

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GERVASIO SANTIAGO, DEFENDANT AND APPELLANT.

G.R. Nos. 32456, 32457. November 14, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

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This is an appeal taken by Gervasio Santiago from the judgment of the Court of First Instance of Manila, the dispositive part whereof is as follows:

"Wherefore the court finds the defendant Gervasio Santiago guilty beyond a reasonable doubt of the offenses charged in the informations filed in these cases, and sentences him:

" (a) In case No. 38871, for the crime of estafa defined and penalized in article 534, No. 1, of the Penal Code, as amended by Act No. 3244, in connection with articles 535, No. 1, and 536 of said Code, to two years, four months, and one day of presidio correctional, the accessories of the law, to indemnify Francisco Fulgencio in the amount of P1.50, without subsidiary imprisonment (Ballesteros, 1 Phil., 208), and to pay the costs; and being an habitual criminal, he is further sentenced to nine years' imprisonment.

"(b) In case No. 38872, to pay a fine of P5 with subsidiary imprisonment in case of insolvency, and to pay the costs. So ordered."

In support of his appeal, the appellant assigns the following alleged errors as committed by the trial court in its judgment, to wit:

"1. The trial court erred in not giving due weight to the testimony of the defendant that upon dismissing the carretela driven by Francisco Fulgencio, he paid the latter as hire hereof 40 centavos, which amount was accepted by said driver through the intervention of a policeman.

"2. The trial court erred in not granting the defendant the benefit of reasonable doubt and in not acquitting him of the crime of estafa and violation of section 1213 of the Revised Ordinances of the City of Manila, charged in the information filed in cases Nos. 38871 and 38872, respectively, of the Court of First Instance of Manila."

The following facts were proved at the trial beyond a reasonable doubt:

On the morning of August 27, 1929, the defendant engaged Francisco Fulgencio's carretela at the stipulated price of P1.50 for the round trip from the corner of Isaac Peral and Nebraska Streets in Ermita, to the Quinta Market.

The defendant first went to the Meralco office, and thence to San Miguel Brewery on Aviles Street. On reaching the latter place, the defendant went into one of the buildings of said brewery, and emerging after a while, asked

the driver whether he had any money with him. Fulgencio answered he only had 70 centavos. The defendant asked for the loan of it and went into the office of the brewery. Seeing that the defendant was trying to get away, Fulgencio pursued him in his carretela. The defendant disappeared somewhere near San Rafael Street, but Fulgencio soon spotted him with the help of someone who had seen him hide himself. Upon being discovered, the defendant at once returned to Fulgencio the 70 centavos he had borrowed. The driver turned over the defendant to policeman Cirilo Abala, telling him what had happened. The policeman then searched the defendant's pockets and did not find 1 centavo. Of course, he was unable to pay Fulgencio the P1.50 for the hire of his carretela. The policeman then went over to a police telephone. While he did so, the defendant tried to run away, but the policeman gave chase and captured him.

The defendant admitted that he had already been convicted of estafa and that the last conviction was in the month of April, 1927.

The evidence shows that the defendant is guilty of the crime charged beyond a reasonable doubt. The only questions to be decided are the principal and the additional penalty which should be imposed.

In criminal case No. 38871 (G. R. No. 32456), wherein he was found guilty of estafa in the amount of P1.50, or 7-1 pesetas, the penalty fixed by article 534, case 1, of the Penal Code, as amended by Act No. 3244, is *arresto mayor* in the minimum and medium degrees. Having committed the same crime previously more than twice, the penalty to be imposed must be one degree higher, or *arresto mayor* in the maximum degree to *presidio correccional* in the minimum degree, in accordance with the provisions of article 536 of said Code. In the absence of modifying circumstances said penalty must be imposed in the medium degree, that is to say, one year and one day of *presidio correccional*.

With respect to the additional penalty which must be imposed upon the defendant in accordance with Act No. 3397, the trial court says:

"The court is of the opinion that the defendant Gervasio Santiago is an habitual criminal under Act No. 3397, having been previously convicted of the same crime more than three times within ten years of the last offense. Since it has been proved that the defendant was previously convicted six times of the same crime, namely, estafa, he must suffer the penalty prescribed in letter (d) of section 1, Act No. 3397, that is, an additional penalty of not less than twenty-one nor more than thirty years. But considering that the defendant herein has already been sentenced by this court in case No. 38870 to two years, four months, and one day of *presidio correccional* and the additional penalty of twenty-one years' imprisonment for habitual delinquency, the additional penalty to be imposed upon him in this case, No. 38871, must not exceed nine years, so that, adding up the two additional penalties, twenty-one years in case No. 38870 and nine years in the instant case No. 38871, the sum should not be greater than the maximum of thirty years prescribed in Act No. 3397. And it must be so in accordance with the spirit of the law, whose evident purpose is not to impose upon the defendant such a number of years' imprisonment as exceeds that of a human life."

The defendant-appellant was tried and convicted in criminal case No. 38870 (G. R. No. 32455)[1] of the crime of estafa committed on March 13, 1929, and being an habitual criminal, he was further sentenced to twenty-one years' imprisonment, in accordance with section 1, subsection (d), of Act No. 3397, cited above. In the instant case, the same defendant was tried and convicted of estafa again, committed on August 27, 1929, before being convicted and sentenced for the former offense.

Section 1 of said Act No. 3397 provides as follows:

"Section 1. Any person who within a period of ten years from the date of his release or of his last conviction by the courts of this country of the crimes of robo, hurto, estafa, embezzlement, or forgery, or of a violation of the laws against vagrancy or prostitution, is found guilty of any of said crimes a third time or oftener, shall be

deemed an habitual criminal * * *"

It will be seen that an accused can only be deemed an habitual criminal if he had been convicted and sentenced at least three times by the courts of this country for any of the crimes of robbery, larceny, estafa, embezzlement or forgery, or a violation of the laws against vagrancy or prostitution, or for three of said crimes, and that his third conviction and sentence must be within the ten years following his liberty or last conviction, which must be the second. It may be deduced from all this that it is not enough that the defendant should have been convicted three times of any of the crimes above set forth, or of three of said crimes, in order to be legally deemed an habitual criminal; the second conviction must be of a crime committed after the first, or after service of sentence for the first, and that the third conviction must be for a crime committed within ten years immediately following the second.

The law also regulates the additional penalty to be imposed upon an habitual criminal if he has committed any of the crimes mentioned three, four, five, six or more times, or has committed three, four, five, six or more of them.

If, in order that an accused may be legally deemed an habitual criminal, it is necessary that he should have been convicted three times of any of the crimes enumerated in the law, or of three such crimes, and that the second crime was committed after the first conviction, and the third after the second conviction, then, in order to apply the additional penalty for the fourth commission of crime, he must also have been convicted or have served the sentence for the third crime, and so on. The reason for this is obvious: As the additional penalties fixed by law are graduated, their application should also be gradual, in view of the reformatory nature of the law in question; that is, the fourth additional penalty provided for the fourth crime must be applied only when the latter has been committed after the third conviction or service, and so on with regard to the fifth, sixth, or more crimes, because until the habitual criminal has served the additional penalty provided for his case, and has committed or abstained from, committing another crime, it cannot be known if said additional penalty has or has not reformed him. If in order that an additional penalty may be imposed upon an habitual criminal for a new crime, he must have been previously convicted or must have served the sentence for the preceding crime. An habitual criminal who, after having been convicted or after having served his term, commits several of the crimes mentioned in the law, whether all at once or one after another, without having first been convicted of any of them before committing the others, cannot be sentenced to the additional penalty of each of said new crimes, because that would be contrary to the reformatory purpose of the law, and the graduation of the additional penalties, and because he would thus be made to serve additional penalties gradually increased for crimes committed before having been convicted of crimes of the same class committed previously.

In *Kinney vs. State* (45 Tex. Cr. R., 500; 79 S. W., 570), the Texas Criminal Court of Appeals held:

"Pen. Code 1895, art. 1014, authorizing an increased punishment where defendant has previously been convicted of the same offense, when construed with other provisions of the Penal Code, and the Code of Criminal Procedure, is a reformatory statute, and does not warrant the cumulation of a number of cases occurring simultaneously, in order to add to the punishment of the case on trial, but contemplates an enhanced punishment for a party who, after one conviction, does not reform, but persists in committing other offenses of a like character."

There can be no doubt that when an habitual criminal, after serving an additional penalty again commits several crimes, whether at the same time or one after another, he thereby shows that the additional penalty attached to the principal penalty to which he has been sentenced, and which he has served, was not enough to reform him. In committing new crimes, his mental and moral perversity was not greater when he committed the second than when he committed the first crime, nor when he committed the third than when he committed the second, whether he did so simultaneously or successively. The degree of his guilt being the same in such cases, he cannot logically

or scientifically be sentenced for each of said crimes to a gradually increasing penalty.

In view of the foregoing considerations, we are of the opinion and so hold that when an habitual criminal has committed several crimes, whether simultaneously or successively, without being first convicted of any of them before committing the others, he cannot be sentenced for each of said crimes to the gradually increasing additional penalty, and for the purposes of the law, said crimes must be considered as one, applying the additional penalty to one of them, and passing over the rest.

In the case at bar, inasmuch as the two estafas were committed one after the other within a short space of time by the defendant-appellant, without having been convicted of the first before committing the second, and the proper additional penalty having been applied to the first crime, no additional penalty can be imposed in view of the offense now before this court.

By virtue whereof, the judgment appealed from is modified, and the defendant-appellant is hereby sentenced to one year and one day of presidio correctional, eliminating the additional penalty of nine years imposed in criminal case No. 38871; and in all other respects the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Street, Ostrand, Johns and Romualdez, JJ., concur.

[1] 54 Phil., 814.

CONCURRING AND DISSENTING

Villamor, J.:

The defendant Gervasio Santiago had been convicted nine times of estafa when the information was filed in case G. R. No. 32455, having served his last sentence in April, 1927.

On the 13th of March, 1929, he again committed estafa and was sentenced by the trial court on October 11, 1929, to the penalty of two years, four months, and one day of presidio correctional, the accessories of the law and costs, besides an additional penalty of twenty-one years' imprisonment in accordance with Act No. 3586, for habitual delinquency. On the 6th of August, 1930, this court reduced the principal penalty to one year and one day of presidio correccional, and affirmed the judgment of the trial court in all other respects.

On the 27th of August, 1929, while the previous case was still pending judgment, the same defendant again committed estafa and a violation of section 1213 of the Revised Ordinances of the City of Manila. The trial court sentenced the defendant for the violation of the municipal ordinance to pay a fine of P5 and the costs; and for the crime of estafa to two years, four months, and one day of presidio correccional, with the accessories of law and costs, besides an additional penalty of nine years, in accordance with Act No. 3586. The case before us is an appeal from this judgment (G. R. Nos. 32456 and 32457), and the majority of the court is of opinion that the principal penalty should be reduced to one year and one day of presidio correccional, and the additional penalty of nine years should be eliminated.

I agree with the modification of the judgment in respect to the principal penalty, but dissent with regard to the elimination of the additional penalty prescribed by law.

The reason given by the majority for eliminating the additional penalty in the instant case is that since the defendant committed the two crimes successively within a short period of time, without having been convicted of

the first before committing the second, and since the proper additional penalty was applied for the first crime, he ought not to be sentenced to an additional penalty for the second crime. I believe this is an argument which should be referred to the Legislature in order to have the law amended.

The last sentence, imposed upon the defendant before the two cases mentioned, was served by him in April, 1927. On the 13th of March, 1929, he committed estafa again, and on the 27th of August that same year, he once more committed estafa. It is true that before committing estafa on August 27, 1929, the defendant had not yet been convicted of the crime committed on the 13th of March, 1929; but, as an habitual criminal who had committed the crime of estafa nine times, the reckoning must be based on the last sentence served by him in April, 1927. The defendant's guilt of the two last crimes of estafa having been proved, he must suffer the penalty for each of them, and the proper additional penalty prescribed by Act No. 3586, with the understanding that the whole or total additional penalty is not to exceed thirty years. In my opinion the judgment appealed from should be affirmed in respect to the additional penalty.

Avanceña, C. J.:

I concur in this dissenting opinion of Justice Villamor.

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