

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANO OANDASAN (BULALA SUR, APPARRI, CAGAYAN),
DEFENDANT-APPELLANT.**

G.R. No. L-29532. September 28, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Defendant's brief on appeal underscores one claimed error: the penalty imposed is incorrect.[1]

The criminal complaint was for homicide. The charge was lodged with the Municipal Court of Flora, Mountain Province. At the preliminary investigation in that court, the accused was arraigned, pleaded "not guilty" to the charge.

The case was thereafter elevated to the Court of First Instance of Cagayan for trial on the merits. There, a formal indictment for homicide was filed by the prosecuting attorney. Upon arraignment, the accused - this time - pleaded guilty. Before sentence, he pre-sented evidence to prove the mitigating circumstances of incomplete self-defense and voluntary surrender, aside from the plea of guilty.

Came the trial judge's decision of September 27, 1967. He ignored the appellant's plea of guilty as a mitigating circumstance "in view of his former plea of not guilty before the municipal court of Flora, Mt. Province". He did not take into account incomplete self-defense as a privileged mitigating circumstance. He merely accorded defendant the benefits of provocation together with voluntary surrender, as ordinary mitigating circumstances lie thus sentence defendant for the crime of homicide defined and penalized under Article 249 of the Revised Penal Code to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correc-cional as minimum, to eight (8) years of prision mayor as maximum, with the accessories of the law. He further directed defendant to indemnify the heirs of the deceased in the sum of P6,000.00 without subsidiary imprisonment in case of insolvency, and to pay costs.

1. The accused argues that his plea of guilty should be con-sidered in his favor. In this he receives an assist from the Solicitor General.

It is to be conceded right at the outset that if an accused, charged with an offense cognizable by the municipal court, pleads not guilty therein, and on appeal to the court of first instance, changes his plea to that of guilty upon rearraignment, he should not be entitled to the mitigating circumstance of confession of guilt.[2] The philosophy behind this rule is obvious. For, the spontaneous willingness of the accused to admit the commission of the offense charged, which is rewarded by the mitigating circumstance, is absent.[3] Indeed, if the rule were otherwise, an accused, who naturally nourishes the hope of acquittal, could deliberately plead not guilty in the municipal court, and upon conviction and on appeal to the court of first instance, plead guilty just so he can avail himself of the benefit of a mitigating circumstance.[4] This cannot be countenanced. The accused should not be allowed to speculate.

One feature of this case, however, takes it out of the reach of the principle earlier adverted to. The municipal court before which the accused pleaded not guilty was only conducting a preliminary investigation. It had no jurisdiction over the crime of homicide; it could not have rendered judgment on the plea. It must elevate the case to the court of first instance - the court of competent jurisdiction - even if the plea be that of guilty. For purposes of applying the mitigating circumstance of confession of guilt, the plea of not guilty upon arraignment at preliminary investigation in the municipal court is no plea at all.

Upon the other hand, we cannot just sweep away defendant's right to a preliminary investigation. It is a statutory grant. It cannot be withheld. To do so would be to transgress constitutional due process. Defendant herein was thus entitled to know if probable cause existed to require elevation of his case to the court of first instance. Because, absent a probable cause, the case against him must be dismissed. His plea of not guilty before the municipal court therefore may not be taken against him.

Thus it is, that the proper forum where a plea in mitigation may be presented is the court which has jurisdiction to take cognizance of the case. Homicide, we repeat, is the charge. The court having original jurisdiction is the court of first instance. Defendant, accordingly, properly entered his plea of guilty therein - with right to claim it as a mitigating circumstance.

By statute [Article 13(7), Revised Penal Code], a circumstance which mitigates penal liability is that the accused "had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution". Otherwise, such voluntary confession should be ruled out in fixing the sentence.[5]

Here, the plea of guilty was made upon arraignment, certainly before trial was conducted. The mitigating circumstance of voluntary confession of guilt before the court of first instance should be counted in his favor.

2. The other argument defendant presses upon us is that the trial court should have appreciated the privileged mitigating circumstance of incomplete self-defense.

The concept of justice thus espoused finds full support in the trial court's decision itself, viz:

"The accused testified that he saw the deceased Quirino Duldulao chasing his son. Not contented with that and not being able to catch the latter the said victim Quirino Duldulao threw his wooden club at the son of the accused, but the accused's son was not hit. The accused approached Quirino Duldulao and asked him why he was chasing the son and why he threw the club.

Upon being asked, the deceased Quirino Duldulao instead of answering the accused Mariano Oandasan, clubbed the accused Mariano Oandasan, hitting him on the left shoulder. The accused Mariano Oandasan stepped backward and remembering that he had a sharp-pointed knife, he drew it. Again the deceased struck the accused on the head with the club, so the accused stabbed Quirino Duldulao on the front. The deceased sustained two wounds, one at the epigastric region and the other on the right hand".[6]

Once again, the Solicitor General joins the accused in ascribing error to the trial court when it declared that the facts just recited merely show provocation by the deceased, a mitigating circumstance under Article 13(4), Revised Penal Code. They say that those facts also clearly demonstrate an act of unlawful aggression by the deceased as well as lack of sufficient provocation on the part of the accused. These two circumstances, they submit, carve out a good case of incomplete self-defense.[7]

Their submission induces approbation. It is borne out by the facts found below. The accused saw the deceased Quirino Duldulao chasing the former's son. When the accused approached Duldulao and asked him why he (Duldulao) was doing so, Duldulao hit the accused with a wooden club on the left shoulder. The accused drew a sharp-pointed knife he had with him. Then, the deceased clubbed the accused on the head, which prompted the

latter to stab Duldulao on the front. As we see it, the only element absent to exempt the accused totally from criminal liability under Article 11(1), Revised Penal Code, is "[r]easonable necessity of the means employed to prevent or repel" the unlawful aggression.

The privileged mitigating circumstance of incomplete self-defense is here present.

3. We now come to assess the penalty that should be imposed.

By the facts, the accused deserves the benefit of Article 69 of the Revised Penal Code. It provides: "A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking".

And then, in view of the plea of guilty and voluntary surrender and the absence of any aggravating circumstance, the accused is also entitled, as Article 64(5) of the same code commands, to a "penalty next lower to that prescribed by law, in the period that it [the court] may deem applicable, according to the number and nature of such circumstances".

From all this, the defendant prays, and the Solicitor General recommends, a two-degree reduction of penalty. This is well-taken.

In the past, this Court has found occasion in a number of instances to lower the penalty by one degree^[8] or two degrees^[9] because of incomplete self-defense (with the concurrence of unlawful aggression and lack of sufficient provocation, and absent a reasonable necessity of the means employed), but without having to compute into the penalty other privileged mitigating circumstances.

What about incomplete self-defense coupled with a privileged mitigating circumstance, as in this case?

In *People vs. Lucero*, 49 Phil. 160, 162, incomplete self-defense was accompanied by provocation, a circumstance analogous to *arrebato* y *obcecacion* and youthfulness of the accused (19 years of age at the time of the trial). This Court reduced the penalty for homicide by two degrees. *People vs. Jaurigue*, 76 Phil. 174, 182-183, was a case of incomplete defense of honor attended by four generic mitigating circumstances. The penalty for homicide was likewise lowered by two degrees. In *People vs. Maula* (unreported), L-7191, October 18, 1954, this Court appreciated incomplete self-defense, concurred in by minority of the accused as a privileged mitigating circumstance and by voluntary surrender. The penalty of the accused for homicide was also brought down by two degrees.

The standard set down in the cases just discussed gives us the proper course to pursue: A two-degree reduction of penalty—one degree, by Article 69, and another degree, by Article 64(5). It is the most reasonable and just for the accused Mariano Oandasan.

4. The crime of homicide is penalized by Article 249 of the Revised Penal Code. The penalty therein prescribed is *reclusion temporal*. Two degrees lower is *prision correccional*, the penalty imposable by law in the period that the courts may deem applicable, "according to the number and nature" of the mitigating circumstances. With the mitigating circumstances attendant, we feel that Oandasan's penalty should be fixed within the medium period at two (2) years, four (4) months, and one (1) day.

Calling the Indeterminate Sentence Law into operation - whose applicability 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,"^[10] - the

minimum of the penalty then should be within the range of the penalty next lower in degree,[11] i.e., *arresto mayor*, which we fix at four (4) months.

5. We cannot close this decision without putting in a good word for defendant's lawyer, Atty. Antonio Ma. Azurin. Appointed counsel *de oficio* below, he volunteered to prosecute defendant's appeal by seeking a new appointment as such counsel on the appellate level. Conscientious and diligent in championing defendant's rights below and on appeal, his actuations present an exemplary case of devotion to duty. They are those of a worthy member of the Bar.

Upon the record as it stands, the lower court judgment rendered against the accused Mariano Oandasan is hereby modified; and he is hereby sentenced to an indeterminate penalty of four (4) months of *arresto mayor* as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional* as maximum, with the accessories of the law. In all other respects, the decision below is affirmed.

No costs in this instance.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Castro, Angeles, Fernando, and Capistrano, JJ., concur.

Dizon, J., did not take part.

Zaldivar, J., is on leave.

[1] In Criminal Case 171 (Apayao), Court of First Instance of Cagayan, entitled "People of the Philippines, Plaintiff, versus Mariano Oandasan, Accused".

[2] Aquino, *The Revised Penal Code*, 1961 ed., Vol. I, p. 264, citing cases.

[3] *People vs. Fortuno*, 73 Phil. 597, 598.

[4] *Id.*, Aquino, *op. cit.*

[5] *People vs. Coronel*, L-19091, June 30, 1966; *People vs. Buco*, L-19831, September 5, 1967, citing *People vs. Quijano*, 223, 225, citing cases.

[6] Decision, pp. 1-2; Rollo, pp. 10-11.

[7] Article 13(1) in connection with Article 11(1), Revised Penal Code.

[8] *U.S. vs. De Castro*, 2 Phil. 67, 70, without any other modifying circumstance; *U.S. vs. Mendoza*, 2 Phil. 109, 110, without any other modifying circumstance; *U.S. vs. Pasca*, 28 Phil. 222, 228, with one other mitigating circumstance; *People vs. Almendralejo*, 48 Phil. 268, 276, without any other modifying circumstance. See also: *U.S. vs. McCray*, 2 Phil. 545, 548 (where the element absent is lack of sufficient provocation), also without modifying circumstances.

[9] *U.S. vs. Dimitillo*, 7 Phil. 475, 476, without any other modifying circumstance; *U.S. vs. Apego*, 23 Phil. 391, 397, with one other mitigating circumstance; *U.S. vs. Rivera*, 41 Phil. 472, 474, with one other mitigating circumstance; *People vs. Dorado*, 43 Phil. 240, 245, without any other modifying circumstance; *People vs. Mercado*, 43 Phil. 950, 952, without any other modifying circumstance.

[10] *People vs. Dimalanta*, 92 Phil. 239, 242.

[11] *People vs. Ducosin*, 59 Phil. 109, 117; *People vs. Gonzales*, 73 Phil. 549, 552; *People vs. Yco* (unreported),

L-6545, July 27 1954, 95 Phil. 951-952, citing *People vs. Alba* (unreported), March 31, 1936, 63 Phil. 1058-1059.

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