

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MARCELINO JOSE Y PAYUMO, DEFENDANT AND APPELLANT.***G.R. No. 46335. July 18, 1939*

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-46335/>**IMPERIAL, J.:**

Marcelino Jose y Payumo was charged in the municipal court of the City of Manila with having committed the crime of theft of a bicycle valued at P90, belonging to Pedro Manlupa, he being a habitual delinquent for having been convicted twice of the same offense by virtue of judgments rendered by competent courts, and was found guilty of said crime and sentenced to four months and one day of arresto mayor plus the additional penalty of two years, four months and one day of prision correccional, for being a habitual delinquent. He appealed from the judgment so rendered and in the Court of First Instance he pleaded "not guilty" upon arraignment. When the case was called for trial, he withdrew his plea of "not guilty" and substituted it with that of "guilty", thereby causing the court to sentence him to the same penalty, and in addition thereto, to indemnify the offended party in the sum of P90, with the corresponding subsidiary imprisonment in case of insolvency, and the costs. The accused again appealed from the latter judgment.

The defense does not deny the guilt of the accused, but maintains that the principal penalty should be applied in its minimum period on the ground that the accused voluntarily pleaded guilty. The mitigating circumstance invoked cannot be taken into consideration in view of the fact that the accused did not plead guilty in the municipal court where the case was originally tried (*People vs. Hermino*, 36 Off. Gaz., 2216; *People vs. Bawasanta*, 36 Off. Gaz., 2237; *People vs. Cariaga*, G. R. No. 46245, Oct. 18, 1938). In the commission of the offense, the aggravating circumstance of recidivism alleged in the information and admitted by the accused should be taken into account and, since no mitigating circumstance was present therein, the penalty of arresto mayor in its medium period to prision correccional in its minimum period, prescribed in article 309, No. 4, of the Revised Penal Code, should be imposed in its maximum period. With respect to the additional penalty, that imposed by the court is in accordance with article 62, No. 6 (a), of the Revised Penal Code, this being the third conviction of the accused.

It being understood that the penalty to be served by the accused is that of six months and one day of prision correccional, plus the accessory penalties prescribed by the Revised Penal Code, the appealed judgment is affirmed in all other respects, with the costs of this instance to the accused-appellant. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.