

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FAUSTINO TOLENTINO Y DE DIOS AND LUISA CORPUZ Y QUITONG,
DEFENDANTS. FAUSTINO TOLENTINO V DE DIOS, APPELLANT.**

G.R. No. 48740. August 05, 1942

Ponente: OZAETA, J.

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OZAETA, J.:

In the municipal court of Manila, where this action was commenced, as well as in the Court of First Instance, to which it was appealed, both of the above-named defendants pleaded guilty to the charge of theft of seven shirts valued at P14 belonging to one Cosme Famorca. Both, being recidivists, were sentenced in the Court of First Instance to suffer two months and one day of arresto mayor and to pay the corresponding civil indemnity to the offended party. Faustino Tolentino y de Dios was further sentenced to suffer an additional penalty of six years and one day of prision mayor for habitual delinquency. He alone appealed to this Court.

The only question raised by the appellant is the correctness of the additional penalty. The pertinent allegation of the information is that the accused Faustino Tolentino y dc Dios is a habitual delinquent, he having been convicted of the crimes of theft and estafa by final judgments rendered by competent courts, as follows:

Date of
commission

Date of
sentence

Crime

Sentence

Date of
release

10-29-26

8-1-27

9-14-35

10-13-25

10-30-26

8-1-27

9-30-35

Qualified theft, MCDE-16887

Theft, NCDE-42165

Qualified, theft. NCDE-57895

Estafa, CFID-50973

6 months and P3 indemnity

3 months and 1 day

6 months 1 day and P15 indemnity

2 months 2 day arresto mayor, to return the bicycle stolen or its value P40, and additional penalty of 2 years 4 months 21 days of prision correccional and costs.

3-18326

1-20-27

8-10-27

The trial court sentenced the appellant under paragraph 5 (b) of article 62 of the Revised Penal Code, as if this were only his fourth and not his fifth conviction. The Solicitor General recommends the affirmance of that sentence, on the theory that appellant's fourth previous conviction alleged in the information should be disregarded because the date of his release in connection therewith was not shown. On the other hand counsel for the appellant, on the basis of the trial court's implied finding that this is appellant's fourth conviction, contends that appellant should be sentenced under paragraph 5 (a) of article 62, as if the present were only his third conviction, on the ground that the first conviction should be taken as an aggravating circumstance and should be disregarded as an element of habitual delinquency.

We cannot uphold appellant's contention. Under his theory an accused cannot be sentenced for habitual delinquency unless he has had at least three previous convictions, because the first conviction has to be taken only as an aggravating circumstance and has to be disregarded for the purpose of determining habitual delinquency. That, we think, would be an unwarranted interpretation of the Habitual Delinquency Law (paragraph 5 of article 62 of the Revised Penal Code), which reads as follows:

5. Habitual delinquency shall have the following effects:

"(a) Upon a third conviction the culprit shall be sentenced to the penalty provided by law for the last crime of which he be found guilty and to the additional penalty of prision correccional in its medium and maximum periods;

"(b) Upon a fourth conviction the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prision mayor in its minimum and medium periods; and

"(c) Upon fifth or additional conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prision mayor in its maximum period to reclusion temporal in its minimum period.

"Notwithstanding the provisions of this article, the total of the two penalties to be imposed upon the offender, in conformity herewith, shall in no case exceed 30 years.

"For the purposes of this article, a person shall be deemed to be habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of robo, hurto, ettafa, or falsificacion, he is found guilty of any of said crimC3 a third time or oftener."

A habitual delinquent is necessarily a recidivist, and in imposing the principal penalty upon him the aggravating circumstance of recidivism has to be taken into account. In fixing "the penalty provided by law for the last crime" as required in paragraph 5 (a), (b), and (c) of article 62 of the Revised Penal Code, the court cannot disregard articles 14 (9) and 64 of the Revised Penal Code, which respectively define recidivism as an aggravating circumstance and lay down the rule for the application of aggravating and mitigating circumstances. We reaffirm the holding of this Court in *People vs. Melondrez*, 59 Phil., 154; *People vs. Espina*, 62 Phil., 607; and *People vs. De Jesus*, 63 Phil., 760, as a correct interpretation of the Habitual Delinquency Law. However, for the purpose of

fixing the additional penalty, recidivism cannot be taken as an aggravating circumstance for the reason that it is inherent in habitual delinquency (People vs. De Jesus, supra).

Neither can we accept the recommendation for affirmance made by the Solicitor General on the theory that the present is appellant's fourth conviction. We cannot disregard his previous fourth conviction alleged in the information solely because the date of his release in connection therewith has not been shown. It appearing that he was sentenced for the fourth time on September 30, 1935, to suffer two months and one day of arresto mayor plus an additional penalty of two years, four months, and twenty-one days of prision correccional, we can readily see that he must have been released in connection therewith less than ten years previous to August 13, 1941, the date of the commission of the offense complained of in the present case. The stand taken by the trial court and the Solicitor General is untenable because if appellant's fourth previous conviction be disregarded, he could not be sentenced to any additional penalty as a habitual delinquent, his previous third conviction and release having taken place more than ten years prior to August 13, 1941.

It results that this is appellant's fifth conviction and, accordingly, he must be sentenced under paragraph 5 (c) of article 62 to the additional penalty of prision mayor in its maximum period to reclusion temporal in its minimum period. This penalty must be imposed in its minimum degree because of the mitigating circumstance of plea of guilty. Wherefore, with the modification that the appellant Faustino Tolentino y de Dios shall suffer an additional penalty of ten years and one day of prision mayor, the sentence appealed from is affirmed, with costs. So ordered.

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

DISSENTING

BOCOBO, J.,

I am constrained to dissent from the majority opinion which, upon the fifth conviction of the accused, considers recidivism as an aggravating circumstance in fixing the principal penalty, despite the fact that, in imposing the additional penalty for habitual delinquency, previous conviction is also counted. In this case, none of the conviction prior to the fifth should be deemed an aggravating circumstance of recidivism in fixing the principal penalty, which should therefore be arresto mayor in its minimum degree, or one month and one day, in view of the plea of guilty.

Article 14, paragraphs 9 and 10 of the Revised Penal Code provides as follows:

"ART. 14. Aggravating circumstances.—The following are aggravating circumstances:

* * * * *

"9. That the accused is a recidivist.

"A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code.

"10. That the offender has been previously punished for an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty."

and Article 62, paragraph 5 of the same Code reads:

"ART. 62. Effect of the attendance of mitigating or aggravating circumstance) and of habitual delinquency.—Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for

the purpose of diminishing or increasing the penalty in conformity with the following rules:

* * * * *

"5. Habitual delinquency shall have the following effects:

"(a) Upon a third conviction the culprit shall be sentenced to the penalty provided by law for the last crime of which he be found guilty and to the Additional penalty of prisiones correccionales in its medium and maximum periods;

"(b) Upon a fourth conviction the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prision mayor in its minimum and medium periods; and

"(c) Upon a fifth or additional conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prision mayor in its maximum period to reclusion temporal in its minimum period.

"Notwithstanding the provisions of this article, the total of the two penalties to be imposed upon the offender, in conformity herewith, shall in no case exceed 30 years.

"For the purposes of this article, a person shall be deemed to be habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of robo, hurto, estafa, or falsificacion, he is found guilty of any of said crimes a third time or oftener."

From the above provisions it can be seen that the Revised Penal Code recognizes three situations in which offenders who are convicted more than once find themselves, namely, reiteration, recidivism and habitual delinquency. Reiteration refers to any crime which is not in the same title of the Revised Penal Code, recidivism to crimes in the same title of the Code, and habitual delinquency to robbery, theft, estafa and falsification. In reiteration, the number of previous punishments is unimportant provided there has been at least one if the law attaches an equal or greater penalty, or at least two if the penalty is lighter. In recidivism, if the previous convictions are of crimes other than robbery, theft, estafa and falsification, but are embraced in the same title as the last offense, the number of previous convictions is also immaterial. But if the previous convictions are of robbery, etc., the number of the same is important because if there is only one previous conviction, there is recidivism but if there have been two or more previous convictions of robbery, etc., habitual delinquency exists.

Therefore, it can be inferred that the law has followed a logical and general plan in dealing with criminals who commit robbery, etc., more than once. That plan is that if there is only one previous conviction, the accused who is convicted for the second time is a recidivist, and if thereafter he does not reform, but commits robbery or kindred crimes for the third time or oftener, he is a habitual delinquent. Thus there is first recidivism and then habitual delinquency. These two conditions are successive and not simultaneous stages in the life of the criminal in cases of robbery, etc. Therefore, upon the third, fourth or subsequent conviction, he is no longer a recidivist but a habitual delinquent. His first conviction having already been counted as an aggravating circumstance of recidivism in fixing the principal penalty when he was convicted for the second time, it would seem that to consider his first conviction again as an aggravating circumstance of recidivism in meting out the principal penalty when he is found guilty for the third, fourth, fifth or additional times, runs counter to the general scheme of the law as I construe it and as already explained.

I believe therefore that upon the fifth conviction of robbery or similar crimes, as in the present case, none of the prior convictions should be considered an aggravating circumstance of recidivism in laying down the principal penalty. It is enough that all the four previous convictions are considered as part of the habitual delinquency and the proper additional penalty is applied accordingly.

Moreover, it would seem to be unjust, on fifth conviction, to count any one of the previous convictions as an aggravating circumstance in fixing the principal penalty, because all the prior convictions are already considered in meting out the additional penalty. This interpretation of the law takes into account the same offense twice at the same time, namely, first as an aggravating circumstance in imposing the principal penalty, and then as one of the required previous convictions in fixing the additional penalty for habitual delinquency. *Non bis in idem*. To punish a person twice for the same offense is frowned upon in this legal maxim.

But it is said in the majority opinion that the court cannot disregard articles 14 (9) and 64 of the Revised Penal Code, which respectively define recidivism as an aggravating circumstance and lay down the rule for the application of aggravating and mitigating circumstances. But these articles are not disregarded in my view of the question because, as already set forth, there is no recidivism, but habitual delinquency, on the third or subsequent conviction, of robbery, theft, estafa, or falsification.

Furthermore, penal laws are liberally construed in favor of the accused. This has not been done in the majority opinion because it considers the same offense twice.

Lastly, the object of article 14, paragraph 9 and article 62, paragraph 5 of the Revised Penal Code is the same: to be severe on those who manifest criminal tendencies in order to curb criminality. That object is already attained when the additional penalty (which is very heavy compared with the principal) for habitual delinquency is applied. It is therefore unnecessary to consider the first or any other previous conviction as an aggravating circumstance in order to increase the principal penalty. To do so is tantamount to saying: "The accused is a dangerous character because he has been previously convicted of robbery, etc., twice or oftener; therefore he should get the additional penalty for habitual delinquency. But he is also a dangerous character because the first or any other of these same previous convictions for similar crime means recidivism; therefore, he should also get a higher penalty because of the aggravating circumstance of recidivism." It would, however, seem more reasonable to hold that inasmuch as the more includes the less, the previous conviction which is the essence of recidivism is absorbed in the total number of convictions that make up habitual delinquency. The majority opinion itself admits that "a habitual delinquent is necessarily a recidivist." If so, why should he be punished as a recidivist when he is already punished as a habitual delinquent? Judgment modified and penalty increased.

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