

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
GO UG (ALIAS GO YU), ONG TING (ALIAS ANG TL), AND HAO BA LIAN
(ALIAS MARIANO HAO), DEFENDANTS AND APPELLANTS.**

G.R. No. 46478. April 05, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

In criminal case No. 67512 of the Court of First Instance of Manila, the herein appellants Go Ug (alias Go Yu), Ong Ting (alias Ang Ti), and Hao Ba Lian (alias Mariano Hao), were accused of violating article 190 of the Revised Penal Code, prohibiting the possession, preparation and use of prohibited drugs. Go Ug (alias Go Yu) was sentenced to six months and one day of prison correctional, a fine of P1,000, and subsidiary imprisonment in case of insolvency, besides an additional penalty of three years' imprisonment, for being an habitual delinquent, and to pay his proportional share of the costs; Ong Ting (alias An Ti) was sentenced to six months and one day of prison correctional, a fine of P500, with subsidiary imprisonment in case of insolvency, and an additional penalty of two years' imprisonment, because of habitual delinquency, and to pay his proportionate share of the costs; and Hao Ba Lian (alias Mariano Hao) was sentenced to six years and one day of prison correctional, a fine of P600, with subsidiary imprisonment in case of insolvency, and an additional penalty of two years imprisonment, for being an habitual delinquent, and to pay his share of the costs. The three appealed against the said judgment, to have the additional penalties for alleged habitual delinquency eliminated, alleging that the lower court erred in imposing said penalties.

The lower court clearly erred in imposing the additional penalties because, according to the provisions of article 62, No. 5, last paragraph, of the Revised Penal Code, habitual delinquency may be considered only in crimes against property such as robbery, theft, estafa, and falsification. The law does not include, for the purposes of habitual delinquency, crimes or infringements of law, which are committed contrary to other articles of the said Code, or other laws, and much less, to article 190 of the said Code.

The article in question, among other things, states:

"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 roba, hurto, estafa, or falsificacion, he is found guilty of any of said crimes a third time or oftener."

For these reasons, and disregarding those of the Solicitor-General who considers the allegations contained in the information insufficient to prove the habitual delinquency of the appellants for they are lacking in the requisites mentioned in the cases of *People vs. Venus* (35 Off. Gaz., 927), and others, because they do not bear on the point, we hold that the appeal of the said appellants is amply justified.

Wherefore, we modify the appealed judgment in the sense of eliminating, as we do hereby eliminate, the additional penalties imposed upon the appellants for alleged habitual delinquency, with costs de oficio. So ordered.

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

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