

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JESUS ACHA Y RIVERA, DEFENDANT AND APPELLANT

G.R. No. 46714. October 02, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

Upon an information charging the defendant-appellant, Jesus Acha y Rivera, with having stolen the sum of 92 centavos from Salvador Martinez, a boy about thirteen years of age, and with being a habitual delinquent, he was tried and convicted by the municipal court of the City of Manila and, on December 7, 1938, sentenced to the principal penalty of one month and one day of arresto mayor and to six years and one day of prision mayor for habitual delinquency, with costs. Appealing to the Court of First Instance of Manila, the defendant, after trial, was again convicted and sentenced to imprisonment for six months and one day of prision correccional, as principal penalty, to return to the offended party the sum of twelve centavos, and to additional imprisonment for six years for habitual delinquency, with costs. On further appeal, the case was elevated to the Court of Appeals which, upon motion of the Solicitor-General after appellant's brief had been filed in which only a question of law was raised, certified and forwarded it to this court under section 145-H of the Revised Administrative Code, as amended.

We are urged to set aside the judgment of the Court of First Instance of Manila on the ground that, as the municipal court of the City of Manila had no jurisdiction to impose on appellant, for habitual delinquency, the additional penalty of six years and one day of prision mayor, said Court of First Instance could not acquire appellate jurisdiction over the case. Appellant contends that under section 2468 of the Revised Administrative Code, as amended by Commonwealth Act No. 361, the original criminal jurisdiction of the municipal court is limited to cases in which the maximum penalty imposable is imprisonment for not more than six months or a fine of not more than two hundred pesos, or both, and makes reference to *People vs. Ramos*, (G. R. No. 40545, April 10, 1934), and *Pineda vs. Director of Prisons* (G. R. No. 46614), where in it was held by this court, in the first case, that a charge of theft of P10.20 and of habitual delinquency gave the Court of First Instance of Zamboanga original jurisdiction and, in the second, that the justice of the peace of Calumpit had no jurisdiction to impose an additional penalty for habitual delinquency. On the other hand, it is argued by the Solitor-General that, under Section 2468 of the Revised Administrative Code, as amended, the municipal court of the City of Manila has jurisdiction over cases of theft concurrent with the Court of First Instance, and the measure of such jurisdiction is not the penalty but the amount involved which should not be more than P200. In support of his position, the Solicitor-General calls attention to the following resolutions of this court dated respectively February 28, 1938 and January 18, 1939, to wit:

"* * * as to the first contention, it must be stated that the municipal court of Manila has concurrent jurisdiction with the Court of First Instance over all cases of theft where the amount involved is not more than P200; and this is not the case at bar for the amount involved therein was only P19, the amount in such cases and not the penalty being the controlling factor in determining whether said Court has jurisdiction or not to act; * * * (Ugaddan vs. Director of Prisons, G. R. No. 46004.)"

"* * * there is no merit in petitioner's contention that the municipal court of the City of Manila is without jurisdiction to impose the additional penalty for habitual delinquency upon the prisoner, for this court has held 'that the municipal court of Manila has concurrent jurisdiction with the Court of First Instance over all cases of theft where the amount involved is not more than P200;' (Ugaddan vs. Director of Prisons, G. R. No. 46004) * * * (Atajar vs. Director of Prisons, G. R. No. 46493.)"

There is merit in the contention of the Solicitor-General which finds express and direct authority in the abovequoted pronouncements of this court which, it may be stated in passing, are not at variance with the cases cited by appellant, for the reason that, in the latter, the jurisdiction of the justice of the peace was involved and there is no law conferring on him concurrent jurisdiction such as that conceded to the municipal court of the City of Manila by section 2468 of the Revised Administrative Code, as amended, which provides, among others, as follows:

"* * * It shall also have concurrent jurisdiction with the Courts of First Instance over all criminal cases arising under the laws relating to gambling and management of lotteries, to assaults where the intent to kill is not charged or evident upon the trial, to larceny, embezzlement and estafa where the amount of money or property stolen, embezzled or otherwise involved does not exceed the sum or value of two hundred pesos. * * *"

The principal legal issue having been thus disposed of, inquiry will be made into the accuracy of both the principal and the additional penalties imposed upon appellant by the Court of First Instance of Manila. As the subject matter of the theft of which appellant was convicted was only 92 centavos, the offense is penalized by Article 309 of the Revised Penal Code, which reads as follows:

"Art. 309. Penalties.—Any person guilty of theft shall be punished by:

* * * * *

"6. Arresto mayor in its minimum and medium periods, if such value does not exceed 5 pesos."

Thereunder the appropriate penalty ranges from one month and one day to four months. Inasmuch as the aggravating circumstance of recidivism inherent in habitual delinquency must be taken into account (People vs. Melendrez, 59 Phil., 154; People vs. Espina y Real (62 Off. Gaz., 607); People vs. De Jesus, 638 Phil., 760; People vs. Bernal, 63 Phil., 750; and there is no mitigating circumstance to offset it, the penalty prescribed for the offense ought to be imposed in the maximum period which we hereby fix at three months and one day.

With respect to the additional penalty for habitual delinquency, we hold that, as the present conviction of appellant for theft is the fourth, the case falls under paragraph 5(b) of article 62 of the Revised Penal Code which prescribes an additional penalty of prision mayor in its minimum and medium periods, or from six years and one day to ten years. To be technically correct, we therefore fix the additional penalty at six years and one day, instead of only six years.

The judgment of the lower court is accordingly modified by reducing the principal penalty to three months and one day of arresto mayor and increasing the additional penalty for habitual delinquency by one day. In other respects, it is affirmed, without pronouncement as to costs. So ordered.

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

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