

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
NANG KAY ALIAS SY KEE, DEFENDANT-APPELLANT.***G. R. No. L-3565. April 20, 1951*

Ponente: MONTEMAYOR, J.

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In the Court of First Instance of Rizal, Nang Kay alias Sy Kee was charged with illegal possession of firearms in that in his possession were found three grease guns and two Thompson Submachine guns, and empty magazines, without the necessary license. In court he appeared without counsel and upon being arraigned, he pleaded guilty. He was sentenced to imprisonment for five (5) years and one (1) day, with the accessories of the law, and to pay costs. The firearms and ammunition in question were ordered confiscated in favor of the Government. He now appeals to this Court on the ground that the trial court failed to inform him at the arraignment of his right to be assisted by counsel. The Solicitor General also questions the correctness of the penalty imposed, expressing the opinion and making the recommendation that the law on indeterminate sentence should have been applied.

Counsel for the appellant makes citations of authorities to the effect that it is the duty of the court to inform the defendant in a criminal case of his right to have counsel, and that should the court fail to do so, its action constitutes a reversible error. In this, we agree with the said counsel. However, contrary to the claim of said counsel that the record in this case shows that the court failed to inform the appellant of his right to have counsel, we believe that the record merely fails to show that the court complied with this duty. In other words, the record of the case is silent on this point. Both the minutes of the court session during which appellant was arraigned as well as the certificate of arraignment signed by the Clerk of Court merely show that the case was called for arraignment, the accused appeared without counsel, and that upon being arraigned, he pleaded guilty to the charge. The transcript of the stenographic notes taken down by the stenographer further states that the court instructed the Clerk of Court to read the information which was translated to the accused after which, the court asked the defendant for his plea. The accused then pleaded guilty.

As we have already stated, the record of the case does not show whether or not the court informed the appellant of his right to have counsel, but of course this cannot be interpreted in the sense that the court failed to so inform him of such right. On the contrary, because of the presumption that the law has been complied with, it is to be presumed in this case that the court has complied with its duty and that it has informed the appellant that he may have counsel, even a counsel de oficio if he wanted to. In the case of *People vs. Miranda*, 78 Phil., 418; 44 Off. Gaz., No. 9, p. 3307, involving a similar case of illegal possession of a firearm, namely, a carbine with ammunition, this Court passing upon the same point now raised, said:

"This precise issue was determined in *United States vs. Labial*, 27 Phil. 87, 88, in the sense that unless the contrary appears in the records, it will be presumed, that the defendant was informed by the court of his right to counsel; 'if we should insist on finding every fact fully recorded before a citizen can be punished for an offense against the laws, we should destroy public justice, and give unbridled license to crime. Much must be left to intendment and presumption for it is often less difficult to do things correctly than to describe them correctly,'

[People vs. Labial]. The same doctrine was reiterated in People vs. Abuyen, 52 Phil., 722 and in United States vs. Custan, 28 Phil., 19. We see no reason to modify it now \* \* \*."

See also the case of People vs. Javier, 64 Phil., 413, wherein it was stated that this Tribunal has repeatedly held that failure to state in the record that an accused has been informed of his right to have counsel, does not warrant reversal of the judgment if it does not affirmatively appear that he has not been informed thereof.

Moreover, it has been held in the case of U. S. vs. Escalante, 36 Phil., 746, that when the appellant fails to raise the question of his right to have an attorney in the trial court, that question will not be considered when raised for the first time in the Supreme Court. In the present case, it does not appear that this point was ever raised in the court below.

As to the application of the law on indeterminate sentence, the Solicitor General merely says that the trial court failed to apply said law, and he recommends that it be applied, without giving his reasons for said recommendation. We agree with the Solicitor General that the letter of the law on indeterminate sentence (Act No. 4103) as amended by Act No. 4225, particularly the latter part of Section 1 thereof, supports his contention, the offense in the present case being penalized by special law. Said legal provision states that:

"\* \* \* and if the offense is punished by any other law (not the Revised Penal Code or its amendments), the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same."

Section 2692 of the Revised Administrative Code as amended by Commonwealth Act 56 and Republic Act No. 4 penalizes the criminal act of the appellant with imprisonment of not less than five (5) years nor more than ten (10) years. So, if we applied the law on indeterminate sentence, the penalty as recommended by the Solicitor General would be not less than five (5) years and not more than a period exceeding ten (10) years. That penalty could hardly be regarded as favorable to the accused, considering his plea of guilty. We should not lose sight of the fact that the law on indeterminate sentence as a rule is intended to favor the defendant in a criminal case particularly to shorten his term of imprisonment, depending upon his behavior and his physical, mental, and moral record as a prisoner, to be determined by the Board of Indeterminate Sentence. Upon favorable recommendation by that Board, the prisoner may be released on parole upon the expiration of his minimum sentence. In fact the Governor General in his message published in 31 Off. Gaz., No. 92, August 3, 1933, issued in connection with the promulgation of the present law on indeterminate sentence, said that one of the purposes of the law was to prevent unnecessary and excessive deprivation of personal liberty and economic usefulness.

Under the special law on illegal possession of firearms applicable to this case, already referred to, if we had no law on indeterminate sentence in this jurisdiction, considering the plea of guilty entered by the appellant, the trial court could well and lawfully have given him a prison sentence of five (5) years. If we are now to apply the law on indeterminate sentence in the instant case, the prison term would have to be more than five (5) years for the reason that the minimum could not be less than five (5) years and the maximum necessarily would have to be more than five (5) years but not more than ten (10) years. That would certainly be not in accordance with the purpose of the law on indeterminate sentence; in fact it would run counter to its spirit.

Moreover, there are authorities to the effect that where the statute under which an accused was convicted fixes the maximum and minimum punishment, or either of them, it has been held that it is not necessary, under the indeterminate sentence law, for the court to specify in the sentence such maximum and minimum punishment. \* \* \* (24 C. J. S. p. 109, Sec. 1582). Besides, it has also been held that the law on indeterminate sentence being penal in character must receive a strict construction in favor of the one to whom the penalty is exacted. (24 C. J. S. p.

1219, Sec. 1993).

We are, therefore, of the opinion and hold that in cases where the application of the law on indeterminate sentence would be unfavorable to the accused, resulting in the lengthening of his prison sentence, said law on indeterminate sentence should not be applied. Under this opinion, it is obvious that the trial court did not err in sentencing the appellant to imprisonment for five (5) years and one (1) day.

In view of the foregoing, the decision appealed from is hereby affirmed, with costs. So ordered.

Paras, C. J., Feria, Pablo, Bengzon, Tuason and Jugo, JJ., concur.

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