

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EUGENIO GARCIA Y MADRIGAL, DEFENDANT AND APPELLANT.

G.R. No. L-2873. February 28, 1950

Ponente: TUASON, J.

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TUASON, J.:

The sole question presented on this appeal is whether the appellant, being 17 years of age at the time of the commission of the crime, was entitled to the privileged mitigating circumstance of Article 68, paragraph 2, of the Revised Penal Code. The lower court, ignoring defendant's minority, sentenced him to an indeterminate penalty of from 4 years, 2 months and 1 day of prision correccional to 8 years of prision mayor for the crime of robbery of which he was found guilty. He was also sentenced to pay the offended party, jointly and severally with, the other accused, the sum of P85.00 as indemnity.

Republic Act No. 47, which amended Article 80 of the Revised Penal Code by reducing from 18 to 16 the age below which accused have to "be committed to the custody or care of a public or private, benevolent or charitable institution," instead of being convicted and sentenced to prision, has given rise to the controversy. The Solicitor General believes that the amendment by implication has also amended paragraph 2 of Article 68 of the Revised Penal Code, which provides that when the offender is over fifteen and under eighteen years of age, "the penalty next lower than that prescribed by law shall be imposed, but always in the proper period."

There are well recognized rules of statutory construction which are against the Government's contention.

One of these rules is that all parts of a statute are to be harmonized and reconciled so that effect may be given to each and every part thereof, and that conflicting intentions in the name statute are never to be supposed or so regarded, unless forced upon the court by an unambiguous language. (59 C. J., 999.)

This rule applies in the construction of a statute and its amendment, both being read together as a whole. "An amended act is ordinarily to be construed as if the original statute has been repealed, and a new and independent act in. the amended form had been adopted in its stead; or, as frequently stated by the courts, so far as regards any action after the adoption of the amendment, as if the statute had been originally enacted in its amended form. The amendment becomes a, part of the original statute as if it had always been contained therein, unless such amendment involves the abrogation of contractual relations between the state and others. Where an amendment leaves certain portions of the original act unchanged, such portions are continued in force, with the same meaning and effect they had before the amendment. So where an amendatory act provides that an existing statute shall be amended to read as recited in the amendatory act, such portions of the existing law as are retained, either literally or substantially, are regarded as a continuation of the existing law, and not as a new enactment." (59 C. J., 1096, 1097.)

We find, no irreconcilable conflict between Article 68, paragraph 2, as it now stands and Article 80 as amended, There is no incompatibility between granting accused of the ages of 15 to 18 a privileged mitigating circumstance and fixing at 16 the maximum age of persons who are to be placed in a reformatory institution. In other words,

there is no inconsistency between sending defendants of certain ages to prison and giving them a penalty lower than the impossible one on adults under the same or similar circumstances. Let it be remembered that the privilege of Article 68, *supra*, is not by its nature inherent in age but purely statutory and conventional, and that this privilege is granted adult offenders under given conditions.

At least there is no clear intention on the part of the Congress to amend Article 68. Indeed the rational presumption is that if there had been such an intention the lawmakers should have said so expressly, instead of leaving the change to inference.

One other rule of interpretation that quarrels with the theory of implied repeal or amendment is that penal law is to be construed, in case of doubt, strictly against the state. "Criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted. Only those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought." (Statutory Construction, Crawford, pp. 460-462.)

The offense charged in the information of which the appellant was found guilty is punishable under Article 294, case No. 5, of the Revised Penal Code, as amended by Section 6 of Republic Act No. 18, with prison correccional in its maximum period to prison mayor in its medium period. The penalty one degree lower than this is arresto mayor in its maximum period to prison correccional in its medium period. There being no modifying circumstance, the appropriate penalty in the present case is from 6 months and 1 day of arresto mayor to 2 years and 4 months of prison correccional. Being entitled to an indeterminate penalty as provided in Section 1 of Act No. 4103 as amended, the accused should be, and he is hereby sentenced to imprisonment of not less than 4 months of arresto mayor, and not more than 2 years and 4 months of prison correccional. In all other respects the appealed judgment is affirmed., The appellant will pay the costs of this appeal.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.

RESOLUTION ON MOTION FOR RECONSIDERATION

April 12, 1950

TUASON, J.:

This is a motion for reconsideration of our decision.

The main theme of the Solicitor General's argument is that articles 13 (2) and 68 (2) of the Revised Penal Code "complement each other;" that "the application of article 68 takes place only when the court has to render judgment and impose a penalty upon a minor who has been proceeded against in accordance with article 80 and who has misbehaved or is found incorrigible," and that "article 80 must be applied first before article 68 can come into operation, and the court can not apply the latter article in total disregard of the former." In short, as we infer from this line of reasoning, what article 80 does not touch, article 68 can not touch.

We do not think the premise and conclusion of the motion are correct. There seems to be a confusion of ideas.

It may do us well to make a brief review of the legislation, past and present, relative to juvenile offenders and dissect and analyze its various provisions. This, we trust, will help us to see the true relations and the differences between them and the role assigned to each.

Article 68 of the Revised Penal Code provides:

"Penalty to be imposed upon a person under eighteen years of age.—When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

"1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

"2. Upon a person over fifteen and under fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period."

Sub-paragraphs 1 and 2 of the foregoing article are a reproduction of article 85 of the Spanish Penal Code.

Into the Revised Penal Code, the Juvenile Delinquency Act was incorporated. It has become in the new code article 80, the first paragraph of which provides that "whenever a minor under 18 years of age, of either sex, be accused of a crime, the court * * * shall commit such minor to the custody or care of a public or private, benevolent or charitable, institution, etc." And in the paragraph immediately preceding the last, it is further provided that "In case the minor fails to behave properly or to comply with the regulation of the institution to which he has been committed, or with the conditions imposed upon him when he was committed to the care of a responsible person, or in case he should be found incorrigible or his continued stay in such institution should be inadvisable, he shall be returned to the court in order that the same may render the judgment corresponding to the crime committed by him."

The latest legislation on the subject was Republic Act No. 47, which amended article 80 of the Revised Penal Code so as to reduce to below 16 the age of minors coming within its purview.

A close examination of articles 68 and 80 will disclose that article 68, according to its main paragraph, is to lay off and watch while the minor is in the hands of a charitable institution or person mentioned in article 80 trying to reform him or her. This has to be so because article 68 is a rule for the application of penalties, and there is no penalty when there is no judgment, and there is no judgment when the delinquent is in Welfareville or other place of similar character or entrusted to the care of a private person. However, if and when the minor turns out to be hopeless or incorrigible, he is returned to the proper court and the court passes sentence on him or her. In other words, article 80 withdraws, as it were, and sub-paragraphs 1 and 2, as the case may be, of article 68 takes control.

From this it will be seen that article 68 is not dependent on article 80, nor do these articles complement each other if by complement is meant that they are two mutually completing parts so that article 68 could not stand without article 80. It is more appropriate to say that article 68 merely adjusts itself to article 80 but is, in all other respects, self-sufficient and independent of the latter. Parts of one system of penology and working in coordination with each other, they pursue different ends. It is to be noticed that article 68 falls under section 2 of Chapter IV entitled "Application of Penalties," while article 80 comes under section 1 of Chapter V entitled "Execution and Service of Penalties." Two different subjects, these.

It will also be seen that article 68, sub-paragraphs 1 and 2, and article 80 of the Revised Penal Code do not

function at the same time and are designed for different purposes. Each has its assigned, separate sphere of action without in any way intermingling with the other. When article 80 operates, article 68 keeps out of the way; article 68 steps in when article 80 steps out.

While a minor is in the process of being reformed he is, in a manner of speaking, in an intermediate or indeterminate state, neither in prison nor free. Through repentance and by observing good conduct, he is rewarded with freedom, released upon reaching the age of majority or before, but if he shows no promise of turning a new leaf, Bilibid claims him.

It is the minors so situated; it is the selection of who should be committed to a reformatory school or to the custody of a private person with which article 80 has to do, and no more. Article 80 does not concern itself with what should be done with minors when they are consigned to jail because of misbehaviour; much less is it concerned over minors who, after the passage of Republic Act No. 47, are condemned to prison without having been under the custody of a benevolent institution or private person like youths between 16 and 18. On the other hand, article 68 is intended for minors who are sent to jail, a matter foreign to the province of article 80.

To press the argument further, article 85 of the original Penal Code conferred upon minors under 18 the right to a penalty one or two degrees lower than the normal penalty. Then came the Juvenile Delinquency Act giving additional concession to juvenile delinquents. When, later, Republic Act No. 47 amended article 80 so as to eliminate from its beneficent provisions minors of the age of 16 or over the under 18, the logical effect of the amendment can be no other than to correspondingly reduce the age of minors regarding whom the suspensory inhibition on article 68 is to be confined. Only to the extent and within the limits that article 80 applies is article 68 bound to defer to that article. Where article 80 does not apply, article 68 is supreme. When article 80 says that it will deal only with minors below 16, it relinquishes authority over minors above that age in favor of article 68. When and if article 80 should by amendment further reduce the age to 15, to that extent the operation of article 68 will be correspondingly enlarged.

In fact, if Republic Act No. 47, instead of limiting the operation of article 80 to minors under 16, had totally abolished the scheme of juvenile reformation, sub-paragraphs 1 and 2 of article 68 of the Revised Penal Code would, in our opinion, remain intact, with the only difference that, as before, they would have full sway, unhampered by any consideration of suspended judgment. The predecessor of article 68 was in the original Penal Code since that Code was put in force in Spain in 1870 and in the Philippines in 1844, long before the idea embodied in article 80 was conceived. Before the Revised Penal Code went into effect, article 85 of the old Penal Code and the Juvenile Delinquency Act worked in the manner herein set forth although there was not any express provision coordinating their operation. It can safely be said that the main paragraph of article 68 was inserted merely to explain in clear and express terms when it should stand aloof and when it should play its role. The Revised Penal Code merely states the obvious as befits a scientific system of law.

In conclusion, when Republic Act No. 47 amended article 80 of the Revised Penal Code by reducing the age of persons who may be placed on probation under that article, the amendment did not change in any form or manner the degree of punishment that should be meted out to those who are to be committed to jail or how they are to be treated. After the minor is turned over to the court for sentence, article 80 ceases to have any interest in him or her. On saying that the 16- and 18-year old should no longer be given a trial or placed on probation in a reformatory institution but should go straight to prison upon conviction, Republic Act No. 47 does not, by implication or otherwise, connote that such minors should also be deprived of a reduced penalty. In no standard of statutory construction is there support for the proposition that the mitigating circumstance which minors between 16 and 18 enjoyed before Republic Act No. 47 came into being, notwithstanding the fact that they had shown evidence of incorrigibility, should be denied them now for no other reason than that the right to be committed to a

reformatory school has been taken away from them; now that they are confined in jail without having committed any fault other than the crime for which they were prosecuted in the first instance.

Let it be remembered that by virtue of the amendment, minors between 16 and 18 do not now come under the provisions of the paragraph next to the last of article 80.

Of course, the effect of a law amendment would be different if the amendatory law had absorbed the law which it had amended. In that case, the original law would become part and parcel of the new law, with the result that if the amendatory law be later repealed, both the law and the law which it had superseded or amended would be considered abrogated. There was no law which of its own force could survive.

But, as we have indicated, article 68 as well as its predecessor is an independent provision and has not been merged with article 80 or any other of the Revised Penal Code. It is an independent provision inoperative only during the suspension of the sentence but possessing all the vigor which article 85 of the Spanish Code had, when the minors are sentenced to jail.

In the decision sought to be reconsidered, we emphasize the rule of statutory construction to the effect the all parts of a statute are to be harmonized and reconciled so that effect may be given to each and every part thereof, and that conflicting intentions in the same statute are never to be supposed or so regarded, unless force upon the court by an unambiguous language. (59 C. J., 999.) The motion for reconsideration has not pointed to any conflict, and we can not find any, between the retention of the privileged or special mitigating circumstance in favor of minors are not entitled to the benefits of article 80 under any circumstances. The motion for reconsideration is conspicuous for its silence on any incongruity or absurdity that might result from our ruling on the scope and extent of Republic Act No. 47.

The sole consideration that might commend itself in favor of the Government's position is the general welfare. For the good of society it may have been better if Republic Act No. 47 had amended article 13 and 68 also by correspondingly reducing the age of accused minors entitled to a mitigating circumstance by reason of age. But it is trite to say that we are not authorize to insert into a law what we think should be in it or to supply what we think the legislature would have supplied if its attention had been called to the omission. This is especially true in penal legislation which, as we have repeatedly stressed in our decision, has to be construed strictly. But there is not even room for construction in this case. The preamble or explanatory note to Republic Act No. 47 cannot be used as basis for giving it a meaning not apparent on its face. A preamble or explanatory note is resorted to only for clarification in cases of doubt. There is no ambiguity in Republic Act No. 47.

The motion and the request to set it for oral argument are denied.

Moran, C. J., Ozaeta, Pablo, Bengzon, Montemayor, Reyes, and Torres, JJ., concur.

Tuason, J.:

I certify that Mr. Justice Padilla took part in the deliberation of this motion and voted to deny the same.

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