

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TOMAS TAPEL, DEFENDANT AND APPELLANT.

G. R. No. 45220. September 18, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

Tomas Tapel was charged with and convicted of the crime of theft and sentenced by the Court of First Instance of Manila to one month and one day of arresto mayor, to indemnify Hamilton Brown, owner of the stolen articles, in the sum of P14, with the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs of the suit. Being a habitual delinquent, he was furthermore sentenced to an additional penalty of ten years and one day of prision mayor.

Not agreeing to his sentence, Tomas Tapel appealed therefrom, alleging that the lower court committed the three errors relied upon in his brief as follows:

"I. In taking into consideration, for the purposes of a conviction under article 62, subsection 5, of the Revised Penal Code, and to declare him a habitual delinquent, the evidence presented in the municipal court wherein this case was originally brought, said court not being a court of record in accordance with law.

"II. In not taking into account the information filed in this case and the defendant's- spontaneous plea of 'guilty' made therein in open court, and

"III. In imposing upon him an excessive penalty contrary to and outside the law."

When the appellant was arraigned in the lower court, he spontaneously confessed having committed the crime with which he was charged therein, thereby admitting not only his guilt but also all the material facts alleged against him. One of said facts is that he had been previously convicted twice of the crime of simple theft and four times of the crime of qualified theft, but the information is silent as to the dates of said convictions except one, which was December 5, 1929. It is evident, therefore, that in the commission of the crime herein imputed to the appellant, the aggravating circumstance of recidivism and the mitigating circumstance of voluntary confession, which mutually compensate each other, must be taken into account thus producing the effect of imposing the penalty corresponding to said appellant's crime in its medium period (art. 64, rule 4, of the Revised Penal Code).

By reason of the amount involved therein, the crime imputed to the appellant is punished in article 309, subsection 5, of said Code, with arresto mayor in its full extent, and the medium period of said penalty is from two months and one day to four months.

The allegation in the information that the appellant is a habitual delinquent reads as follows:

"That the said accused is a habitual delinquent under the provisions of the Revised Penal Code, he having been previously convicted twice of the crime of theft and four times of the crime of qualified theft, by virtue of final judgments rendered by competent courts, having been last convicted on December 5, 1929."

We have already stated more than once that an allegation of this nature is insufficient to warrant the conclusion that if the accused in one case pleads guilty, he actually admits that he is a habitual delinquent. In the cases of *People vs. Santiago* (55 Phil., 266), and *People vs. Venus* (p. 435, ante), not to mention others, we extensively stated the reasons why this is so and it is not amiss that we reiterate the recommendation made by us in the latter of said two cases. Prosecuting attorneys should take case that in preparing their informations in cases wherein an averment of habitual delinquency must be made against the accused, the dates of the commission of his previous crimes, the dates of his convictions and those of his release for service of sentence are clearly expressed so as to avoid the inconveniences stated in said case of *People vs. Venus*.

The principal penalty that should have been imposed upon the appellant is four months of *arresto mayor*, which is included within the medium period of that prescribed by law.

Wherefore, the appealed judgment is modified, sentencing the appellant to four months of *arresto mayor*, instead of one month and one day thereof, without the additional penalty imposed upon him by the lower court, it not having been proved that he is a habitual delinquent, and it is affirmed in all other respects, with the costs to the appellant. So ordered.

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

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