

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CASIMIRO CONCEPCION, DEFENDANT AND APPELLANT.***G.R. No. 46652. September 23, 1939*

Ponente: IMPERIAL, J.

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The accused appealed from the judgment rendered by the Court of First Instance of Manila which found him guilty of the crime of estafa in the sum of P400 and sentenced him to six months and one day of prision correccional, to indemnify the offended party in the above-stated sum, with the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs. Upon arraignment, the accused voluntarily pleaded guilty. The court likewise declared him to be a habitual delinquent, in accordance with the allegations of the information and, considering as only three the seven previous convictions specified in the information, imposed upon him the additional penalty of six years and one day of prision mayor, pursuant to subsection 5, paragraph (b), of article 62 of the Revised Penal Code.

In the memorandum filed by him, counsel de oficio submits that the judgment appealed from is in accordance with law and recommends that it be affirmed. The Solicitor-General, however, recommends modification of the principal penalty on the ground that it has not been imposed in the corresponding period. The estafa committed by the accused is penalized by article 315, paragraph 3, of the Revised Penal Code, with arresto mayor in its maximum period to prision correccional in its minimum period, by reason of the amount thereof. The mitigating circumstance of plea of guilty being compensated by the aggravating circumstance of recidivism, which is necessarily inferred from the allegation of habitual delinquency, 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. The subsidiary imprisonment imposed is not correct because by adding the principal and additional penalties, the resulting penalty is higher than that of prision correccional (*Edet, etc. vs. Director of Prisons*, G. R. No. 45572, June 10, 1937). There is no error whatsoever in the appreciation of habitual delinquency nor in the imposition of the additional penalty.

Article 70 of the Revised Penal Code, as amended by section 2 of Commonwealth Act No. 217, provides, among other things, as follows:

"Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period.

"Such maximum period shall in no case exceed forty years.

"In applying the provisions of this rule the duration of perpetual penalties (*pena perpetua*) shall be computed at thirty years."

The accused has been prosecuted in several other criminal cases and he likewise pleaded guilty in all of them. In

the service of the penalties imposed in this and in the other cases, the rules prescribed in article 70, as amended, must be observed, and pursuant to the provisions contained in the above-quoted paragraphs, the accused should not serve a penalty of imprisonment for more than threefold the length of time corresponding to the most severe of the penalties imposed upon him in all of said cases and the maximum period of the penalty to be served by him shall in no case exceed forty years.

With the modification that the accused is sentenced to one year and one day of prision correccional with the corresponding accessory penalties prescribed by law, and the suppression of the subsidiary imprisonment, 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, and Concepcion, JJ., concur.

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