

EL PUEBLO DE FILIPINAS, QUERELLANTE Y APELADO, CONTRA FERNANDO GONZALES Y SOL, QUERELLADO Y APELANTE.

G.R. No. L-1959. December 13, 1948

Ponente: BRIONES, J.

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BRIONES, J.:

Ante el Juzgado de Primera Instancia de Manila se querrela contra el acusado, Fernando Gonzales y Sol, por posesion de una pistola automatica, calibre 45, serie No. 429651, con algunas munioiones. Al llamarse a vista la causa, el acusado, previo permiso del Juzgado, retiro su anterior deolaracion de no culpable y, en su lugar, presto otra onfesandose culpable del glplito querellado. En consacuenoia el Juzgado, apre[pando oomo cirounstanoia atenuante la declaracion de culpabilidad, condend al acusado a sufrir una pena ingeterminada de 1 ao y 1 dla a 3 años de priaidn, y a Siagar las ootas, amen de la confiscacion de los objetos Ite constituian el corpus delicti y se hallaban en poder de la policia. De la sentencia asl dictada el aousado Da interpuesto la presente apelacion.

El apelante no ausolta mas que una ouestion, a saber: que, habieindose el mismo deolarado culpable, la pena debiera ser la minima de 1 año y 1 dfa de prision, en vez de la indeterminada de 1 año y 1 dfa a 3 años impuesta por el Juzgado.

La pretension del apelante careoe de rundamento. La pena Impuesta se nalla a;justada a la ley que sefiala para el delito querellado y enjuoiado una pena no menor de 1 afio y 1 dfa de prisidn nl mayor de 5 años, o dioha pena de prision y una multa de no menos de P1,000 ni mas de P5,000, a discrecion del tribunal. (Art. 2692 delCodigo Administrativo Reviaado, tal como na sido enmendado por la ley de la repilblica No.4). Es evidente que la pena impuesta se nalla perfeotamente dentro del marco de la ley.

Se arguye que, en virtud de la deolaraoind de oulpabilidad, el aousado "merece una pena menor que la impuesta," a tenor del art. 13, inc. 7 del cddigo penal revisado. Pretension erronea. Con respecto a infraociones oastigadaa por leyes especiales, no cabe invocar ni tener en cuenta oomo atenuante la declaraoitfn de oulpabilidad bajo la dispoaicion citada del ctfdigo penal. (Art. 10, cddlgo penal revisado; Plxeblo contra Isabelo Noble.) [1]

De todas maneras, se advierte que en la presente oausa el Juez sentenciador tuvo en cuenta como atenuante L la deolaraoind de oulpabilidad y, en conseouenoia, condeno al aousado al minimum de la pena senalada por la ley.

En meritos de lo expuesto, se conrirma la seivcenola apelada, oon las costas a cargo del apelante.

Moran, Pres., Paras, Feria, Pablo, Bengzon, Tuason, y Montemayor, MM., estan conformes.

DISSENTING

PERFECTO, J.,

We cannot agree with the theory that the plea of guilty as a mitigating circumstance under the Revised Penal Code (Art. 3, paragraph 7) cannot be considered in offenses punishable under special laws, meaning, all penal laws other than the Revised Penal Code.

Appellant having pleaded guilty prays that the indeterminate penalty of one year and one day to three years of imprisonment imposed by the trial court should be reduced to the fixed penalty of one year and one day, the minimum allowed by Commonwealth Act No. 56, as amended by Republic Act No. 4, punishing illegal possession of fire arms.

The pronouncement made in *People vs. Noble*, L-289,[*] upon further consideration, appears to be wrong and must be reversed. The pronouncement was based on an incomplete understanding of the provisions of Article 10 of the Revised Penal Code.

Said article provides:

"ART. 10. Offenses not subject to the provisions of this Code.—Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary."

It can be seen that the article is composed of two clauses. In the first it is provided that offenses under special laws are not subject to the provisions of the Code. The second makes the code supplementary to such laws.

Apparently, the two clauses are contradictory, but a sensible interpretation will show that they can perfectly be reconciled. The first clause should be understood to mean only that the Penal Code is not intended to supersede special penal laws. The latter are controlling with regard to offenses therein specifically punished. Said clause only restates the elemental rule of statutory construction that special legal provisions prevail over general ones. As a matter of fact, the clause can be considered as a superfluity, and could have been eliminated altogether.

The second clause contains the soul of the article. The main idea and purpose of the article is embodied in the provision that the "code shall be supplementary" to special laws, unless the latter should specifically provide the contrary.

Under this clause, which inadvertently has not been considered in the laconic decision in the *Noble* case, in the absence of contrary provision in the special laws, these shall be supplemented by the general provisions in the Revised Penal Code that, by their nature, are applicable. Among them are Articles 2, 3, 4, 5, 8, 11, 12, 13, 14 and 15.

The provisions in the above-mentioned articles of the Penal Code have been enacted in consonance with the conviction among the most enlightened penologists that they are necessary to render substantial justice in criminal cases.

If the modifying circumstances provided in the Revised Penal Code could not be considered in the trial of offenses punished under special penal laws, what standard shall the courts consider in order to determine if the accused should be punished with lighter, moderate or heavier penalty within the range provided by law? Without considering such modifying circumstances, the determination of which is the result of deep legal thought and centuries of experience in the administration of criminal laws, the only standard that can be taken into consideration as to the more or less severe penalty to be imposed will be the discretion of the court. That might

open the door to discrimination and unjust results, as the discretion of each judge will be differently exercised from that of the others.

The general practice in trial courts has been to consistently consider voluntary surrender and voluntary plea of guilty as mitigating circumstances. Even in this case, as stated in the prosecution's brief, the lower court considered the plea of guilty as a mitigating circumstance, although it failed to grant appellant all the benefits of it. Undoubtedly, the practice is intended to make effective the provision of art. 10 of the Revised Penal Code to the effect that the same is supplementary to special penal laws.

Appellant is undoubtedly entitled to the benefits of the mitigating circumstance for his voluntary plea of guilty and, accordingly, the appealed decision should be modified as prayed for in appellant's brief.

[1] 77 Phil., 93.

[*] 77 Phil. 93.

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