

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILFORIANO CESAR ALIAS JUNIOR, DEFENDANT-APPELLANT.***G.R. No. L-26185. March 13, 1968*

Ponente: BENGZON, J.P., J.

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This is an appeal from a decision of the Court of First Instance of Bohol in Criminal Case No. 4258.

The record bears out, the counsel de oficio does not challenge, and the Office of the Solicitor General agrees with, and adopts, the following findings of fact of the trial court:

Accused was a student of St. Anthony's Academy in Carmen, Bohol. On March 9, 1966, during the first period in the afternoon, he went out to buy a notebook from the store of a certain Emil Andres and there he met his friend, Vidal Torrefranca, who offered him tuba. He drank two glasses and returned to his classes. He was able to attend all his classes and could remember the subjects he attended. After classes, he stood by the flagpole where he met and stabbed with a knife[1] Segundo Sarce, Jr., Acting Principal Teacher of St. Anthony's Academy. Accused fled after the stabbing. According to the autopsy report,[2] the victim died minutes after the wound was inflicted.

Upon being informed of the incident, the Chief of Police and five policemen went to St. Anthony's Academy, where they were informed that the accused had escaped. From the Carmen Extension Hospital where they proceeded and saw the victim already dead, the policemen went to the house of the accused and found the latter's father who informed them that he was going to town to look for his son whom he would surrender. While accused's father was putting on his trousers in order to go with the policemen, a knife fell from his trousers' pocket. Reply-ing to the query of the Chief of Police, accused's father stated that it was the knife (Exh. "A") that accused had used in stabbing his victim. The policemen and accused's father went to the house of Teodorico Cabanag, accused's grandfather, where the policemen found the accused in a room. The accused was brought to the municipal jail and locked therein.

Charged with direct assault with murder in the Municipal Court of Carmen, Bohol, accused waived his right to preliminary investigation and moved that his case be re-manded to the Court of First Instance of Bohol at Tagbilaran. This was granted and the accused was charged with the same complex crime in the latter court.

Upon arraignment on April 12, 1966, the accused pleaded not guilty. However, on the date set for trial on the merits, he manifested thru counsel his intention to plead guilty to the lesser offense of direct assault with homicide and to pay damages. With the Fiscal's conformity and upon petition of the accused, the latter was allowed to withdraw his former plea of not guilty, the information was amended accordingly, and the accused pleaded guilty to the charge of direct assault with homicide.

With leave of court, and in order to mitigate his liability, accused proved that he was born in the Municipality of Carmen, province of Bohol, on May 27, 1948 (Exhibits 1 and 1-A), and therefore on the date of the commission of the crime, he was only 17 years, 9 months, and 12 days old.

The trial court convicted the accused of direct assault upon a person in authority with homicide in its decision dated April 30, 1966, the dispositive portion of which is as follows:

"IN VIEW OF THE FOREGOING, accused Wilfredo Cesar alias Junior is found guilty of the complex crime of direct assault upon a person in authority with homicide, as defined under Article 48 in relation with Articles 148 and 249 of the Revised Penal Code, with a special or privileged mitigating circumstance of minority (Article 68, paragraph 2) and spontaneous plea of guilty (Article 13, paragraph 7) and is hereby sentenced to an indeterminate penalty of from TWELVE (12) years and ONE (1) day of reclusion temporal, as minimum, to FOURTEEN (14) years, EIGHT (8) months and ONE (1) day of reclusion temporal, as maximum, (Article 27 in relation to Articles 76 and 77 of the Revised Penal Code; *People vs. Pao*, 58 Phil. 545; *People vs. Gayrama*, 60 Phil. 796) with all the accessory penalties provided by law, and to pay damages to the heirs of the deceased Segundo Sarce, Jr. in the amount of P7,500.00, including expenses for embalming, tomb, prayers, wick, but without subsidiary personal liability in case of insolvency in view of the nature of the penalty (Article 39, Revised Penal Code). The accused must pay the costs of this proceeding. He is, however, credited one-half of his preventive imprisonment from March 10, 1966, until this decision becomes final (Article 29, Revised Penal Code).

"The lethal weapon, Exhibit 'A', is hereby confiscated in favor of the Government of the Philippines." [3]

In this appeal, the accused raises as sole issue the correct penalty under the circumstances.

Accused-appellant pleaded guilty to and was convicted of the crime of direct assault upon a person in authority with homicide. This being a complex crime, the penalty for the more serious crime should be imposed, the same to be applied in its maximum period. [4] The more serious crime is homicide punishable by reclusion temporal.

Accused has to his credit two mitigating circumstances: the special or privileged mitigating circumstance of minority [5] and the ordinary mitigating circumstance of plea of guilty. [6] Therefore, under Art. 64, par. 5 of the Revised Penal Code, the penalty imposable is the penalty next lower to that prescribed by law. Under Art. 71, Revised Penal Code, the penalty next lower to reclusion temporal is prision mayor. Because of the complex nature of the crime committed by accused-appellant, the penalty of prision mayor is to be applied in its maximum period. However, having in his favor the ordinary mitigating circumstance of plea of guilty without any offsetting aggravating circumstance, applying Art. 64, par. 2 of the Revised Penal Code, the penalty of prision mayor maximum should be imposed in its minimum range.

Parenthetically, We must state that the lower court erred in the imposition of the correct penalty - despite its proper appreciation of the privileged mitigating circumstance of minority and the ordinary circumstance of plea of guilty in favor of the appellant - because it applied first the imposable penalty to its maximum degree, i.e., reclusion temporal maximum, and then imposed the penalty immediately inferior to it, i.e., reclusion temporal medium. This latter penalty it imposed as the maximum of the indeterminate sentence, but applied in the minimum range because of the ordinary mitigating circumstance of plea of guilty. As the minimum of the indeterminate sentence, it imposed the minimum of the penalty next lower, i.e., reclusion temporal minimum.

The proper method [7] is to start from the penalty imposed by the Revised Penal Code, i.e., reclusion temporal; then apply the privileged mitigating circumstance of minority and determine the penalty immediately inferior in degree, i.e., prision mayor; and finally apply the same in its maximum degree but within the minimum range [8] thereof because of the ordinary mitigating circumstance of plea of guilty. Prision mayor being the maximum of the indeterminate sentence, the minimum of the indeterminate penalty is within the range of the penalty next lower to it as prescribed by the Revised Penal Code, i.e., prision correccional.

All told, and applying now the Indeterminate Sentence Law, accused-appellant should be sentenced to an indeterminate penalty of not less than six (6) years of prision correccional, to not more than ten (10) years and

eight (8) months of prision mayor.[9]

WHEREFORE, the judgment appealed from is hereby modified as to the personal penalty so as to sentence the accused to an indeterminate penalty of not less than six (9 years of prision correccional to not more than ten (10) years and eight (8) months of prision mayor; in all other respects, the judgment is hereby affirmed. No costs.

SO ORDERED.

Reyes, Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., on leave.

[1] Exhibit "A".

[2] Principal Record, page 3.

[3] Principal Record, pp. 39-40.

[4] Art. 48, Revised Penal Code.

[5] Art. 68, par. 2, Ibid.; People vs. Fulencio, G.R. No. L-5570, Nov. 10, 1952; People vs. Aragon, G.R. No. L-13222, Apr. 22, 1960.

[6] Art. 13, par. 7, Revised Penal Code.

[7] See People v. Gonzalez, 73 Phil. 549.

[8] People v. Mape, 77 Phil. 809.

[9] Prision Mayor maximum (Max range - 11 yrs. 4 mos. 1 day to 12 years

(10 yrs. 1 day to 12 yrs.) (Med range - 10 yrs. 8 mos. 1 day to 11 yrs.

4 mos.

(Min range - 10 yrs. 1 day to 10 yrs. 8 mos.

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