

FRANCISCO BASAN Y GOBOT, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. L-39483. November 29, 1974*

Ponente: ESGUERRA, J.

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Petitioner Francisco Basan y Gobot was charged with two (2) homicides in Criminal Cases Nos. 704 and 705 of the Court of First Instance of Camarines Sur. Upon arraignment the petitioner pleaded guilty in each case but invoked the mitigating circumstances of voluntary surrender and plea of guilty which the prosecution did not contest. He was sentenced to serve an indeterminate penalty of from six (6) years and one (1) day of prision mayor, as minimum, to ten (10) years of prision mayor, as maximum, to indemnify the heirs of the deceased in the sum of P15,000.00, and to pay the costs.

The petitioner moved to reconsider the decision in so far as the penalty is concerned, contending that the Court did not apply the Indeterminate Sentence Law under which, after reducing the penalty by one degree lower or prision mayor, he should have been sentenced to a penalty the minimum of which is within any of the periods of the penalty next lower in degree, or specifically, six (6) months and one (1) day of prision correccional. The penalty meted out by the respondent Court in its minimum degree is within the range of the minimum period of prision mayor, instead of within the range of any period of prision correccional, and the maximum of ten (10) years is within the range of the medium period of prision mayor.

Upon denial of petitioner's motion for reconsideration he appealed to this Court. The case not being appealable by mere notice of appeal, he was directed to file a petition for review in accordance with Section 17 of the Judiciary Act, as amended by Republic Act 5440. Having filed said petition, the same was referred to the respondent Judge for comment. The Solicitor General, in representation of the People of the Philippines and the respondent, filed his comment wherein he stated that the penalty imposed by the respondent Judge is not in accordance with law and requested that the case be decided immediately and the proper penalty meted out. This Court resolved to consider the petition as a special civil action, the comment of the respondent as their answer and the case submitted for decision.

The petitioner's contention is supported by the comment of the Solicitor General. Although the trial Court appreciated the two mitigating circumstances of plea of guilty and voluntary surrender, with no aggravating circumstances to offset them, yet it imposed an erroneous penalty insofar as the minimum of the indeterminate penalty is concerned. Under the Indeterminate Sentence Act (Act No. 4103, as amended), if the offense is punishable under the Revised Penal Code, the minimum penalty should be within any of the periods of the penalty next lower in degree to that prescribed by law, and the maximum thereof should be within the proper period of the penalty that may be imposed were the sentence a straight penalty (*People vs. Ducosin*, 59 Phil. 109). In this case, the minimum of the indeterminate sentence that should have been imposed upon the petitioner for each of the two offenses should be within the range of from six (6) months and one (1) day to six (6) years, and the maximum should have been within the range of from eight (8) years and one (1) day to ten (10) years, the medium period of

prision mayor, which should be the proper penalty, considering that the two mitigating circumstances have already been taken into account in reducing the penalty by one degree lower.

In the exercise of our discretion in the imposition of the proper indeterminate penalty, We hereby modify the sentence imposed by the respondent Judge in Criminal Cases Nos. 704 and 705 of the Court of First Instance of Camarines Sur, Branch I, so as to impose upon the petitioner who is the accused in said cases, the indeterminate penalty in each case of from six (6) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

WHEREFORE, the petition is hereby granted. The penalty imposed upon the accused in Criminal Cases Nos. 704 and 705 of the Court of First Instance of Camarines Sur, Branch I is hereby modified accordingly as above indicated.

SO ORDERED.

Castro, (Chairman), Makasiar, Teehankee, and Munoz Palma, JJ., concur.

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