

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ANTONIO MAPE, DEFENDANT AND APPELLANT

G.R. No. L-81. January 07, 1947

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is an appeal from a judgment of the Court of First Instance of Manila convicting the herein appellant of the crime of robbery and imposing an indeterminate sentence of not less than two years, four months and one day of prisión correccional, nor more than eight years and one day of prisión mayor, to indemnify Gen. J. T. Smith, one of the offended parties in the sum of P117, with subsidiary imprisonment in case of insolvency, and to pay one-half of the costs.

On August 7, 1945, at about 3 o'clock a.m., appellant Antonio Mape and a companion whom he named as Andres Salas (still unapprehended), entered the house occupied by Brigadier-General J. T. Smith and Lt. W. Gallows at No. 47 Gilmore street, Quezon City, by breaking through the wire screen of the kitchen door. Once inside the house, appellant Mape went into the room occupied by Lieutenant Gallows, while Salas entered another. Just as appellant was leaving the room of Lieutenant Gallows, the latter, who was then in bed but awake, pursued and caught him. General Smith then came and helped Lieutenant Gallows in subduing appellant. When the police arrived, upon call, they found in appellant's possession a wallet valued at P5, a fountainpen valued at P15, and P100 in cash, all belonging to Lieutenant Gallows. Meanwhile, appellant's companion had escaped and from Gen. Smith's room there were missing a wrist watch valued at P100 and a Parker fountainpen valued at P17.

Appellant alleges drunkenness as a defense, claiming that his companion Salas made him drunk prior to their going to the house of the offended parties. This uncorroborated statement of appellant reveals itself clearly as an attempt to tinge with truth his allegation that his nocturnal visit had for its purpose a purely business transaction. The fact, however, that the stolen articles including the amount of P100 belonging to Lieutenant Gallows were found in his possession immediately after his apprehension within the house itself and at the unusual hour of 3 o'clock a. m., discredits this unsupported defense. The records of the case prove appellant's guilt beyond reasonable doubt.

The crime having been committed at night time, the aggravating circumstance of nocturnity enters into consideration. The mitigating circumstance of drunkenness not having been creditably established, cannot serve to offset the aggravating circumstance of nocturnity.

The applicable portion of article 299 of the Revised Penal Code reads:

"When said offenders do not carry arms and the value of the property taken does not exceed 250 pesos, they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period."

The penalty prescribed in the "two next preceding paragraphs" is the next lower in degree to prisión mayor in its medium period to reclusión temporal in its minimum period, which would be prisión correccional medium to

prisión mayor minimum. The minimum of this, namely, prisión correccional medium, is the penalty in cases where the offenders do not carry arms and the property taken does not exceed 250 pesos, as in the instant case. Due to the presence of one aggravating circumstances—nocturnity—this penalty of prisión correccional medium must be applied in its maximum period as provided for in section 3 of article 64. After dividing prisión correccional medium into three periods, its maximum period would be 3 years, 6 months and 21 days to 4 years and 2 months.

The minimum of the penalty in this case must be computed in connection with the Indeterminate Sentence Law which provides in its section 1, that the minimum of the indeterminate penalty "shall be within the range of the penalty next lower to that prescribed by the Code for the offense." 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 circumstances modifying liability may require. (*People vs. Gonzalez*, 73 Phil., 549). In the instant case, prescindendo from the circumstances modifying criminal liability which are the fact that the offender did not carry arms and the amount taken was less than 250 pesos, and the aggravating circumstance of nocturnity, the basic penalty would be that "prescribed in the two next preceding paragraphs," namely, prisión correccional medium to prisión mayor minimum. It is from this basic penalty that the penalty next lower in degree must be computed. In accordance with section 4, article 61, of the Code, this penalty next lower would be arresto mayor medium to prisión correccional minimum, from within the range of which the minimum of the penalty in this case must be taken for purposes of the Indeterminate Sentence Law.

Judgment is accordingly modified and appellant is sentenced to the indeterminate penalty of 2 months and 1 day to 4 years and 2 months. In all other respects, the judgment appealed from is affirmed, with costs.

Pablo, and Tuason, JJ., concur.

CONCURRING

PERFECTO, J.:

Generally we would refrain from taking part in the decision of cases in which, as in the present one, the attorney for the appellant is a son of the writer. The importance of the legal question debated in this case compelled us to accede to our brethren's suggestion that we should not refuse to intervene.

There is no disagreement as to the facts in this case as proved by the evidence. Upon them, appellant appears to be guilty of the crime of robbery as punished by article 299 of the Revised Penal Code, his case falling under the penultimate paragraph of said article, it appearing that the property taken does not exceed P250 and the accused did not carry arms in committing the crime.

Under the said penultimate paragraph the penalty for the crime at bar is the same prescribed in the antipenultimate paragraph of article 299 and the one preceding it, that is, minimum prisión mayor to medium prisión correccional, but to be applied "in its minimum period."

The minimum period in question is medium prisión correccional. The attendance of one aggravating circumstance in the commission of the crime requires that medium prisión correccional should be divided, under the tri-partite system of the Revised Penal Code, in three sub-periods, and that the highest of them should be applied in the present case.

Sections 1 and 2 of Act No. 4103 of the Philippine Legislature as amended by Act No. 4225 of the Philippine Legislature are as follows:

"SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and 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.

"SEC. 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year; nor to those already sentenced by final judgment at the time of approval of this Act, except as provided in section five hereof."

Accordingly, the indeterminate penalty that must be imposed on appellant should be medium *prisión correccional* in its highest sub-period to a penalty that must be taken from the range of minimum *prisión correccional* to medium *arresto mayor*.

The main disagreement between the majority and the minority lies on the question as to what is the penalty provided by the Revised Penal Code for the crime at bar, the majority maintaining that the penalty is medium *prisión correccional* to minimum *prisión mayor*, while the minority is of the opinion that it is just medium *prisión correccional*, the disagreement being the result of conflicting interpretations of the penultimate paragraph of article 299 of the Revised Penal Code.

To our mind the minority position is untenable. The paragraph in question specifically provides that "when said offenders do not carry arms and the value of the property taken does not exceed P250, they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period," and the penalty in the "two next preceding paragraphs" referred to is medium *prisión correccional* to minimum *prisión mayor*, but with the proviso that it should be applied "in its minimum period." The minority would narrow the provision of the penultimate paragraph in question as if it is written therein that the offense shall be punished but by medium *prisión correccional*, a thing essentially different from what the law-maker intended to provide.

The fact that, under the penultimate paragraph in question, the offender will be finally punished with medium *prisión correccional* is no reason for concluding that that covers the whole range of the penalty intended by the law-maker, in the same way that because the accused in a specific treason case is punished with *reclusión perpetua*, we should close our eyes to the fact that article 114 of the Revised Penal Code also provides *reclusión temporal* and death as parts of the group of penalties provided for treason.

If we should follow the minority's theory to its natural consequences we would even come to the conclusion of dismissing their contention that the penalty for the crime at bar is medium *prisión correccional*, because the same is not to be applied, and cannot be applied, in its whole range, but only in its maximum sub-period, the one to be applied to appellant, because in the commission of his crime there is the attendance of one aggravating circumstance.

If we take the maximum sub-period of medium *prisión correccional* as the maximum indeterminate penalty, the minimum indeterminate penalty must be taken from the medium sub-period of medium *prisión correccional*, a result that will appear absurd, as it will defeat the purposes of the Law of Indeterminate Sentence.

If the position of the minority to the effect that medium *prisión correccional* constitutes the whole range of the

penalty provided by the penultimate paragraph of article 299 in question is correct, to be consistent, the indeterminate minimum penalty must be taken from minimum prisión correccional, because that is the penalty "next lower in degree" to that of medium prisión correccional. But the minority would jump as far to medium arresto mayor, leaving two unexplained and unexplainable gaps, the intermediary penalties of maximum arresto mayor and minimum prisión correccional.

The system of penalties adopted by the Revised Penal Code is both rigid and elastic. Its rigidity lies in the classification of penalties. Its elasticity lies in the application of the specific penalty to be imposed within the range of each class, period, or degree of penalty. The elasticity has further been enlarged by the Law of Indeterminate Sentence, not only in the range of penalty, but in its actual application. In not limiting themselves in providing just medium prisión correccional in the penultimate paragraph of article 299 in question, the authors followed only the system adopted, by enlarging the range of the penalty that may be imposed.

For all the foregoing, we concur in the decision.

CONCURRING

BENGZON, J.:

I concur. I am inclined to disagree with the doctrine in *People vs. Gonzalez* (73 Phil., 549 [1942]), modifying *People vs. Gayrama* (60 Phil., 796 [1936]) and *People vs. Co Pao* (58 Phil., 545, 550 [1933]) which in turn modified the earliest case on the point *U. S. vs. Fuentes* (4 Phil., 404 [1905]). But I believe that lower courts and lawyers, and parties, are entitled to know definitely what the law is, and that such changes of view do not make for public convenience. So, until the Penal Code is amended, I propose to yield and conform to the latest pronouncement.

HILADO, J.:

I concur in the foregoing concurring opinion of Mr. Justice Bengzon.

CONCURRING AND DISSENTING

PARAS, J.:

Article 299 of the Revised Penal Code defines four cases of robbery and fixes the penalty corresponding to each. For the purpose of this dissenting opinion, I would group them as follows:

First Case. The penalty of prisión mayor in its medium period to reclusión temporal in its minimum period shall be imposed upon any armed person who commits robbery in an inhabited house or public building or edifice devoted to religious worship, if the value of the property taken exceeds 250 pesos, and if—

(a) The malefactors shall enter the house or building in which the robbery was committed, by any of the foregoing means:

- Through an opening not intended for entrance or egress;
- By breaking any wall, roof, or floor or breaking any door or window;
- By using false keys, picklocks or similar tools;

- By using any fictitious name or pretending the exercise of public authority; or if—

(b) The robbery be committed under any of the following circumstances:

- By the breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle;
- By taking such furniture or objects away to be broken or forced open outside the place of the robbery.

Second Case. When the offenders do not carry arm and the value of the property taken exceeds 250 pesos, or when the offenders are armed but the value of the property taken does not exceed 250 pesos, the penalty is that next lower in degree to prisión mayor in its medium period to reclusión temporal in its minimum period, or prisión correccional in its medium period to prisión mayor in its minimum period.

Third Case. When the offenders do not carry arm and the value of the property taken does not exceed 250 pesos, the penalty is the minimum period of prisión correccional in its medium period to prisión mayor in its minimum period, or prisión correccional in its medium period.

Fourth Case. If the robbery be committed in one of the dependencies of an inhabited house, public building or building dedicated to religious worship, the penalties next lower in degree than those imposed in the three cases above-mentioned shall be imposed, or prisión correccional in its medium period to prisión mayor in its minimum period if the offenders come under the first case; prisión correccional in its medium period if the offenders come under the second case; and arresto mayor in its medium period if the offenders come under the third case.

The appellant herein is convicted of robbery of the third case. The majority assume that the penalty prescribed by the Penal Code is prisión correccional in its medium period to prisión mayor in its minimum period, but that in view of the attending circumstances that the appellant did not carry arm and the value of the property taken does not exceed 250 pesos, the penalty that should be imposed on him is prisión correccional in its medium degree. In determining the next lower penalty for the purpose of applying the Indeterminate Sentence Law, the majority insist that the prescribed penalty is prisión correccional in its medium period to prisión mayor in its minimum period, and not prisión correccional in its medium period, on the ground that the latter penalty is to be actually imposed only in view of the attending circumstances aforementioned.

The Indeterminate Sentence Law provides that "in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense." (Sec. 1, Com. Act No. 4103, as amended by Act No. 4225.) The "attending circumstances" spoken of in the Indeterminate Sentence Law undoubtedly refer to mitigating or aggravating circumstances, and this conclusion becomes inescapable because in the illustration given in the Committee Report, House, Third Session, regarding the imposition of the House of Representatives, H-3321, 9th Philippine Legislature, Third Session, regarding the imposition of the maximum penalty of the indeterminate sentence, mitigating and aggravating circumstances are mentioned. (People vs. Ducosin, 59 Phil., 109, 115.)

The facts that the offender does not carry arm and that the value of the property taken does not exceed 250 pesos are essential elements or integral parts of the robbery of the third case or, according to article 62, subsection 1, of the Revised Penal Code, "circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor."

The penalty prescribed by the Code for robbery of the third case is prisión correccional in its medium period, and not prisión correccional in its medium period to prisión mayor in its minimum period, which latter penalty is that

imposed for the second case. If the Code has defined and penalized the third case by providing that "when said offenders do not carry arms and the value of the property taken does not exceed 250 pesos, they shall suffer the penalty of prisión correccional in its medium period," it cannot be argued that the prescribed penalty is any other than prisión correccional in its medium period. And yet this is the ruling of the majority, simply because the Code does not directly mention "prisión correccional in its medium period" but does so by referring to "the penalty next lower in degree" to that prescribed for the second case.

The penalty of prisión correccional in its medium period may of course be divided into three periods (minimum, medium, maximum) with a view to imposing the correct penalty in the light of the presence or absence of any mitigating or aggravating circumstance. But prisión correccional in its medium period should be the basis for determining the next lower penalty for the purpose of applying the Indeterminate Sentence Law.

In the case at bar, the minimum penalty may be taken from prisión correccional in its minimum period, in accordance with *People vs. Co Pao* (58 Phil., 545, 550), *People vs. Gayrama* (60 Phil., 796 [1936]), and *People vs. Haloot* (64 Phil., 739), or from *arresto mayor* in its medium period, in accordance with *United States vs. Fuentes* (4 Phil., 404), and *People vs. Gonzalez* (73 Phil. 549 [1942]), but never from the whole range of *arresto mayor* in its medium period to prisión correccional in its minimum period which is the penalty next lower in degree to that of prisión correccional in its medium period to prisión mayor in its minimum period, because the latter is not prescribed by the Revised Penal Code for the offense of which the appellant is herein convicted, robbery of the third case. There are good reasons for the view that the next lower penalty is prisión correccional in its minimum period, but I had agreed to the doctrine laid down in the *Gonzalez* case, which is a reiteration of the *Fuentes* case, because it is more favorable to the accused.

In my opinion, therefore, the appellant should be sentenced to the minimum penalty of not more than 4 months or less than 2 months and 1 day of *arresto mayor*.

PADILLA, J.:

I concur in the foregoing opinion.

CONCURRING AND DISSENTING

FERIA, J.:

We concur with the majority in that the penalty prescribed by the Code for the offense of robbery when the offender does not carry arms and the value of the property taken does not exceed 250 pesos, committed by the appellant, is:

"The penalty prescribed in the 'two next preceding paragraphs' is the next lower in degree to prisión mayor in its medium period to *reclusión temporal* in its minimum period, which would be prisión correccional medium to prisión mayor minimum. The minimum of this, namely, prisión correccional medium, is the penalty in cases where the offenders do not carry arms and the property taken does not exceed 250 pesos, as in the instant case. Due to the presence of one aggravating circumstance—nocturnity—this penalty of prisión correccional medium must be applied in its maximum period as provided for in section 3 of article 64. After dividing prisión correccional medium into three periods, its maximum period would be 3 years, 6 months and 21 days to 4 years and 2 months."

But we dissent from the majority's conclusion that:

"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 circumstances modifying liability may require. (People vs. Gonzalez, 73 Phil., 549). In the instant case, prescind from the circumstances modifying criminal liability which are the fact that the offender did not carry arms and the amount taken was less than 250 pesos, * * * the basic penalty would be that 'prescribed in the two next preceding paragraphs,' namely, prisión correccional medium to prisión mayor minimum. It is from this basic penalty that the penalty next lower in degree must be computed."

We do not see any reason why, in determining the maximum penalty, the majority decision considers "prisión correccional" in its medium period as the penalty prescribed by the Code for the offense committed by the appellant, but instead of considering the same prisión correccional in its medium, the majority considers prisión correccional in its medium to prisión mayor in its minimum period as the penalty prescribed by the Code for the purpose of determining the penalty next lower in degree within the range of which the minimum of the penalty must be taken for the purpose of the Indeterminate Sentence Law. Section 1 of this law simply provides that the minimum of the indeterminate penalty "shall be within the range of the penalty next lower to that prescribed by law." There is nothing in said law to authorize a method of computation to determine the penalty next lower in degree for the purpose of the minimum of the indeterminate penalty, different from that for other purposes.

It is correct, and we agree, that in order to determine the penalty next lower in degree for the purpose of imposing the minimum indeterminate penalty, the penalty prescribed by the Code for the offenses must be taken as the basis, without taking into consideration the attending mitigating or aggravating circumstance which may decrease, to the minimum or increase to the maximum period, the penalty which may be imposed by the court, because this is not directly prescribed by the law. But it is not correct, and we can not agree, that the penalty specifically imposed by the Code in its minimum or maximum period in consideration of the qualifying circumstances that are elements or ingredients of a complex offense, should not be considered as the penalty prescribed for the purpose of determining the minimum indeterminate penalty. That the value of the property taken was less than 250 pesos and the offenders did not carry arms, are not aggravating or mitigating circumstances modifying the criminal liability; they are qualifying circumstances that integrate that complex offense. They are part and parcel of the specific offense committed by the appellant irrespective of the mitigating or aggravating circumstances which might attend the commission of said offense. Without said qualifying circumstances the offense committed and the penalty therefor would be different, just as the treachery which qualifies and makes the illegal killing of a person murder instead of homicide.

The prisión correccional medium to prisión mayor minimum can not be considered as the penalty prescribed by the Code, since said penalty is prescribed for the offenses penalized in the next two preceding paragraphs in consideration of the different qualifying circumstances that integrate them, and the penalty for the offense at bar is the minimum thereof. To consider the penalty of presidio correccional in its medium to prisión mayor in its minimum period, instead of arresto mayor in its medium period, as the basic penalty for determining the minimum indeterminate penalty to be imposed upon the appellant, would be to punish a less serious offense with the same minimum indeterminate penalty which the Penal Code provides for the more serious offense of robbery of an amount less than 250 pesos but with arms, or of more than 250 pesos without arms, defined or punished in the next two preceding paragraphs.

Besides, it is a maxim that, in case of doubt, criminal laws must be construed in favor of the accused, and our construction of the law is not only in accordance with the letter and spirit thereof, but in favor of the accused. According to our construction the minimum indeterminate penalty should be within the range of arresto mayor in its medium period from 2 months and 1 day to 4 months, or will not exceed 4 months; while under the contrary construction, the minimum should be within the range of arresto mayor in its medium to prisión correccional in its minimum period, that is, from 2 months and 1 day to 2 years, or it may be 2 years.

CONFORME EN PARTE Y DISIDENTE EN PARTE**BRIONES, M.:**

Mi posición en esta causa es peculiar. Estoy sustancialmente de acuerdo con la ponencia; difiero de esta sólo en aquella parte en donde se sienta la conclusión de que, para los efectos de la sentencia indeterminada, la pena mínima que debe imponerse al acusado debe tomarse del siguiente arco—de arresto mayor en su grado medio a prisión correccional en su grado mínimo. Naturalmente mi disconformidad en este respecto se extiende al razonamiento que ha hecho posible dicha conclusión.

Estoy más inclinado a sostener la conclusión a que han llegado sobre este particular los Magistrados Parás y Feria, a saber: que, bajo la ley de sentencia indeterminada, la pena mínima debe quedar circunscrita dentro del período medio de arresto mayor, o sea, de 2 meses y 1 día a 4 meses, sin que en ningún caso exceda de 4 meses. Pero como, de hecho, la pena mínima que se impone en la ponencia es la de 2 meses y 1 día, se sigue que en la presente causa, por lo menos, la parcial disconformidad entre la sentencia y la disidencia es tan sólo abstracta y más bien dice relación con la discreción que en lo futuro pueden ejercer los Jueces en la imposición del minimum de la pena correspondiente.

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