

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CALIXTO QUIJANO Y PASCUAL, DEFENDANT-APPELLANT.

G.R. No. 48630. June 04, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

The above-named appellant was charged in the Court of First Instance of Manila with the crime of robbery alleged to have been committed as follows:

"That on or about the 17th day of May, 1941, in the City of Manila, Philippines, the said accused, conspiring and confederating together with two other persons whose identities are still unknown, by means of violence upon person, to wit: by then and there giving one Efrain Fajardo, a pay-master and foreman of the Eastern Syndicate Investment Co., of this City, fist blows on the face which caused him physical injuries of minor importance, did then and there willfully, unlawfully, and feloniously snatch, take, steal, and carry away, with intent of gain and without the consent of the owner thereof, one bag which at that time contained two native mangoes, and which the said paymaster and foreman was using for carrying the pay of the laborers working for said company, to the damage and prejudice of the Eastern Syndicate Investment Co. in the sum of P1.00, the value of the bag, and the said Efrain Fajardo in the amount of P0.05, the value of the two mangoes.

"That the accused is a recidivist, he having been previously convicted twice of theft on sept. 13, 1940, by final judgments of competent courts."

He pleaded not guilty to that information upon arraignment on July 24, 1941, and stood trial upon that plea on September 9 of the same year. After the first witness for the prosecution had testified, the trial was continued to September 15, 1941. Upon the resumption of the trial on that date, the accused, thru his attorney, asked leave of court to change his former plea of not guilty to that of guilty. The court granted his petition and then and there found him guilty of the crime charged, with the mitigating circumstance of voluntary confession of guilt, which was offset by the aggravating circumstance of recidivism, and sentenced him to suffer an indeterminate penalty ranging from three months of arresto mayor to three years, eight months, and one day of prision correctional, with the accessory penalties of the law, to indemnify the Eastern Syndicate & Investment Company in the amount of P1 and Efrain Fajardo in the sum of P.05, with subsidiary imprisonment in case of insolvency, and to pay the costs. From that sentence he appealed.

In this court, counsel de oficio for the appellant recommends the affirmance of the sentence appealed from. But the Solicitor-General contends that the appreciation by the trial court of the plea of guilty as a mitigating circumstance was not authorized by law, and recommends that the penalty be raised accordingly.

Under paragraph 7 of article 13 of the Revised Penal Code, in order that a voluntary confession of guilt may be considered a mitigating circumstance, it must be made prior to the presentation of the evidence for the prosecution. Conformably thereto, this court has held in various cases that the voluntary confession of guilt made after part of the evidence for the prosecution has been presented cannot be appreciated as a mitigating circumstance in favor of the accused. (People vs. Diaz and Fernandez, G. R. No. 45281; People vs. Borenaga, G.

R. No. 45211; People vs. Sotelo y Matti, G. R. No. 44655; People vs. Fortuno, 1 Off. Gaz. No. 9, Sept. 1942.) There should be no mitigation on account of an admission of guilt which the accused has withheld until after he has speculated on the proofs against him and has satisfied himself that he has no probable escape.

The trial court recognized that "under the law, the accused is no longer entitled to this mitigating circumstance," but nevertheless gave the accused the benefit thereof, "taking into account the insignificant value of the property stolen, which is P1.10 only." We cannot sanction that view. The relative insignificance of the booty does not mitigate the criminality of the robber. On the contrary, it only serves to bring out his perversity in bolder relief; for he who commits violence against persons for a trifle must be a real criminal.

The crime committed by the appellant is punished by article 294, paragraph 5, of the Revised Penal Code with prision correccional to prision mayor in its medium period. With the aggravating circumstance of recidivism not compensated by any mitigating circumstance, the penalty should be applied in the maximum degree, instead of the medium as the trial court did.

Wherefore, the appellant should be and is hereby sentenced to an indeterminate penalty of not less than four months and one day of arresto mayor and not more than six years, ten months, and one day of prision mayor. With this modification the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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