

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE. VS. JOSE IGNACIO SANTOS, DEFENDANT AND APPELLANT.*G.R. No. L-21735. January 30, 1965*

Ponente: BENGZON, J.P., J.

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An information for estafa thru falsification of a commercial document—a Philippine National Bank check for P4,608.62—was filed on December 29, 1961 against Jose Ignacio y Santos.

When arraigned on August 31, 1962, Jose Ignacio y Santos pleaded guilty. Thereupon the Court of First Instance of Manila sentenced him "to suffer one (1) year, eight (8) months and one (1) day of prision correccional as minimum, to four (4) years, nine (9) months and eleven (11) days of prision correccional, as maximum; to indemnify the Philippine National Bank in the sum of P4,608.62; and to pay a fine in the sum of 13,000.00, with subsidiary imprisonment in case of insolvency of both indemnity and fine, and the costs of the proceedings."

Not satisfied with the penalty imposed, the accused a motion for reconsideration, but it was denied. Thereafter he appealed to the Court of Appeals. By resolution of July 25, 1968, the Court of Appeals has certified the case to this Court because "the only question for determination is one of law".

Appellant, as stated, pleaded guilty to the complex crime of estafa thru falsification of a commercial document. The penalty for estafa where the amount involved is P4,608.62 is arresto mayor in its maximum period to prision correccional in its minimum period (Art. 315, par. 1, No. 3, Revised Penal Code). The penalty for falsification of a commercial document is prision correccional in its medium and maximum periods and a fine of not more than 5,000 pesos (Art. 172, par. 1, Revised Penal Code). So, for the complex crime afore-stated, the penalty is that provided for falsification of a commercial document, the same to be applied in its maximum period (Art. 48, Revised Penal Code).

Applying the Indeterminate Sentence Law, the minimum of the indeterminate sentence should be "within the range of the penalty next lower to that prescribed by the code for the offense (Sec. 1, Act No. 4103 as amended by Act No. 4225). In *People vs. Mape*, 77 Phil. 809, 811, we said: "For purposes of the Indeterminate Sentence Law, the penalty next lower should be determined without regard as to whether the basic penalty provided by the Code should be applied in its maximum or minimum period as the circumstances modifying liability may require (*People vs. Gonzalez*, 73 Phil. 549)."

The basic penalty that the Code provides in this case is, as aforesaid, prision correccional in its medium and Maximum periods. The penalty next lower to it, therefore, is arresto mayor in its maximum period to prision correccional in its minimum period; which is four (4) Months and one (1) day to two (2) years and four (4) months.

Thus, the minimum of the sentence imposed by the court a quo, that is, one (1) year, eight (8) months and one (1) day of prision correccional, is within the range prescribed by the Indeterminate Sentence Law. In the absence of

abuse, and appellant has not shown any, the discretion of the court a quo to fix the minimum term of the indeterminate sentence anywhere within the range provided by law, will not be interfered with (*People vs. De Joya*, 98 Phil., 238; 52 Off. Gaz., 788).

Since appellant admits that the maximum term of his sentence is correct, there is no need to state the reasons why it is so. We may, however, mention that in fixing the maximum term of the sentence, the court a quo rightly considered in appellant's favor the simple mitigating circumstance of plea of guilty. Appellant's error lies in contending that, contrary to what has been held in *People vs. Mape*, supra, the mitigating circumstance should also be considered in determining the minimum of his indeterminate sentence.

As to the fine of P3,000.00, the same is obviously in order. Article 172, paragraph 1, of the Revised Penal Code provides, in addition to imprisonment, "a fine of not more than P5,000 pesos".

WHEREFORE, the judgment appealed from is hereby affirmed, with costs.

SO ORDERED.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

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