

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. AMBROSIO MANCERA, DEFENDANT AND APPELLANT.*G.R. No. L-13290. June 30, 1960*

Ponente: REYES, J.B.L., J.

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Charged with the crime of frustrated homicide in the Court of First Instance of Surigao (Crim. Case No. 2072), the accused Ambrosio Mancera pleaded not guilty to the information. Later, when the case was called for trial on October 11, 1957, the accused, through counsel, manifested his willingness to plead guilty to the lesser crime of serious physical injuries, there being no intent to kill, and the fiscal, with the approval of the court, amended the information accordingly. Whereupon, the accused was allowed to withdraw his plea of not guilty and enter a plea of guilty to the amended information.

Thereafter, the accused requested that he be given opportunity to prove drunkenness as a mitigating circumstance, and trial was had upon this issue. After the hearing, the court rendered judgment finding the accused guilty of the crime of serious physical injuries as defined and penalized under Article 263, paragraph 4 of the Revised Penal Code; refusing to give him the benefit of the mitigating circumstance of drunkenness for being a habitual drunkard and of plea of guilty "because he is not pleading guilty of the crime of frustrated homicide which is charged in the above information but to the lesser offense of serious physical injuries"; and sentencing him to undergo the indeterminate penalty of four (4) months arresto mayor as minimum to one (1) year, six (6) months prision correccional as maximum, to indemnify the complaining witness in the sum of P700.00 or serve subsidiary imprisonment in case of insolvency which shall not be more than one-third of the principal penalty or in any case not more than one year, and to pay the costs. From this judgment, accused Mancera appealed directly to this Court, urging that he be given the benefit of the mitigating circumstance of plea of guilt.

The refusal of the court a quo to give appellant the benefit of the mitigating circumstance of plea of guilty appears to be based on our ruling in *People vs. Noble* (77 Phil. 93; 43 Off. Gaz. No. 6, 2010, and *People vs. Saturnino* 96 Phil. 868) that an offer to plead guilty to a lesser offense than that charged cannot be considered a mitigating circumstance. Upon the other hand, the Solicitor-General, who shares the view of appellant that this circumstance should be appreciated in his favor in mitigation of his penalty, cites the case of *People Court* considered a plea of guilty by the accused to the lesser crime of homicide as a mitigating circumstance, in spite of the fact that he had previously entered a plea of not guilty to the charge of murder.

We agree with appellant and the Solicitor General that the former should be given the benefit of the mitigating circumstance of plea of guilty. In the recent case of *People vs. Intal*, 101 Phil., 306; 67 Off. Gaz., (8) 1398, we drew the distinction between the doctrine of the *Noble* and *Saturnino* cases on one hand, and the *Calma* case on the other. We said that the first doctrine applies where the accused merely made an offer to plead guilty to a lesser offense; while the second doctrine governs where the accused having signified his intention to plead guilty to a lesser offense than that charged, the information is accordingly amended and the accused enters a plea of guilty to the amended information. In the instant case, although the appellant had already pleaded not guilty to the

information for frustrated homicide, the fiscal agreed to the amendment of the information to serious physical injuries because he believed he could not prove the intent to kill on the part of the accused (t.s.n., p. 2), and it was only after the information was amended that the accused entered a plea of guilty to the amended information. Consequently, it is the doctrine in the case of *People vs. Calma*, supra, that governs this case, and appellant should be given the benefit of the mitigating circumstance of plea of guilty.

The crime of serious physical injuries committed by appellant is penalized under Article 263, paragraph 4 of the Revised Penal Code *arresto mayor* in its maximum period to *prision correccional* in its minimum period or from 4 months and 1 day to 2 years and 4 months. There being one mitigating circumstance without any aggravating one, the principal penalty should be imposed in the minimum period or from 4 months and 1 day of *arresto mayor* to 1 year of *prision correccional*. The *In determinate Sentence Law* no longer applies because the maximum term of the imposable penalty does not exceed 1 year (Act 4103 as amended, sec 2).

Wherefore, the decision appealed from is modified in the sense that the principal penalty imposed upon appellant is reduced to 4 months and 1 day of *arresto mayor*. In all other respects, the decision appealed from is affirmed, with costs *de officio*.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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