

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LOPE HERMINO Y LIMOSA (ALIAS LOPE GERMINO), DEFENDANT AND APPELLANT.

G. R. No. 45466. June 30, 1937

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DIAZ, J.:

Lope Hermino y Limosa (alias Lope Germino) was charged with theft and later sentenced by the Court of First Instance of Manila to suffer one month and one day, of *arresto mayor* with the corresponding accessory penalties, to indemnify the owner of the stolen articles in the sum of P15.17, and to suffer also the additional penalty of six years and one day of *prision mayor*, being a habitual delinquent. Not satisfied with the sentence imposed upon him, the accused appealed therefrom and, quoting from his brief, now contends in this instance that:

"I. The lower court erred in deciding that the defendant's spontaneous plea of guilty has been compensated by recidivism.

"II. The lower court erred in imposing upon the defendant an additional penalty not in accordance with the allegation of the information."

Apropos of the first question raised by the appellant, the Solicitor-General, in turn, raises this other one: Should the appellant's plea of guilty, entered in the Court of First Instance which tried the case on appeal, be taken into consideration in his favor, notwithstanding the fact that he had gone to trial in the municipal court, presenting his own evidence therein after the promotor fiscal had presented his?

This is a case of an appellant who, after having been charged with the crime of theft by virtue of an information filed by the office of the city fiscal of Manila in the municipal court of said city, went to trial, thus requiring the presentation, in an ordinary trial, of the evidence to substantiate his case. As a result, judgment was rendered against him, having been found guilty of theft by said court. From said judgment, he appealed to the Court of First Instance of Manila which, in turn, found him guilty of the crime with which he was charged and sentenced him to the above-stated penalties, after having permitted him to substitute his former plea of not guilty for that of guilty. This appeal was interposed by him to set aside the foregoing sentence.

The information, which gave rise to the case and was the one answered by the appellant in the Court of First Instance of Manila, pleading guilty of the crime charged therein, reads as follows;

"That on or about the 26th day of December, 1936, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully and feloniously, with intent of gain and without the consent of the owner thereof, take, steal and carry away one leather pocketbook, valued at P1 containing cash in the amount of P14.17, belonging to Mrs. W. G. Schindler, to the damage and prejudice of the said owner in the total sum of P15.17, Philippine currency.

"That the said accused has previously been convicted three times of the crime of theft by virtue of final judgments rendered by competent courts, as follows:

Criminal case No.

Date of commission of crime

Date of conviction

Date of release

Penalty

Municipal Court H-5055

Jan. 20, 1934

Jan. 20, 1934

Apr. 7, 1934

2 months, 1 day

Court of First Instance of Manila D-52639

June 28, 1936

July 3, 1936

Oct. 1936

4 months, 1 day

Municipal Court H-56458

June 29, 1936

July 6, 1936

Dec. 20, 1936

2 months, 1 day

and is therefore a habitual delinquent under the provisions of article 62, paragraph 5, of the Revised Penal Code, the date of his release from confinement in connection with his last offense being December 20, 1936."

It will be seen that, although the information in question contains no express allegation that the appellant is a recidivist, it states in the second paragraph thereof (a) that he was convicted once of the crime of theft on January 20, 1934, and sentenced therefor on said date to two months and one day of arresto mayor; that he extinguished said penalty on April 7, 1934; and (6) that he was likewise convicted of other (two crimes of theft on July 3 and 6, 1936, respectively, long after he had served his first sentence; that in said two cases he was sentenced to the penalties of four months and one day and two months and one day of arresto mayor, respectively; that he extinguished his two sentences on December 20, 1936. This fact is, in itself, equivalent to an allegation that the appellant is a recidivist, as no other thing can be inferred from said allegations than that he had been previously convicted by final judgment of crimes embraced in the same title of the Revised Penal Code. But, of how many crimes was he convicted by final judgment for the purposes of rule 5 of article 62 of the Revised Penal Code, which treats of habitual delinquency?

It should be noted that between the appellant's commission of one and his commission of the other of his last two crimes, and between his prosecution for the former and his prosecution for the latter, hardly one day had elapsed

in the first and three days in the last case. This shows that when he was prosecuted for his last crime, the judgment rendered in the case instituted against him for his next preceding crime had not yet become final and this is so because judgments do not become final, until after the expiration of the period of fifteen days allowed the accused to interpose an appeal. Under the law, there can be no recidivism except when the accused, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the Code (art. 14, subsec. 9, of the Revised Penal Code). Consequently, the answer to the question is that when the appellant committed his last crime, he was a recidivist only for the third time.

As to the question whether or not the appellant's plea of guilty, entered in the Court of First Instance of Manila, should be compensated by the aggravating circumstance of recidivism, which this court declares to have been proven, it should be borne in mind that the spirit of the law is what may reasonably be inferred from the terms thereof. The seventh mitigating circumstance reads:

"That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution."

In the case under consideration, the appellant confessed his crime after the prosecution had presented its evidence, at least in the municipal court where the case originated. It cannot be stated that the appeal taken by him to the Court of First Instance again restored the case to its original state for the very reason that the law requires a trial *de novo*, that is, that there had been no presentation of evidence before he confessed or admitted his crime, because a trial *de novo* gives the impression and necessarily implies the existence of a previous trial. On the other hand, the terms of the law expressly require that the confession, in order to constitute a mitigating circumstance, must not only be spontaneous but also be made prior to the presentation of the evidence for the prosecution (art. 13, subsec. 7, Revised Penal Code).

As this court stated in the case of *People vs. De la Cruz* (63 Phil., 874), the reason for the existence of said mitigating circumstance is that it reveals to a certain extent an act of repentance, a moral disposition favorable to his reform and submission to the law. This reason cannot be said to exist in the appellant's case because he wished neither to acknowledge his crime nor to repent when his first opportunity came, that is, during the trial granted him in the municipal court. Consequently, after eliminating the mitigating circumstance of confession of guilt, the aggravating circumstance of recidivism remains uncompensated and, under the circumstances, the penalty that should be imposed upon him is *arresto mayor* in its maximum period, or from four months and one day to six months (arts. 308 and 309, subsec. 5, in connection with art. 64, rule 3, of the Revised Penal Code).

Following the doctrine laid down in the cases of *People vs. Santiago* (55 Phil., 266); *People vs. De la Rama* (G. R. No. 43744, 62 Phil., 972); *People vs. Venus* (63 Phil., 435); and *People vs. Tapel* (63 Phil., 464), the appellant cannot be a habitual delinquent by reason of his having been a recidivist for the fourth time, but only for the third time, and deserves, therefore, the least additional penalty prescribed in article 62, subsection 5, paragraph (a), or prison correctional in its medium and maximum periods.

For the foregoing reasons, the appealed judgment is modified by sentencing the appellant to four months and one day of *arresto mayor*, plus the additional penalty of two years, four months and one day, affirming it in all other respects, with the costs to the appellant. So ordered.

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

ABAD SANTOS, J., dissenting in part:

For the reasons stated in my dissenting opinion in *People vs. Bawasanta* (G. R. No. 45467, June 30, 1937, p. 413 post), I am of the opinion that the appellant is entitled to have considered in his favor the mitigating circumstance

of having pleaded guilty in the Court of First Instance.

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