

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BASILIO DE JESUS Y JAVIER, DEFENDANT AND APPELLANT.

G. R. No. 45198. October 31, 1936

Ponente: DIAZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-45198/>

DIAZ, J.:

Basilio de Jesus y Javier was convicted by the Court of First Instance of Manila in criminal case No. 52270 of said court, of the theft of an umbrella and a buri hat valued at P2.65 committed, according to the information, on April 28, 1936. He was therein sentenced to one month and one day of *arresto mayor* with the accessory penalties, to indemnify Francisco Liwanag in the sum of P2.50 representing the value of the umbrella which was not recovered, and being a habitual delinquent, the additional penalty of two years, four months and one day of *prision correccional* with the corresponding accessory penalties was also imposed upon him in conformity with the provisions of subsection 5, paragraph (a), of article 62 of the Revised Penal Code. Not agreeing with said penalties he appealed from the sentence undoubtedly for the review of his case.

The appellant's counsel *de officio* in this instance, considering the appealed sentence in accordance with law, recommends the affirmance thereof in all respects in his short brief.

Due to the amount involved, the theft imputed to the appellant is punishable with *arresto mayor* in its minimum and medium periods the duration of which is from one month and one day to four months (art. 309, subsection 6, Revised Penal Code); and the minimum period of said penalty is from one month and one day to two months. It appears therefrom that the penalty questioned by the appellant is the minimum of the minimum period, as no other less penalty could have been imposed upon him because said penalty in itself already constitutes the minimum limit under the law. The reasons which prompted the lower court to be lenient with the appellant were undoubtedly his voluntary confession before the prosecution presented its evidence, which constitutes a mitigating circumstance (art. 13, subsection 7, Revised Penal Code), and the apparent absence of all allegation in the information of some aggravating circumstance that may compensate said mitigating circumstance (art. 63, rule 1, Revised Penal Code).

The imposition of the additional penalty of two years, four months and one day upon the appellant is justified by his own admission of guilt because the rule is well settled in this jurisdiction that when one pleads guilty of the crime imputed to him in an information, it is understood that he admits all the material facts alleged therein (*U. S. vs. Barba*, 29 Phil., 206; *U. S. vs. Santiago*, 35 Phil., 20), not excluding those alleging his former convictions of other crimes (*U. S. vs. Burlado*, 42 Phil., 72) ; and in the information filed against the appellant, it was alleged:

"That the said accused is a habitual delinquent within the purview of rule 5 of article 62 of the Revised Penal Code, he having been convicted by final judgments of competent courts of the following crimes: On January 4, 1933, he was convicted of theft and sentenced to one month and one day of imprisonment, and on November 13, 1935, he was convicted of qualified theft and sentenced to serve two months and one day of imprisonment,

the date of his last release being January 10, 1936."

The Solicitor-General, taking advantage of the allegation in the information that the appellant is a habitual delinquent, recommends that instead of affirming his principal penalty of one month and one day of arresto mayor, it be increased to the minimum of the medium period of that prescribed by law for his crime, or two months and one day of arresto mayor, considering the aggravating circumstance of recidivism established but compensated by the mitigating circumstance of voluntary confession. His argument appears to be as follows: Habitual delinquency necessarily implies recidivism or former conviction, at least more than once. The appellant having admitted in his confession that he is a habitual delinquent for having committed theft for the third time within the period prescribed by law, he must necessarily be considered a recidivist. This naturally raises the question whether or not in this case the circumstance of recidivism can be and must be twice taken into consideration against the appellant, first as an aggravating circumstance although compensated by another mitigating circumstance, and second as a qualifying circumstance or one inherent, as the case may be, in habitual delinquency. If such an opinion were sustained, would not an injustice be committed against the appellant by imposing two penalties upon him, the principal and the additional, in a period which must be determined by taking into consideration one and the same fact or circumstance, which is recidivism? There is no express provision, of law prohibiting it. On the contrary, as to the principal penalty, there is the rule that in cases in which the penalty prescribed by law contains three periods, the courts must take into consideration, in the application of said penalty, the aggravating or mitigating circumstances established at the trial if they do not appear to be compensated by other circumstances; and there is also the rule that when only an aggravating circumstance is present the former, that is the principal penalty, must be imposed in its maximum period (art 64, Revised Penal Code) ; and in *People vs. Aguinaldo* (47 Phil., 728), this court has stated, and it is reiterated in *People vs. Melendrez* (59 Phil., 154), that the aggravating circumstance of recidivism, even in cases of habitual delinquency, should be taken into consideration in the application of the principal penalty in the corresponding period.

As to the additional penalty, if we must rely upon the spirit and letter of the law, we would say that the purpose of the latter in establishing it was to prevent those who for the second time or more commit the crimes enumerated in the last paragraph of article 62 of the Revised Penal Code from relapsing thereafter, at least during the period fixed thereby, as if to tell them: "If you relapse, the penalty corresponding to your last offense will be imposed upon you plus another additional penalty ranging from prision correctional in its medium and maximum periods to prision mayor in its maximum period and reclusion temporal in its minimum period, according to your recidivism, that is, the third, fourth, fifth or more times."

When the law has prescribed the additional penalty for habitual delinquency in a manner susceptible of division into periods and has enumerated it among the penalties that may be imposed by incorporating it into the Revised Penal Code, it was for no other purpose than that all the circumstances present in every case be taken into consideration in order to avoid arbitrariness in the determination of the period in which said penalty should be imposed. It would be arbitrary, in the absence of any circumstance, to impose the maximum of the additional penalty upon a habitual delinquent, as it would also be arbitrary to impose the minimum thereof upon him when there are circumstances justifying its application in the maximum period.

We should not lose sight of the fact that when the Legislature incorporated the provision relative to habitual delinquency into the Revised Penal Code, it was aware—this, at least, is the presumption of law—that recidivism was, as it continues to be in the majority of cases to this date, an aggravating circumstance the effect of which, as the name itself implies, is to aggravate the criminal responsibility of the delinquent. But unlike other circumstances, as treachery, evident premeditation, sex, craft, relationship, public position, dwelling, not to mention several others so as not to be tedious, which may be aggravating, qualifying and inherent as the case may

be, recidivism is and can be nothing else but an aggravating circumstance. This is the general rule; but as such it certainly is not without its exception as other general rules. The exception is found in the case of habitual delinquency, as recidivism is precisely one of those that constitute and give it existence, the other being former conviction, but it is not necessary that both be present at the same time.

Treachery, evident premeditation and relationship are aggravating circumstances in crimes against persons and when one of them is present, for instance, in a case of homicide, the crime committed ceases to be homicide and becomes murder or parricide, as the case may be. In such cases, that of the said three circumstances which has raised the crime committed from the category of homicide to that of murder or parricide, ceases to be an aggravating circumstance to become a qualifying circumstance and, once accepted as such, it cannot, by virtue of the legal maxim *non bis in idem* be considered as an aggravating circumstance at the same time (U. S. vs. Estopia, 28 Phil., 97; U. S. vs. Vitug, 17 Phil., 1; Decision of the Supreme Court of Spain of November 13, 1871). So must recidivism be considered in habitual delinquency. We have taken it into consideration in imposing the principal penalty and we cannot again take it into consideration in imposing the additional penalty because inasmuch as recidivism is a qualifying or inherent circumstance in habitual delinquency, it cannot be considered an aggravating circumstance at the same time. Consequently, the additional penalty to be imposed upon the appellant must be the minimum of that prescribed by law as, with the exception of recidivism, no other circumstance or fact justifying the imposition of said penalty in a higher period has been present.

The proposition based on rules 1 and 2 of article 62 of the Revised Penal Code, that if recidivism is considered an inherent or qualifying circumstance of habitual delinquency it should not be taken into account in the imposition of the principal penalty, seems to us untenable because it is based upon the erroneous assumption that habitual delinquency is a crime. It is simply a fact or circumstance which, if present in a given case with the other circumstances enumerated in rule 5 of said article, gives rise to the imposition of the additional penalties therein prescribed. This is all the more true because the law itself clearly provides that the habitual delinquent must be sentenced to the penalty provided by law for his last crime in addition to the additional penalty he deserves.

In view of the foregoing facts and considerations and furthermore taking into account the provisions of article 62, rule 5, paragraph (a), of the Revised Penal Code, we deem it clear that the appellant deserves the additional penalty imposed by the lower court upon him. The penalty prescribed by said rule is prison correctional in its medium and maximum periods, or from two years, four months and one day to six years. What was imposed upon the appellant is the minimum of said penalty and he has absolutely no reason to complain because after all he can not be exempt from the additional penalty by reason of his admission at the trial that he is a habitual delinquent, having committed the crime of theft for the third time before the expiration of ten years from the commission of his former crime.

In resume we held that the principal penalty of the appellant must be two months and one day of *arresto mayor*. We therefore modify the appealed sentence in this sense and so modified it is affirmed in all other respects, with the costs to the appellant. So ordered.

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

DISSENTING

ABAD SANTOS and RECTO, JJ.,:

We dissent from the opinion of the court in so far as it holds that, in the imposition of the penalty prescribed by law for the crime of which the appellant has been found guilty, the aggravating circumstance of recidivism should be taken into consideration. Our views on this question, and the reasons in support thereof, have already been set

forth in the opinion subscribed by us in *People vs. Bernal* (G. R. No. 44988, October 31, 1936, pp. 750, 755, ante).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.