

[G.R. No. L-7490. January 21, 1958]

THE PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE VS. JESUS SALAZAR Y GABRIEL, DEFENDANT-APPELLANT.

D E C I S I O N

BENGZON, J.:

In the Manila court of first instance Jesus Salazar y Gabriel pleaded guilty to an information charging him with illegal possession of a sub-machine-gun committed in December 1953. He was immediately sentenced to five years' imprisonment and to pay costs.

However, although the penalty was the lowest prescribed by law,^[1] he appealed in due time, contending that the trial judge erred in not recommending executive clemency inasmuch as the weapon had already been forfeited to the Government, and no showing was made that he was a hardened criminal.

He obviously refers to the provisions of Article 5 of the Revised Penal Code enjoining the courts to make proper representations to the Chief Executive whenever "a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense." But such article has no application, because it refers to penalties provided by the Revised Penal Code; whereas the legal provision violated by herein appellant is another piece of legislation.

Besides, no questioning was made at the hearing, and no manifestations whatsoever were uttered either by the accused or by his counsel to explain the circumstances surrounding the case. Consequently no elements appear of record in the light of which could be appreciated the degree of malice or the injury caused by the offense.

Now, in the absence of peculiar circumstances of the kind already mentioned, it would not be prudent for the courts to consider whether this penalty be excessive for this class of offenses,^[2] because they would be entering the area reserved for the Legislative Department and the Executive that approved the statute with its specified punishments.

The judgment will accordingly be affirmed, with costs against appellant.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

^[1] Republic Act No. 4 amending sec. 2692 Administrative Code.

^[2] No allegation that penalty was “cruel and unusual” Art. III sec. 1(19) Constitution.
