

EL PUEBLO DE FILIPINAS, QUERELLANTE Y APELADO, CONTRA GERARDO EVANGELISTA Y MARAMOT, ACUSADO Y APELANTE.

G.R. No. 47125. June 22, 1940

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

La siguiente es la querella presentada en esta causa:

"That in or about the period between the 6th and the 29th of October, 1939, in the City of Manila, Philippines, the said accused Gerardo Evangelista y Maramot, did then and there willfully, unlawfully, and feloniously, with the intent of gain and without the consent of the owner thereof take, steal, and carry away the following personal property belonging to Bonifacio Pereja, to wit:

One (1) lady's yellow gold ring

P30.00

One pair of leather shoes

7.00

One pair of canvas shoes

2.50

Cash amounting to

3.00

to the damage and prejudice of the said owner in the total sum of forty-two pesos and fifty centavos (P42.50), Philippine currency.

"That the accused acted with grave abuse of confidence, he being at the time of the commission of the crime a houseboy of the said Bonifacio Pereja.

"That the said accused is a recidivist, having previously been convicted once of qualified theft by virtue of a final judgment of a competent court."

El acusado, al ser informado de esta querella, declaro" ser culpable y fue condenado a la pena indeterminada de seis meses y un dia, como minima, a dos afios, cuatro meses y un dia de prision correccional, como maxima, con las accesorias de ley, y a indemnizar a la parte ofendida en la cantidad de P25, con la prision subsidiaria correspondiente en caso de insolvencia. El acusado apelo contra esta decision.

El Juzgado, al imponer al apelante la pena que impuso, considero el delito de hurto acusado como cualificado. Sostiene el apelante en esta instancia que el Juzgado erro al considerar cualificado el hurto acusado, con vista

solamente de su declaration de culpabilidad. Pero, se alega en la querella que el acusado obro con grave abuso de confianza, al cometer el delito, siendo entonces un domestico (houseboy) en la casa del ofendido. Esta alegacion de que el acusado era domestico y obro con abuso de confiaza cualifica el hurto acusado. Habiendo el acusado declarado ser culpable de los hechos alegados en la querella, es legal la sentencia que le condena por el delito que constituyen estos hechos.

Con la unica modificacion de que la pena minima de prision, que se condena al apelante, es de seis meses de arresto mayor, en vez de seis meses y un dia de prision correctional, se confirma en lo demas la sentencia apelada con las costas al apelante.

Imperial, Diaz, Laurel, y Moran, MM., estan conformes.

Se modifica la sentencia.

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