, were to be followed, the imposition of the additional penalty would make the penalty lighter, instead of more severe, contrary to the purpose of the law.

Wherefore, it being understood that the principal penalty imposed upon the appellant is one year, eight months and twenty-one days, the appealed judgment is affirmed in all other respects, with costs. So ordered.

Hull, and Vickers, JJ., concur.

CONCURRING

ABAD SANTOS, J.,

In *People vs. Melendrez* (59 Phil., 154), I expressed the view that the aggravating circumstance of recidivism should not be taken into consideration in fixing the penalty prescribed by law for the offense charged, where the accused is found by the court a habitual delinquent and sentenced accordingly, my reason being that in such a case recidivism is an inherent element of habitual delinquency. My view in that respect did not prevail, as the majority of the court held otherwise. While I still maintain the same opinion, I feel that I should concur in the decision in this case, in order not to embarrass the work of the court by causing the case to be submitted to the court in banc. When the appropriate time comes, however, I propose to renew my effort to have the majority of the court adopt the view which I consider sound and correct.

Recto, J., concurring:

I concur in the points of view expressed in this concurring opinion of Justice Abad Santos.

Judgment modified.

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