

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CARLOS DE LA PEÑA Y LACSAMANA, DEFENDANT AND APPELLANT.***G.R. No. 46270. November 03, 1938*

Ponente: DIAZ, J.

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Carlos de la Peña y Lacsamana was prosecuted and convicted later of the crime of theft, first, in the municipal court of the City of Manila, and afterwards in the Court of First Instance of said city, for having taken away, without the consent of the owner and with intent of gain, on July 12, 1938, ten pairs of socks valued at P4.50 belonging to the Toyo Bazar. The penalties imposed upon him by said courts were four months and one day of *arresto mayor*, as the principal penalty, and ten years and one day, as additional penalty, for being a habitual delinquent. He appealed from the judgments which imposed said penalties upon him, alleging that four months and one day of *arresto mayor* is an excessive penalty for his crime on the ground that it exceeds that prescribed by law; and that the additional penalty of ten years and one day is cruel and unusual, taking into consideration the little value of the articles stolen by him.

The appellant contends that he should have been sentenced at most to the minimum period of *arresto mayor*, that is, from one month and one day to two months, without the additional penalty of ten years and one day of *prision mayor*, the latter penalty being unusual and cruel.

The reason alleged by the appellant in support of his first proposition is that he voluntarily pleaded guilty upon being tried in the Court of First Instance of Manila. The records, however, show that in the municipal court, where the case was first tried, since the determination of the same devolved upon said court by reason of the nature of the crime charged therein and also by reason of the penalty that should be imposed for the commission thereof, he neither admitted any thing nor acknowledged having committed any crime at all. Hence the necessity for the prosecution to present its evidence. The rule laid down in this jurisdiction is that, in order that the mitigating circumstance of voluntary confession of guilt may be taken into consideration as such, it is necessary that it be made in open court, at the first opportunity, that is, before the competent court that is to try the case of the person making such confession. Confessions made under the circumstances of the appellant do not constitute, in the eyes of the law, a mitigating circumstance for the reasons stated in the cases of *People vs. Hermino* (36 Off. Gaz., 2216); *People vs. Bawasanta* (36 Off. Gaz., 2237); and *People vs. Sy Chay* (37 Off. Gaz., 3206).

On the other hand, the penalty prescribed by law (arts. 308 and 309, subsec. 6, of the Revised Penal Code) for the crime committed by the appellant, is that of *arresto mayor* in its minimum and medium periods, that is, from one month and one day to four months, the maximum period of which is from three months and one day to four months. Inasmuch as the information filed against the appellant alleged facts clearly showing that he is a recidivist for the fifth time during the last ten years, he necessarily incurs the maximum of said penalty. This is so because the only mitigating circumstance that might compensate said aggravating circumstance, which is that of plea of guilty, cannot be taken into consideration for the reasons already stated. However, this court is not unaware of the fact that the lower court imposed one day more than the penalty that should be imposed upon the appellant. As

has just been stated a few lines before, the maximum period of the penalty that should be imposed upon the appellant may not exceed four months. Therefore, the error committed should be corrected.

With respect to the second proposition, that is, whether or not the additional penalty of ten years and one day of prision mayor imposed upon the appellant is unusual and cruel, it should be stated that the question raised has already been decided more than once, this court having then held very clearly that the additional penalties imposed for habitual delinquency by virtue of the provisions of article 62 of the Revised Penal Code, are neither cruel nor unusual (*People vs. Madrano*, 53 Phil., 860; *People vs. Montera*, 55 Phil., 933). Consequently, there is no necessity of again passing upon the same question, the reasons stated in the above-cited cases being sufficient to decide said question in the negative.

Wherefore, the appealed judgment is modified in the sense of eliminating one day from the principal penalty imposed upon the appellant, so that the same is understood to be four months of arresto mayor. In all other respects, said judgment is affirmed, with the costs to the appellant. So ordered.

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

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