

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FAUSTINO SANTIAGO SIM, DEFENDANT AND APPELLANT.

G. R. No. 45367. February 10, 1937

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DIAZ, J.:

The question raised in the appeal of the defendant Faustino Santiago Sim is whether or not he may be considered a habitual delinquent in view of his voluntary confession of guilt made during the trial, for the reason that it was alleged in the information filed against him that on September 2, 1936, he committed a third crime against property (estafa of P50), after having been convicted of, and sentenced for two crimes, one of theft and the other of estafa on October 11, 1935, and November 1st of said year, respectively, whereupon he was sentenced to several months of arresto menor which he served in prison until January 8, 1936.

The allegation contained in the information to the effect that the appellant is a habitual delinquent simply reads:

"That the said accused is a habitual delinquent under the provisions of the Revised Penal Code, he having been previously convicted by final judgments rendered by competent courts, as follows:

"October 11, 1935—Theft—M. C. D. H.-40247—Released Jan. 8, 1936.

"November 1, 1935—Estafa—M. C. D. H.-40877—Released Jan. 8, 1936."

As may be noted, the foregoing allegation does not state when the appellant committed the two crimes of theft and estafa of which he was previously convicted. He might have committed them on the same day or so shortly one after the other that when he was tried for the latter crime, assuming that it was of said crime that he was convicted on November 1, 1935, nothing warranted, as there is nothing now to warrant, his being a recidivist in the strict sense of the law.

The information which gave rise to this case has the same defect and the same omission as that found and emphasized by this court in the cases of *People vs. Santiago* (55 Phil., 266), *People vs. Venus* (63 Phil., 435), *People vs. Tapel* (63 Phil., 464), and several others, to wit: the lack of a concrete allegation as to the dates of the commission of the crimes alleged to have been committed by the appellant claimed to be a habitual delinquent. Informations of the nature of the one under consideration, alleging habitual delinquency, as provided in article 62, subsection 5 of the Revised Penal Code, must state not only the dates of the final judgments rendered against the accused and those of his release by reason of service of sentence or any other cause, but also the dates of the commission of his previous crimes, in order to avoid doubts as to whether or not he is a recidivist once or oftener; because he is not a recidivist who, at the time of his trial for one crime, has not been previously convicted by final judgment of another crime embraced in the same title of the Revised Penal Code (article 14, subsection 9). All indications show that when the appellant was sentenced for the crime of which he was convicted on November 1, 1935, he was not a recidivist for the first time. Had he been so, the lower court would have necessarily taken into consideration said circumstance and instead of imposing upon him the penalty of two months and one day, which is the minimum of the minimum period of the penalty prescribed for his offense, taking into account the fact that the amount embezzled was only P15, it would have imposed upon him the penalty of four months and twenty-one

days of arresto mayor (article 315, 4th case, Revised Penal Code).

Consequently, only one recidivism should be taken into consideration against the appellant which circumstance is certainly offset by his voluntary confession of guilt prior to the presentation of any evidence against him (article 13, subsection 7, Revised Penal Code).

In view of the foregoing, and taking into consideration the fact that the amount embezzled by the appellant does not exceed P200, the penalty which the lower court should have imposed upon him is the medium period of arresto mayor in its medium and maximum periods, or at least three months and eleven days.

Modified as above-stated by entirely eliminating therefrom the additional penalty of two years, four months and one day of prision correctional, which is improper not being in accordance with law, the appealed judgment is affirmed in all other respects, without special pronouncement as to costs. So ordered.

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

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