

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EMILIO DE JESUS AND FLORENCIO CORTEZ, DEFENDANTS. EMILIO DE JESUS, APPELLANT.*G. R. No. 45362. March 04, 1937*

Ponente: IMPERIAL, J.

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Emilio de Jesus and Florencio Cortez were charged with estafa in the municipal court of Manila. The information alleged that on September 4, 1936, the accused, conspiring together, illegally appropriated for themselves a gold ring worth P3 and a lady's wrist watch worth P65 belonging to Matilde Tan, by falsely representing to her that De Jesus had found a diamond ring on the street which Cortez was eager to buy, but which could be exchanged for the jewelry of the said Tan, thus inducing the latter to turn, over her jewelry to them in exchange for another worthless brass ring set with a fake diamond. The information further alleged that De Jesus was a habitual delinquent under article 62, paragraph 5, of the Revised Penal Code, having been twice convicted of estafa, once of theft, and once of robbery by judgments of competent courts, and having been released on August 12, 1936.

Both accused appealed to the Court of First Instance from the judgment finding them guilty. In the latter court, they voluntarily pleaded guilty and were sentenced as follows: Florencio Cortez to one (1) month and one (1) day of arresto mayor, and to pay one-half of the costs, and Emilio de Jesus to four (4) months and one (1) day of arresto mayor, plus an additional penalty to eight (8) years and one (1) day of prision mayor, and to pay the other half of the costs. Cortez abided by this judgment, but Emilio de Jesus took an appeal therefrom.

The defense of the defendant and appellant is to the effect that the penalty imposed by the trial court is in accordance with law, and submits the case for decision. The Solicitor-General finds the principal penalty correct, but alleges that the additional penalty should be raised, because that fixed by article 62, paragraph 5, subsection (c), of the Revised Penal Code, is prision mayor in its maximum period to reclusion temporal in its minimum period, that imposed by the lower court being, therefore inadequate.

We hold that the additional penalty cannot be imposed upon the defendant and appellant because the allegation of habitual delinquency in the information is fatally defective and insufficient. It has been repeatedly held that, for such allegation to be sufficient for the purpose of imposing the additional penalty prescribed by law, it must specify the dates of the commission of the previous offenses, the dates of conviction, and the dates of the defendant's release. (People vs. Morales, 61 Phil., 222; People vs. Dominguez, G. R. No. 44221, 62 Phil., 975; People vs. Venus, 63 Phil., 435, and cases cited in the decision; People vs. Tapel, 63 Phil., 464; People vs. Santiago Sim, G. R. No. 45367, p. 81, .)

Wherefore, with the elimination of the additional penalty from the appealed judgment, the latter is affirmed in all other respects, with the costs of this instance to the defendant and appellant. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, J., concur.

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