

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PEDRO JAVIER Y RIVERO (ALIAS PEDRO RIVERO), DEFENDANT AND APPELLANT.

G. R. No. 45470. June 30, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The accused Pedro Javier y Rivero (alias Pedro Rivero) appeals to this court from the judgment of the Court of First Instance of Manila finding him guilty, by confession, of the crime of theft, sentencing him to the penalty of one month and one day of arresto mayor and imposing upon him, as a habitual delinquent, the additional penalty of ten years and 1 day of prision mayor, with costs, by virtue of the following information:

"That on or about the 15th day of January, 1937, in the City of Manila, Philippine Islands, the said accused Pedro Javier y Rivero (alias Pedro Rivero) did then and there wilfully, unlawfully, and feloniously, with intent of gain and without the consent of the owner thereof take, steal, and carry away part of the harness valued at ten pesos (?10), belonging to Teodoro Gatmaitan, to the damage and prejudice of the said owner in the aforementioned amount of P10, Philippine currency.

"That the said accused is a habitual delinquent, having already been convicted five times by final judgments rendered by a competent court, as follows:

Crime

Date of Commission

Date of Release

Theft

April 22, 1929.....

May 22, 1929

Estafa

March 17, 1933.....

May 12, 1933

Theft.....

March 14, 1935.....

.....

Theft.....

March 14, 1935.....

Aug. 21, 1935

Estafa.....

.....

Nov. 19, 1935

Theft.....

Nov. 20, 1935

Jan. 16, 1936"

While the accused-appellant makes no assignment of error, it is inferred from the body of his brief that he raises as first question of law the fact that the record of arraignment made by the deputy clerk of the Court of First Instance of Manila does not affirmatively show that the accused has been informed of his right to be defended by counsel at every stage of the proceedings; that he has been provided with counsel, and that a copy of the information or complaint has been delivered to him in accordance with the provisions of section 15, subsection 1, in connection with sections 17 and 18, of General Orders, No. 58.

The record shows that on January 23, 1937, the Honorable Judge, presiding over Branch IV of the Court of First Instance of Manila, assigned Attorney Jorge B. Delgado as counsel de oficio to defend the herein accused-appellant. It is true that in said record of arraignment made by the deputy clerk of the Court of First Instance of Manila, Macario M. Ofilada, there appears only the following: "There being present in open court Mr. Juan h. Diaz, Prosecuting Attorney of the City of Manila, and the accused in this cause, named Pedro Javier y Rivero (alias Pedro Rivero) accompanied by his counsel, Mr..... and after having been informed of the nature and cause of the accusation filed against him in this court for the crime of theft and the complaint having been read to him and a copy thereof delivered to him including a list of the witnesses, said; accused pleaded guilty of the crime as charged in this complaint."

In the case of *People vs. Lim Tiam* (G. R. No. 44936, promulgated on October 31, 1936), this court, through the Chief Justice thereof, stated as follows:

"This court has repeatedly held in numerous decisions that failure to state in the record that an accused has been informed of these rights, does not warrant reversal of the judgment if it does not affirmatively appear that he has not been informed thereof (*U. S. vs. Gimeno*, 1 Phil., 236; *U. S. vs. Palisoc*, 4 Phil., 207; *XI. S. vs. Go-Leng*, 21 Phil, 426; *U. S. vs. Ramirez and Seradoy*, 26 Phil, 616; *U. S. vs. Labial and Abuso*, 27 Phil., 82; *U. S. vs. Custan*, 28 Phil., 19; *V. S. vs. Kilayeo*, 31 Phil., 371; *V. S. vs. Escalante*, 36 Phil., 743; *People vs. Abuyen*, 52 Phil., 722; *People vs. Del Rosario*, G. R. No. 44239). This doctrine is based upon the presumption that official duty has been regularly performed."

See also *People vs. Del Rosario* (G. R. No. 44239, 62 Phil, 975).

There being no affirmative showing that the accused appeared for arraignment unaccompanied by said attorney assigned to defend him de oficio, and it being the official duty of the judge before whom said accused appeared to provide him with such counsel if he so desired and was unable to employ one, it is presumed that the judge in question complied with his official duty (section 334, No. 14, Code of Civil Procedure).

The allegation in the attorney de oficio's brief that no copy of the information was delivered to the accused after it had been read to him, is not true because the above-quoted record of arraignment states: "* * * and the complaint

having been read to him and a copy thereof delivered to him including a list of the witnesses, said accused pleaded guilty * * *."

Notwithstanding the conclusion arrived at by this court that failure to clearly and affirmatively state, in the record of arraignment prepared by the deputy clerk of the Court of First Instance of Manila, that the accused appeared represented by the attorney de oficio assigned by the court to defend him and that a copy of the information was delivered to him, is not conclusive evidence that said accused had been deprived of his said rights, the admonition given by this court in the cases of *United States vs. Labial and Abuso* (27 Phil., 82), *United States vs. Custan* (28 Phil., 19), and *People vs. Lim Tiam*, supra, to the effect that all the necessary details required in sections 17 and 18 of General Orders, No. 58 be made to appear in the record of arraignment of the accused, is more emphatically repeated herein.

Although appellant's counsel de oficio does not question the penalty imposed in the appealed judgment, as this court, in reviewing a criminal case on appeal before it, has to examine all the questions of law involved therein, it finds that the penalty of one month and one day of *arresto mayor* imposed in the judgment is not in accordance with law on the ground that the presence of the aggravating circumstance of recidivism has not been taken into consideration. Said aggravating circumstance has not been offset by the plea of guilty entered by the accused in the Court of First Instance on appeal because the plea of guilty made when the case is on appeal does not constitute the mitigating circumstance established in article 13, No. 7, of the Revised Penal Code, which requires that such plea of guilty, to constitute a mitigating circumstance, must be made before the presentation of the evidence for the prosecution in the competent court of origin (*People vs. Bawasanta*, p. 409 ante). Undoubtedly, the legislator's purpose in establishing such mitigating circumstance was to encourage repentance, which not only ennoble the soul and tends to avoid recidivism but also saves the Government the expenses of a trial and the judicial and executive officials much trouble. Taking into consideration the aggravating circumstance of recidivism evidenced by the various convictions of the crimes of theft and *estafa* stated in the information, without any mitigating circumstance to offset it, the penalty of *arresto mayor* to its full extent prescribed by article 309, subsection 5, for persons guilty of theft where the value of the property stolen is over P5 but does not exceed P50, should be imposed in its maximum period, that is, from four months and one day to six months of *arresto mayor*. The additional penalty of ten years and one day of *prision mayor* imposed in the judgment, for considering the accused-appellant a habitual delinquent, is correct, as the herein accused-appellant cannot be considered a recidivist for more than five times because the crime with which he is charged herein is the fifth. As the date of the commission of the crime of *estafa* the term for which he finished serving on November 19, 1935, does not appear, there is no way of determining whether said crime was not committed prior to his conviction of the crime of theft committed by him on March 14, 1935, the term for which he finished serving on August 21, 1935. According to article 62, subsection 5, paragraph (c), of the Revised Penal Code, the culprit, upon a fifth or additional conviction, shall be sentenced to the additional penalty of *prision mayor* in its maximum period to *recluson temporal* in its minimum period, that is, from ten years and one day to fourteen years and eight months. Therefore, the additional penalty of ten years and one day imposed by the lower court is in accordance with law.

Wherefore, with the sole modification that the accused-appellant is sentenced to the principal penalty of four months and one day of *arresto mayor*, the appealed judgment is affirmed in all other respects, with costs to the appellant. So ordered.

Avancena, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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