

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND AP-
PELLEE, VS. BLENVENLDO VENUS, DEFENDANT AND APPELLANT.***G. R. No. 45141. September 15, 1936*

Ponente: LAUREL, J.

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On March 16, 1936, the prosecuting attorney of the City of Manila filed with the Court of First Instance of that city an information charging the defendant, Bienvenido Venus, with the crime of robbery in an inhabited house. The information alleges that on or about the 9th day of March, 1936, the defendant entered the house then occupied by Zoila de Talaban at 1328 M. Natividad Street, Manila, Philippines, by breaking the hasp of the door of said house which was secured by a padlock and once inside took and carried away, with the intent of gain and without the consent of the owner thereof, various personal properties belonging to Zoila de Talaban of the total value of one hundred and eighty-eight pesos and fifty centavos. The information further alleges "that the said accused is a habitual delinquent, he having previously been convicted by final judgment rendered by a competent court, once for the crime of attempted robbery in an inhabited house and once for theft, the date of his last conviction being November 14, 1934."

The accused, in the court below, pleaded guilty to the information whereupon the trial court rendered judgment imposing upon him an indeterminate prison sentence ranging from four months and one day of arresto mayor to three years, three months and twenty-one days of prision correccional, with the accessory penalties provided by law, to indemnify the complainant Zoila de Talaban in the amount of P97.60, which represents the value of the personal properties not recovered from the accused, with subsidiary imprisonment in case of insolvency, and to pay the costs. The articles recovered from the accused were ordered returned to the complainant. From this decision, the defendant has appealed to this court. The trial court, in imposing the prison sentence upon the defendant-appellant, took into account the aggravating circumstance of recidivism because the date of the conviction of the accused for the crime of theft is specified in the information, but it refused to consider the defendant-appellant a habitual delinquent under the provisions of article 62 of the Revised Penal Code for the following reason:

"El Juzgado, sin embargo, considera que la alegacion de delincuencia habitual es deficiente, y sobre la misma no puede ser condenado el acusado con una pena adicional correspondiente a la alegacion de habitualidad, pues las palabras 'That the said accused is a habitual delinquent, he having previously been convicted by final judgments rendered by a competent court, once for the crime of attempted robbery in an inhabited house and once for theft, the date of his last conviction being November 14, 1934', no especifican cuando cometio el delito de tentativa de robo y cuando fue condenado por dicho delito."

There is no question as to the guilt of the defendants appellant, Bienvenido Venus. The only question before us now refers to the propriety of the penalty imposed upon him. Counsel de oficio for the appellant recommends confirmation of the decision of the lower court. The Solicitor-General, however, recommends that the defendant-appellant be also adjudged a habitual delinquent.

We are of the opinion that the circumstance of multi-recidivism, known in our law as habitual delinquency, can not be taken into account in the present case because of the insufficiency of the allegation on this point in the city fiscal's information. In the recent case of *People vs. Masonson* (G. R. No. 44527, promulgated March 31, 1936, p. 92, ante), the allegation in the information as to habitual delinquency was as follows: "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 of said convictions being September 9, 1935." This court, speaking through its Chief Justice, said: "* * * 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 correctly asserts that the information in the case before us, unlike that in the case of *Masonson*, specifies the particular offense (attempted robbery in an inhabited house) for which the defendant-appellant was alleged to have previously been convicted and also the date of the last conviction for theft which occurred prior to the date of the commission of the offense now charged. But this does not make the information sufficient in law for it fails to specify the date of the conviction of the accused for the crime of attempted robbery. For all we know, the two previous convictions for attempted robbery in an inhabited house and theft may have taken place on the same date (November 14, 1934) or on two different dates so close together as to warrant the court in considering the two convictions as only one for the purposes of the application of the habitual delinquency law (*People vs. Santiago* [1930], 55 Phil., 266; *People vs. De la Cruz*, G. R. No. 33786, promulgated February 7, 1931, not reported; *People vs. Ventura* [1931], 56 Phil., 1; *Paguntalan vs. Director of Prisons* [1932], 57 Phil., 140; *People vs. Kaw Liong and Yu Siong* [1933], 57 Phil., 839; *People vs. Morales*, 61 Phil., 222; *People vs. Artigas*, G. R. No. 43901, promulgated November 27, 1935 [62 Phil., 972]; *People vs. De la Rama*, G. R. No. 43744, November 27, 1935 [62 Phil., 972]). Upon the other hand, it may happen that a person accused of robo, hurto, estafa or falsificacion may have been convicted of any of said offenses after the commission of the crime with which he is charged. We have already held that previous convictions in order to be considered for the purpose of imposing the additional penalty for habitual delinquency, must precede the commission of the crime charged. (*People vs. Santiago*, supra; *People vs. Masonson*, supra.) Other instances may be mentioned but those given suffice to demonstrate the necessity of charging the existence of habitual delinquency with sufficient clearness and certainty to enable the courts to properly apply the provisions of our law on the subject.

It is therefore urged upon prosecuting attorneys that in the prosecution of cases of this nature, they should not content themselves with a general averment of habitual delinquency but should specify the dates (1) of the commission of the previous crimes, (2) of the last conviction or release, and (3) of the other previous convictions or release of the accused. Informations filed in these cases should be sufficiently clear and specific to avoid the

improper imposition of the additional penalty on a plea of guilty to a general allegation of habitual delinquency, no less than the frequency with which hardened criminals escape the imposition of the deserved additional penalty provided for by law. As early as 1923, this court, in the case of *People vs. Nayco* (45 Phil., 167), had occasion to refuse the imposition of the additional penalty provided by law for habitual delinquents on account of the insufficiency of the allegations in the information. In that case of *Nayco*, the information alleged that "the herein accused has heretofore been twice convicted of theft "in the municipal court, by virtue of final judgment". This court said:

"For want of an allegation in the information in the instant case to the effect that the defendant was an habitual delinquent, under the terms and provisions of Act No. 3062, all of the sentence under that Act is error, and must be eliminated from the judgment."

In the case of *People vs. Dominguez* (G. R. No. 44221, promulgated January 8, 1936 [62 Phil., 975]), the information alleged "That the said accused has already been convicted eleven (11) times of the crime of estafa and eight (8) times of the crime of theft, by virtue of final judgments rendered by competent courts." This court held that:

"The allegation in the information that the accused has already been convicted eleven times of estafa and eight times of theft by virtue of final judgments rendered by competent courts is not sufficient on a plea of guilty to sustain a finding that the accused is a habitual delinquent. It is provided in article 62 of the Revised Penal Code that a person shall be deemed to be a 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 falsification, he is found guilty of said crimes a third time or oftener. In the case before us there is no allegation as to the date of the last conviction or release of the defendant, or as to the date of his other convictions or when the crimes for which he was convicted were committed. It is important whenever the evidence warrants it that prosecuting attorneys should take pains to allege and prove the facts necessary to constitute habitual delinquency. In the present case the accused, a criminal by profession, who has already been convicted eleven times of estafa and eight times of theft, cannot be declared a habitual delinquent because of the insufficient allegations of the information. After a short term in prison, he will be free to prey again upon society. (*People vs. Santiago*, 55 Phil., 266; *People vs. De la Cruz*, G. R. No. 33786, promulgated February 7, 1931, not reported; *People vs. Morales*, 61 Phil., 222.)"

In the case of *People vs. Morales* (61 Phil., 222), the information alleged "That the herein accused is a habitual delinquent under the provisions of article 62 of the Revised Penal Code, paragraph 6 (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 ten years from the date of his last conviction." This court held that:

"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 the appellant's last conviction or release. It simply averred that the crime herein complained of was 'committed within the period of ten 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.' * * *" (See also *People vs. Ilanan* [C. A.] 34 Off. Gaz., 1238.)

The defendant and appellant in the case at bar can not be considered a habitual delinquent but only a recidivist. As the plea of guilty offsets the aggravating circumstance of recidivism, the penalty provided for in article 299 of the Revised Penal Code for the crime of robbery in an inhabited house by means of unlawful entry where the criminal is not armed and the value of the property stolen does not exceed 250 pesos, should be imposed in the medium degree in accordance with the provisions of article 64 of the Revised Penal Code. Applying the provisions of the Indeterminate Sentence Law (People vs. Co Pao [1934], 58 Phil., 545; People vs. Gayrama [1934], 60 Phil., 796), the principal penalty imposed by the court a quo is modified and instead the penalty of six months and one day to two years, eleven months and eleven days of prision correctional, is hereby imposed upon the defendant-appellant, Bienvenido Venus. With this only modification, the judgment of the lower court is affirmed, with costs against the appellant in both instances. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Recto, JJ., concur.

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