

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO MASONSON Y KATIGBAK (ALIAS CRISPIN GONZALO), DEFENDANT AND APPELLANT.

G. R. No. 44527. March 31, 1936

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The information filed in this case was as follows:

"The undersigned accuses Pedro Masonson y Katigbak (alias Crispin Gonzalo), of the crime of theft, committed as follows:

"That on or about the 6th day of August, 1935, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully and feloniously, with intent of gain and without the consent of the owner thereof, take, steal and carry away the following personal property belonging to Fausto Veloso, to wit:

One tan leather pocket book Containing

P3.00

One five-peso bill

5.00

Five one-peso bills

5.00

Two two-peso bills

4.00

Two fifty-centavo coins

1.00

Eight gold teeth of different size

102.00

to the damage and prejudice of the said owner in the total sum of one hundred twenty pesos (P120), Philippine currency.

"That the said accused is a habitual delinquent, having been convicted four times of a similar offense by virtue of final judgments rendered by competent courts, the date of the last said convictions being September 9, 1935."

The appellant having pleaded guilty upon arraignment, the court sentenced him to six months and one day of

prision correctional, to indemnify the offended party, Fausto Veloso, in the sum of P120, with the corresponding subsidiary imprisonment in case of insolvency, and also to the additional penalty of six years and one day of prision mayor, having considered him a habitual delinquent.

The court erred in imposing the additional penalty upon the appellant. The information does not allege sufficient facts whereby the appellant should be considered a habitual delinquent. Under the law (art. 62, subsec. 5, par. 5, of the Revised Penal Code), a person shall be deemed to be habitual delinquent " * * * if within a period of ten years from the date of his release or last conviction of the crimes of robo, hurto, estafa, or falsificacion, he is found guilty of any of said crimes a third time or oftener." The allegation in the information that the appellant was already convicted four times of similar crimes, is not sufficient to show that said crimes were precisely those enumerated by the law and for the conviction of which the appellant should be considered a habitual delinquent. The word similar has no legal definition in the Penal Code and it is too abstract in its general acceptance. There may be crimes similar in some sense to that charged in the present case, which are not those enumerated in the law, the conviction of which constitutes an element of habitual delinquency.

Aside from this, it appears in the information that the last of these former convictions was on September 9, 1935, and the crime charged was committed prior thereto, that is, on August 6th of said year. This court has already held in former cases that in order that former convictions may constitute an element of habitual delinquency, they must precede the commission of the crime charged (*People vs. Santiago*, 55 Phil., 266).

Discarding this last conviction of September 9, 1935, it appears that the information no longer contains any allegation of the date of the other three former convictions, and it cannot be stated whether they also were subsequent to the commission of the crime charged, or, if prior thereto, they were rendered more than ten years before the commission of the crime charged. In either case, there would be no habitual delinquency herein.

The Solicitor-General contends that if the allegations of the information relative to the former convictions of the appellant are insufficient to warrant his being declared a habitual delinquent, they are sufficient, at least, to constitute the aggravating circumstance of recidivism or reiteracion. This court does not agree to this proposition. In order that former convictions may constitute the circumstance of recidivism or reiteracion, they must arise from crimes prior to that charged, and there is no such allegation in the information.

The facts alleged in the information constitute the crime of theft punished in article 309, paragraph 4, of the Revised Penal Code, with the penalty of arresto mayor in its medium period to prision correctional in its minimum period. The appellant's plea of guilty upon arraignment should be taken into consideration as a mitigating circumstance, and as no aggravating circumstance was present, the penalty prescribed by law should be imposed in its minimum period.

Wherefore, modifying the appealed judgment, the appellant is sentenced to two months and one day of arresto mayor, and, eliminating the additional penalty imposed, it is affirmed in all other respects, with costs. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Recto, and Laurel, JJ., concur.

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