

EL PUEBLO DE FILIPINAS, QUERELLANTE Y APELADO, CONTRA FIDEL FORTUNO, ACUSADO Y APELANTE.

G.R. No. 48523. December 13, 1941

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HORRILLEN, M.:

En este proceso el acusado no discute su culpabilidad; en verdad, se declaro culpable cuando fue informado de la querella. Lo unico que pretende su defensa es que la alegacion de varios delitos en la querella como constitutivos de delincuencia habitual no pueden considerarse como alegacion de reincidencia. El Procurador General, fundado en los asuntos de Estados Unidos contra Burlado, 42 Jur. Fil. 75 y Pueblo contra Masonson, R. G. No. 42549, sostiene lo contrario, esto es, que, cuando se alega delincuencia habitual en la querella, tal hecho incluye el de reincidencia. Estamos conformes con dicho funcionario. La declaracion, por tanto, de culpable, como circunstancia atenuante, esta compensada con la agravante de reincidencia incluida en la alegacion de delincuencia habitual. La pena, por tanto, debe imponerse en su grado medio, no habiendo como no hay otras circunstancias, ni atenuantes ni agravantes, que apreciar. El delito es uno de estafa de una maquina de escribir cuyo valor es P186.50, y por tanto es el sancionado y castigado en el articulo 315 delCodigo Penal Revisado, parrafo 4.o, que senala la pena de arresto mayor en su grado medio y maximo. El grado medio de esta pena es el de 3 meses, y 11 dias a 4 meses y 20 dias. La pena impuesta al acusado esta, por tanto, dentro de lo dispuesto en la ley.

Abad Santos, Diaz, Moron, y Ozaeta, MM., estan conformes.

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