

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ALBINA MONTOYA Y DE JESUS (ALIAS ALBINA M. RAMOS, ALIAS
AVELINA), DEFENDANT AND APPELLANT.**

G.R. No. 46610. July 17, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The accused appealed from the judgment rendered by the Court of First Instance of Manila, which found her guilty of the crime of estafa and sentenced her to one year imprisonment, to indemnify the offended party in the sum of P289, with the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs.

The accused was charged with the crime of estafa for having illegally misappropriated 200 pieces of garments belonging to Alie Akrass, which she had received to sew, with the obligation to return them after finishing the work. by keeping the same to the damage and prejudice of the owner thereof. The accused pleaded "guilty", but in the information presented it was expressly alleged that she is a recidivist, having been convicted in four cases of estafa committed by her on October 10, 1935, by judgments rendered therein on March 2, 4 and 5, 1936. The crime of which the accused pleaded guilty is punished in article 335, subsection 3, of the Revised Penal Code, with arresto mayor in its maximum period to prision correccional in its minimum period. By compensating the abovestated circumstances, the aggravating circumstance of recidivism and the mitigating circumstance of voluntary plea of guilty, with each other, the penalty should be imposed in its medium period, which is from one year and one day to one year and eight months of prision correccional. According to the Indeterminate Sentence Law (Act No. 4103), the penalty that should be imposed is that of from two months and one day of arresto mayor to one year and one day of prision correccional.

The defense maintains that the accused did not admit recidivism and that the allegation contained in the information is insufficient to warrant the existence of habitual delinquency. The information does not state that the accused is a habitual delinquent, but former conviction was alleged therein as an aggravating circumstance. Upon voluntarily pleading guilty, the accused likewise admitted the allegation of recidivism (U. S. vs. Barba, 29 Phil., 206;" U. S. vs. Burlado, 42 Phil., 72).

With modification of the judgment appealed from, the accused-appellant is hereby sentenced to an indeterminate penalty of from two months and one day of arresto mayor to one year and one day of prision correccional, with the accessory penalties prescribed by law, and said judgment is affirmed in all other respects, with the costs of this instance to the appellant. So ordered.

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

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