

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ANASTASIA BARABASA, DEFENDANT AND APPELLANT.***G. R. No. 44933. June 30, 1937*

Ponente: IMPERIAL, J.

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An information was filed in the municipal court of the City of Manila against the accused charging her with violation of section 822 of the Revised Ordinances. It was alleged that on November 5, 1935, and prior to said date, the accused, with no visible means of support or lawful employment, habitually and idly loitered about cafes, drinking saloons and hotels without being able to justify her presence therein; having been formerly convicted twice of vagrancy by virtue of final judgments rendered by competent courts. After the trial, she was found guilty and sentenced to four months of prison, a fine of P100, with subsidiary imprisonment in case of insolvency, and to pay the costs. She appealed to the Court of First Instance where, after trial, she was again convicted and sentenced to three months' imprisonment, with costs.

It has been proven that on the night of November 1, 1935, the accused was in the Boston Hotel with an American and when policeman Castillo asked her occupation, she begged forgiveness, adding that she had no other means of support to maintain her children and her mother; on the night of the 3d of said month, she took a taxi with an American from the, Metropole Hotel to the Roast Bar; she later went with another American from the Roast Bar to the Stagg Bar, and upon being arrested by policeman Manikis, she begged forgiveness, whereupon Manikis confined himself to admonishing her; on the morning of the following day, November 4, she was also at the Washington Hotel with another American, and about 9 o'clock on the night of the 5th, the date specified in the information, the accused went from one cafe to another along P. Gomez Street in the company of American soldiers with whom she chatted, inviting them to spend a pleasant time and sitting on their lap; she later left with an American in a taxi, and returned with him afterwards.

The defense argues that the accused cannot be convicted of vagrancy on the ground that there is no evidence that she had no visible means of support, and that the appealed sentence is erroneous because the court deprived her of the testimony of Sergeant L. R. Sneider who was offered as a witness to establish the fact that she was receiving a monthly pension of P25 from him.

I. Section 822 of the Revised Ordinances of the City of Manila, under which the information was filed, describes eleven kinds of vagrancy, one such kind being to habitually and idly loiter about, or wander abroad, visiting or staying about hotels, cafes, drinking saloons, houses of ill repute, gambling houses, railroad depots, wharves, public waiting rooms and parks. Under section 822, the lack of a visible means of support is not an essential element in this kind of vagrancy which is the violation committed by the accused and, therefore, there is no necessity of establishing it. In the case of *United States vs. Giner Cruz* (38 Phil., 677), this court held that said section 822 considers a pimp as a vagrant, and there is no necessity of proving that the accused lacks visible means of support because it is not an essential element of the infraction. It having been proven that on said occasions the accused habitually and idly loitered about the places above-stated, behaving as a woman of ill

repute and catering to soldiers' pleasures at night, this court is of the opinion that she is guilty-of vagrancy under section 822 of the Revised Ordinances of the City of Manila. The ruling laid down in the cases of *United States vs. Hart* (26 Phil., 149), and *People vs. Magtaas and Manalad* (G. R. No; 36944, 57 Phil., 993), cited by the defense, is not applicable to the present case on the ground that the accused therein were prosecuted and convicted under Act No. 519 and the infractions imputed to them, as stated, required that the accused had no visible means of support.

II. At the end of the testimony of the accused her attorney signified to the court his intention to present Sergeant Sneider to testify that he was really paying her a monthly pension of P25. The evidence undoubtedly tended to corroborate the testimony of the accused. The court refused to postpone the trial to the following day, when the witness would be able to appear and testify, on the ground that the evidence was immaterial and unnecessary. The defense assigns this resolution of the court as one of the errors committed in the decision. This court holds that suppression of said evidence did not deprive the accused of any substantial right. The evidence was merely cumulative and, as stated by the court, it was immaterial and unnecessary because it would not have affected the result of the case in the least.

In view of the foregoing, and there being none of the errors attributed thereto in the appealed sentence, it is affirmed, with the costs of this instance to the accused-appellant. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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