

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND
APPELLEE, VS. FRANCISCO DE LA CRUZ ET AL., DEFENDANTS.
FRANCISCO DE LA CRUZ, APPELLANT.**

G. R. No. 45284. December 29, 1936

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

This case was prosecuted upon the following information:

That on or about the 30th day of May, 1936, in the City of Manila, Philippine Islands, the said accused Francisco de la Cruz, Fernando Legaspi and three other persons whose identities are still unknown, confederating together and helping one another, did then and there willfully, unlawfully and feloniously, and with intent of gain, attack, assault and use personal violence upon one Yu Wan, by then and there giving him blows with his fist on the face and other parts of the body, thereby inflicting upon him physical injuries which have required and will require medical attendance for a period of more than one but less than nine days and have prevented and will prevent the said Yu Wan from engaging in his customary labor for the same period of time; and afterwards took, stole and carried away with him without the consent of the owner thereof the following personal property, to wit:

Twenty-six (P26) pesos in cash, consisting of different denominations

P26.00

belonging to said Yu Wan, to the damage and prejudice of the said owner in the said sum of P26, Philippine currency.

"That the said accused Francisco de la Cruz is a habitual delinquent under the provisions of the Revised Penal Code, he having been previously convicted once of the crime of theft and twice of the crime of estafa, by virtue of final judgments rendered by competent courts, having been last convicted on July 24, 1933."

Upon arraignment, the accused pleaded not guilty.

During the trial and after two witnesses for the prosecution had testified, the accused withdrew their plea of not guilty, substituting it by that of guilty. The court sentenced Francisco de la Cruz to six months and one day of prison correccional and, considering him a habitual delinquent, sentenced him furthermore to the additional penalty of six years and one day of prison mayor. The other accused Fernando Legaspi was sentenced to ten months of prison correccional. Francisco de la Cruz appealed from this sentence.

The facts charged constitute the crime of robbery defined in article 294 of the Revised Penal Code and punished by the penalty of prison correccional to prison mayor in its medium period.

The allegations of the information with respect to the appellant Francisco de la Cruz are not sufficient to consider him a habitual delinquent (People vs. Venus, p. 435, ante). However, the facts alleged in this respect constitute the aggravating circumstance of recidivism.

On the other hand, the appellant's plea of guilty does not constitute a mitigating circumstance under article 13, subsection 7, of the Revised Penal Code, which requires that this plea be spontaneous and that it be made prior to the presentation of evidence by the prosecution. The confession of guilt, although subsequent to the consummation of the crime and entirely alien to its development, constitutes a cause for the mitigation of the penalty, not because it is a circumstance modifying criminal responsibility already incurred and in the evolution of which it has not intervened absolutely, but because, as an act of repentance and respect for the law, it indicates a moral disposition in the accused favorable to his reform. It is clear that these benefits are not deserved by the accused who submits to the law only after the presentation of some evidence for the prosecution, believing that in the end the trial will result in his conviction by virtue thereof.

Wherefore, eliminating the additional penalty by reason of habitual delinquency, considering the presence of an aggravating circumstance in the commission of the crime without any mitigating circumstance, and applying the Indeterminate Sentence Law, the appellant is sentenced to the penalty of from six months of arresto mayor, as minimum, to six years, ten months and one day of prision mayor, as maximum, affirming the appealed sentence in all other respects, with the costs. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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