

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAGLALA MACATANDA, DEFENDANT-APPELLANT.

G.R. No. L-51368. November 06, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Charged with and convicted on a plea of guilty, in the Court of First Instance of Lanao del Norte, Branch IV in Iligan City, for the crime of cattle rustling, Saglala Macatanda was sentenced as follows:

"WHEREFORE, and in view of all the foregoing, this Court finds the accused Saglala Macatanda guilty beyond reasonable doubt of the crime of Cattle Rustling penal-ized under PD No. 533 and as described in the information filed against him. Crediting in his favor the mitigating circumstances of plea of guilty and extreme poverty without any attendant aggravating circumstances, and after applying the Indeterminate Sentence Law, the said accused is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of prison mayor as minimum, to eight (8) years of prison mayor, as maximum.

"The period of his preventive imprisonment shall be credited in his favor in accordance with the terms and conditions provided by Article 29 of the Revised Penal Code, as amended.

"The amount of One Hundred Fifty (P150.00) Pesos is hereby ordered paid to Atty. Reynaldo Echavez for his services as counsel de oficio in this case in accordance with the provisions of the Rules of Court, the amount to be taken from the funds appropriated by the Government for the purpose.

"With costs against the accused." (Appellee's Brief, pp. 1-2)

From the judgment of conviction, Saglala Macatanda (hereinafter referred to as appellant) appealed direct to this Court, raising purely legal questions, to wit: whether the mitigating circumstances of (1) lack of instruction, and (2) being a member of a cultural minority, being a Moslem, should be appreciated in his favor, which the court a quo refused to consider in the imposition of the penalty, and also disputing the correctness of the trial court's computation of the proper penalty.

Before going into a discussion of the legal questions, the facts may be recited, quoting from the People's Brief, the following:

"In the evening of December 25, 1976, complainant left his two carabaos near his house in Salug, Sapad, Lanao del Norte. The following morning, however, he noticed they were missing. He immediately reported the loss to Welfredo Bucol, who was the team leader of the constabulary home defense unit. Complainant joined the posse composed of the members of the unit, and the barangay captain to search for the missing carabaos. When they reached Pawak, Salvador, Lanao del Norte, they saw Macabaas, Mangigya, Makaonggos, and appellant in possession of the two carabaos. These four, surprised at being discovered engaged the posse in a gun battle, as a result of which, appellant was wounded. Appellant's companions fled, leaving him and the carabaos behind. (Rec. pp. 3-7).

"Appellant was taken into custody and was charged with cattle rustling. He pleaded guilty and was sentenced

accordingly." (People's Brief, pp. 2-3)

Citing the case of *U.S. vs. Maqui*,^[1] appellant contends that his lack of instruction and education and his being a Moslem belonging to a cultural minority should mitigate his liability, and the penalty imposed by the trial court should be reduced accordingly. He also cites the fact that the pro-secution did not object to his being credited with the afore-said mitigating circumstances.

Under the circumstances of the present case, the Maqui case may not be invoked as a precedent. In the first place, in that case, the Supreme Court found indication in the record which tends to show that Maqui was an uncivilized Igorot. In the present case, owing to appellant's plea of guilty, the records disclose no evidence presented to prove the mitigating circumstances of lack of instruction, which needs to be proven, as all circumstances modifying criminal liability should be proved directly and positively.^[2]

Likewise, nowhere in the Maqui case was it disclosed that his being a member of a cultural minority, being an Igorot, sufficed to mitigate his liability on that circumstance alone. What the Court considered mitigating was his being an uncivilized Igorot which amounted to more than just lack of instruction. Again, there is no proof on record that appellant herein may be similarly described. In any case, mere membership in a cultural minority is not expressly mentioned by the Revised Penal Code among the mitigating circumstances,^[3] nor would it come under paragraph 10, Art. 3 of said Code, which speaks of "any other circumstances of a similar nature and analogous to those above mentioned."

Appellant, however, prays for a lenient approach in consideration of his being an ignorant and semi-uncivilized offender, belonging to a cultural minority, the two separate circumstances to be joined together to constitute the alter-native circumstance of lack of instruction to mitigate his liability,^[4] relying on the Maqui case from which he quotes the following:

"We conclude, therefore, that under the provisions of article 11 as amended by Act No. 2142, (now Article 15 of the Revised Penal Code) the courts may and should, even in cases of theft and robbery, take into consideration the lack of instruction and education of the offender where it appears that under all the circumstances attending, he should not be held to the strict degree of responsibility pre-scribed in the code for the ordinary offender." (Appellant's Brief, p. 5)

Some later cases which categorically held that the mitigating circumstance of lack of instruction does not apply to crimes of theft and robbery^[5] leave us with no choice but to reject the plea of appellant. Membership in a cultural minority does not per se imply being an uncivilized or semi-uncivilized state of the offender, which is the circumstance that induced the Supreme Court in the Maqui case, to apply lack of instruction to the appellant therein who was charged also with theft of large cattle. Incidentally, the Maqui case is the only case where lack of instruction was considered to mitigate liability for theft, for even long before it, in *U.S. vs. Pascual*,^[6] a 1908 case, lack of instruction was already held not applicable to crimes of theft or robbery. The Maqui case was decided in 1914, when the state of civilization of the Igorots has not advanced as it had in reaching its present state since recent years, when it certainly can no longer be said of any member of a cultural minority in the country that he is uncivilized or semi-uncivilized.

But more than what has just been observed, a legal impediment stands in the way to giving the lenient treatment appellant invokes in his appeal. It is that the records of the case do not afford any basis on which to judge the degree of instruction of the appellant, no evidence having been taken relative thereto because he entered a plea of guilty.^[7] And the stricter treatment provided by P.D. 533 for the crime charged with a more severe penalty imposed thereon, hardly justifies the courts to apply said law with leniency.

Appellant, finally, contends that in the computation of the penalty the rules prescribed under Article 64, paragraph

5 should be applied. To this argument, the Solicitor General comes up with a reply that Article 64 of the Revised Penal Code does not apply to penalties prescribed by special laws. He considers P.D. 533, otherwise known as "Anti-Cattle Rustling Law of 1974" as a special law, and in accordance with existing rulings,[8] the penalty should not be governed by the Revised Penal Code. Accordingly, his recommendation as to the proper penalty to be imposed and pursuant to the Indeterminate Sentence Law which provides:

"x x x if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225.)" (Appellee's Brief, p. 7)

is a minimum of not less than 10 years and 1 day and the maximum, not more than 17 years and 4 months, the penalty imposed under P.D. 533.

We do not agree with the Solicitor General that P.D. 533 is a special law, entirely distinct from and unrelated to the Revised Penal Code. From the nature of the penalty imposed which is in terms of the classification and duration of penalties as prescribed in the Revised Penal Code, which is not for penalties as are ordinarily imposed in special laws, the intent seems clear that P.D. 533 shall be deemed as an amendment of the Revised Penal Code, with respect to the offense of theft of large cattle (Art. 310), or otherwise to be subject to applicable provisions thereof such as Article 104 of the Revised Penal Code on civil liability of the offender, a provision which is not found in the decree, but which could not have been intended to be discarded or eliminated by the decree. Article 64 of the same Code should, likewise, be applicable, under which the presence of two mitigating circumstances, as found by the trial court, that of plea of guilty and extreme poverty, without any aggravating circumstances to offset them, entitles appellant to a lowering by one degree of the penalty for the offense, which under P.D. No. 533 is prison mayor, maximum, to reclusion temporal, medium.

Appellant's computation would be to lower the afore-said penalty to prison correccional, maximum, to prison mayor, medium period, in view of the presence of the two mitigating circumstances as appreciated by the court a quo, with no aggravating circumstance attendant. For the purpose of the Indeterminate Sentence Law, the minimum of the penalty should be one degree lower still, or arresto mayor in its maximum period, to prison correccional in its medium period, or from 4 months and 1 day of arresto mayor to 4 years and 2 months of prison correccional, as minimum, and not less than 4 years, 2 months and 1 day of prison correccional nor more than 10 years of prison mayor, as maximum.

The penalty imposed by the trial court is within the range, as to its maximum period, but is beyond the range, as to its minimum period, which should be not more than 4 years and 2 months of prison correccional.

WHEREFORE, the judgment appealed from is hereby modified by reducing the minimum of the indeterminate sentence to 4 years of prison correccional, and maintaining the maximum at 8 years of prison mayor as imposed by the lower court. With the modification as indicated, the appealed decision is affirmed in all other respects.

SO ORDERED.

Makasiar, Fernandez, and Guerrero, JJ., concur.

Teehankee, (Chairman), J., no part.

Melencio-Herrera, J., in the result.

[1] 27 Phil. 97.

[2] People vs. Melendrez, 59 Phil. 154.

[3] Article 13, Revised Penal Code.

[4] Appellant's Brief, p. 6.

[5] People vs. Melendrez, 59 Phil. 154; People vs. Condemena, 23 SCRA 910.

[6] 9 Phil. 491.

[7] See People vs. Melendrez, *supra*.

[8] p. 7, Appellee's Brief.

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