

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BRUNO OCBINA Y DE LOS SANTOS (ALIAS BRUNO OCVINA) AND MANUEL PAMERO, DEFENDANTS. BRUNO OCBINA Y DE LOS SANTOS (...)

G. R. No. 45178. September 30, 1936

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Appellant was prosecuted in the Court of First Instance of Manila for the crime of theft. Upon his plea of guilty, he was sentenced to suffer four months and one day of *arresto mayor*, and an additional penalty of six years and one day of *prision mayor* for habitual delinquency. In support of this appeal counsel *de oficio* for the appellant contends that the lower court erred (1) in not advising the appellant of his right to have counsel; and (2) in sentencing him to suffer the penalty above indicated

1. In *United States vs. Escalante* (36 Phil., 743), this court held that the failure of the record to disclose affirmatively that the trial judge advised the accused of his right to have counsel is not sufficient ground to reverse a judgment of conviction. The reason for this doctrine, is that the trial court must be presumed to have complied with the procedure prescribed by law for the hearing and trial of cases; and that such a presumption can only be overcome by an affirmative showing to the contrary. (*U. S. vs. Labial and Abuso*, 27 Phil., 82; *People vs. Del Rosario*, G. R. No. 44239, promulgated January 8, 1936 [62 Phil., 975].) In the instant case, there is no affirmative showing that the appellant was not advised of his right to have counsel. We, therefore, find no merit in the first error assigned by counsel for the appellant.

2. Although the point is not discussed in the brief of counsel for the appellant, the second assignment of error is sufficiently broad to raise the question of whether the additional penalty of six years and one day of *prision mayor* for habitual delinquency was properly imposed. The only allegation in the information concerning this matter is the following:

"That the accused Bruno Ocbina y De los Santos (alias Bruno Ocvina) is an habitual delinquent, he having already been convicted three (3) times of the crime of theft, by virtue of final judgments of a competent court, the date of his last conviction being December 13, 1935."

In the recent case of *People vs. Venus* (G. R. No. 45141, p. 435, ante), this court held that an allegation of this nature in an information was too general and therefore insufficient to sustain a conviction for habitual delinquency upon a plea of guilty. It follows that the additional penalty of six years and one day of *prision mayor* imposed on the appellant must be eliminated from the judgment below.

Modified as above indicated the judgment is affirmed with costs *de oficio* in this instance. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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