

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. VICTORIO HERNANDEZ, DEFENDANT AND APPELLANT.*G.R. No. L-7616. May 10, 1955*

Ponente: BAUTISTA ANGELO, J.

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Victorio Hernandez, driver of a truck, was charged with homicide through reckless imprudence in the Court of First Instance of Cavite for having run over and killed a child seven years old. At the trial, he pleaded guilty to the charge, and, having been allowed to prove the mitigating circumstance of voluntary surrender, the trial court sentenced him to suffer one year of prision correccional and to pay the costs. No pronouncement was made as to his civil liability because of the reservation made by the private prosecutor. Notwithstanding his plea of guilty, the defendant appealed from the decision, and the case was certified to this court because the question raised is one purely of law.

The only error assigned by appellant is that the trial court failed to appreciate in his favor the benefits of the Indeterminate Sentence Law. He claims that considering the presence of two mitigating circumstances the imposable penalty should be arresto mayor in its maximum period to prision correccional in its minimum period, the duration of which is 4 months and 1 day to 2 years and 4 months. This, he says, should be further divided into three periods, the medium of which is 1 year and 1 day to 1 year and 8 months of prision correccional, which should be the one to be considered because of lack of additional qualifying circumstance. And the penalty next lower, following the provisions of the Indeterminate Sentence Law, is arresto mayor in its minimum and medium periods, the minimum of which is 1 month and 1 day to 2 months of arresto mayor. The penalty that should therefore be imposed upon appellant if we are to consider the Indeterminate Sentence Law is one the minimum of which is 1 month and 1 day to 2 months of arresto mayor and the maximum of 1 year and 1 day to 1 year and 8 months of prision correctional. However, the trial court in convicting the appellant chose to overlook the Indeterminate Sentence Law and merely imposed upon him a straight penalty of 1 year of prision correccional which he believes is unfair considering the circumstances of this case. '

We disagree with this contention of appellant. The crime charged comes under paragraph 6 of Article 365 of the Revised Penal Code which prescribes a penalty of prision correccional in its minimum and medium periods. Notwithstanding the provisions of Republic Act No. 384 to the effect that in the imposition of the penalties prescribed by said Article 365, the court may exercise its discretion without regard to the rules prescribed in Article 64 (relative to the presence of mitigating and aggravating circumstances), the trial court in the instant case reduced the penalty by one degree because of the presence of two mitigating circumstances, which reduced penalty is arresto mayor in its maximum period to prision correccional in its minimum period, the duration of which is 4 months and 1 day to 2 years and 4 months. The straight penalty of 1 year imprisonment imposed by the trial court is therefore within the range provided for by law.

It is true that the trial court could have imposed an imprisonment the minimum of which should be not less than 1 month and 1 day but not greater than 4 months, and the maximum not less than 4 months and 1 day nor greater

than 2 years and 4 months, if it has chosen to apply the provisions of the Indeterminate Sentence Law, but having made use of its discretion without reference to the technical subdivision of the period within the range of the penalty provided for by law by applying a straight penalty of 1 year imprisonment (People vs. Ducosin, 59 Phil., 109), we believe that appellant cannot now invoke the benefits of said law because the same does not apply when the maximum term of imprisonment does not exceed 1 year (Section 2, Act No. 4103). It has been held that "The application of the Indeterminate Sentence Law is based upon the penalty actually imposed in accordance with law and not upon that which may be imposed in the discretion of the court." (People vs. Dimalanta, 92 Phil., 239.)

As no error has been committed by the trial court, the judgment appealed from is affirmed, with costs against appellant.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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