

IGNACIO NIPALES, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.*G. R. No. 45647. December 20, 1937*

Ponente: DIAZ, J.

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Believing that the Court of Appeals was without jurisdiction to validly impose the additional penalty it imposed upon him in case G. R. No. 484 of said court, which penalty modifies that imposed upon him by the Court of First Instance of Iloilo, by reason of habitual delinquency, in the sense of increasing said penalty of only four years to four years, nine months and ten days, Ignacio Nipales instituted this certiorari proceeding in order to appeal from the judgment of said court and thus question the validity thereof.

The entire strength of the petitioner's argument in support of his complaint consists in the proposition, which he has attempted to prove, that as it had not been alleged in the information upon which he was tried and convicted of the crime of robbery and later sentenced to the penalty questioned by him that he was a habitual delinquent, in no way could he be so declared.

The Solicitor-General invites the attention of this court to the fact that the petitioner now raises a question which he previously failed to raise either in the Court of First Instance or in the Court of Appeals to which he had appealed. This is true and on this sole ground this court could, in strict accordance with law, overrule the petition filed, so as not to encourage unnecessary appeals, a practice looked upon with disapproval in this jurisdiction, particularly when there is no sufficient reason therefor. However, since the case is already before this court and the question, on the other hand, is clearly and plainly raised, it is deemed just to decide it once and for all.

The allegations pertinent to the question under consideration contained in the information filed against the petitioner and his coaccused, charging them with the crime of robbery, are as follows:

"That on or about the 4th of April, 1936, in the municipality of Iloilo, Province of Iloilo, Philippines, and within the jurisdiction of this court, the said accused, conspiring among themselves and acting jointly together with Francisco Guivarra N. Vaca alias Vaca and Francisco Mercado alias Banag, who, up to this time, are fugitives from justice, with deceit and by breaking open a door of the store named 'American Bazar' belonging to Halim Kanaan, entered therein and, with intent of gain, and against the will of the said owner thereof, Halim Kanaan, took away the following articles:

* * * * *

"Total

P1,707.25,

the accused Salvador Gadian and Ignacio Nipales having then been convicted by virtue of final judgments rendered in the following cases: Against Salvador Gadian * * * and against Ignacio Nipales, on August 2, 1935, in

criminal case No. 17622 of the justice of the peace court of Iloilo, for the crime of theft, on October 18, 1935, in criminal case No. 17772 of the justice of the peace court of Iloilo, for the crime of theft, and on January 24, 1936, in criminal case No. 17895 of the justice of the peace court of Iloilo, for the crime of vagrancy; there having been recovered in the possession of the accused 21 watches and 5 ladies' handbags, all valued at P65, of the articles stolen."

While the foregoing allegations do not expressly state that the petitioner is thrice a recidivist and that he is a habitual delinquent, which phrases are, after all, mere conclusions of law, it is clearly inferred therefrom that they suggest the idea that he is both, and they do so by stating the facts which necessarily give rise to the said conclusion of law. It was so understood by the petitioner when he was arraigned, for which reason, in order to deny said facts and conclusions of law, he pleaded not guilty. At the trial, the prosecution established all the facts necessary to prove that the petitioner was really thrice a recidivist and also a habitual delinquent, thereby enabling the Court of First Instance and the Court of Appeals to make a finding to that effect in their respective judgments. We should not lose sight of the fact that the provisions of law relative to recidivism and habitual delinquency simply read as follows:

"A recidivist is one who, 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 this Code." (Art. 14, subsec. 9, Revised Penal Code.)

"For the purposes of this article, a person shall be deemed to be habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of robo, hurto, estafa, or falsificacion, he is found guilty of any of said crimes a third time or oftener." (Art. 62, subsec. 5, last paragraph, Revised Penal Code.)

Between the petitioner's first and second conviction and between his second and third, there has elapsed more than sufficient time for each of the judgments to have become final, and when the petitioner committed his third crime, he did so before the lapse of ten years from his previous conviction.

The alleged omissions in the allegation of the information, relative to the petitioner's habitual delinquency, for, as the latter claims, it does not contain all the requisites mentioned in the cases of *People vs. Venus* (35 Off. Gaz., 927); *People vs. Tapel* (35 Off. Gaz., 612) ; *People vs. Masonson y Katigbak* (35 Off. Gaz., 2355), were cured during the trial, and this took place without the least objection on the part of the petitioner. He is, therefore, in estoppel and, for the reasons stated by this court in the cases of *United States vs. Destrito and De Ocampo* (23 Phil., 28), and *United States vs. Del Castillo* (35 Phil., 413), it is not permissible for him now to raise the question raised by him in this proceeding. For the purposes of the law, the allegations that an information should contain should be of facts rather than of conclusions of law; and when it is desired to allege recidivism or habitual delinquency therein, an averment of the facts constituting such circumstances is sufficient.

It appearing that the judgment rendered by the Court of Appeals is in accordance with law, it is hereby affirmed in all its parts, with the costs de oficio, in view of the fact that the petitioner is confined in Bilibid and a pauper. So ordered.

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

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