

**ROMULADO BAYLEN, COMPLAINANT, VS. HON. SANCHO INSERTO,
JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, BRANCH I,
ILOILO CITY, RESPONDENT.**

Adm. Mat. No. 2380-CFI. July 31, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This is an administrative case against Judge Sancho Inserto of the Court of First Instance of Iloilo, Branch I, arising from a verified complaint dated December 21, 1979 filed by Romulado Baylen.

The complainant charged respondent herein with ignorance of the law. He alleged that respondent was oblivious of the provisions of Article 39 of the Revised Penal Code, as amended by R.A. No. 5465 and Act No. 4103, otherwise known as the Indeterminate Sentence Law, when respondent rendered a decision in Criminal Case No. 2939, entitled "People vs. Romulado Baylen," (CA-G.R. No. 22130-CR) finding the accused therein guilty of the crime of estafa and sentencing him, in the absence of any mitigating or aggravating circumstance, "to suffer an imprisonment of one (1) year and eight (8) months of prison correctional, to indemnify Barrio Salacay in the municipality of Cabatuan, Iloilo in the sum of P1,135.00 with subsidiary imprisonment of one hundred and forty-one (141) days in case of insolvency and to pay the costs of suit."

Under Article 39 of the Revised Penal Code, it is provided that:

"If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each eight (8) pesos, subject to the following rules:

"If the principal penalty imposed be prison correctional or arresto and a fine, he shall remain under confinement until his time referred in the preceding paragraph is satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the sentence, and in no case shall it continue for more than one year, and no fraction or part of a day shall be counted against the prisoner (As amended by RA 5465)."

On the other hand, Section 1 of Act No. 4103 as amended by Act No. 4225, otherwise known as the Indeterminate Sentence Law provides:

"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 the minimum of which shall be within the range of the penalty next lower to that prescribed by the code for the offense;

Complainant likened respondent to a recidivist or habitual delinquent because the present complaint is a repetition of similar acts complained of in Administrative Matter No. 1098, entitled "Ajeno vs. Inserto," 71 SCRA 166, where herein respondent was "admonished for not keeping abreast of the latest developments in the law and for

not knowing that subsidiary imprisonment is now imposed only in case of a fine." He prayed that respondent be dismissed for ignorance of the law and/or patent incompetence.

In his comment dated July 17, 1980 respondent admitted the errors in the imposition of the penalty in question and alleged that although he wanted to retrieve the case for proper correction, it was too late because he lost control and jurisdiction over the same upon perfection of the appeal. Respondent further alleged that in almost nine (9) years as CFI Judge, only two (2) of his decisions on criminal cases have been reversed, two (2) orders set aside, and only one (1) decision in a civil case has so far been reversed by the Appellate Courts; that during his tenure as CFI Judge, he contacted (sic) heart ailment (myocardial infraction); that his gall bladder was removed in 1965; that he suffered stroke twice, first in 1975 and second in 1978; that he has hypertension and diabetes and in 1978 both of his eyes were operated for cataract extraction; that in 1978 alone he was hospitalized five (5) times; and that he applied for disability retirement in 1976 which was disapproved.

Respondent pleads that, considering that he is now 62 years old with 41 years of government service, 21 years of which were served in the judiciary, including 13 years as Municipal Judge of Kalibo, Aklan, with his failing eyesight, impaired memory and constant dizziness, he be allowed to retire as soon as possible so he may be able to benefit from the fruits of his labor.

In Administrative Matter No. 1098-CFI, entitled "Ludovico Ajeno vs. Hon. Sancho Inserto," supra, herein respondent was charged with ignorance of the same Article 39 of the Revised Penal Code, as amended by RA No. 5465 for sentencing complainant therein "to suffer an imprisonment of four (4) months of arresto mayor, to indemnify Solomon Banagua, Jr. in the sum of P200.00 with subsidiary imprisonment in case of insolvency and to pay the cost of the suit." In said case, We stated that non-payment of the indemnity can not subject the accused to subsidiary imprisonment because under the amendment introduced to Article 39 of the Revised Penal Code by Republic Act No. 5465, it is only for non-payment of the fine that the accused may be required to serve subsidiary imprisonment. Since it was respondent's first violation of the norm of judicial conduct during his service in the government, We admonished him to be more cautious in the application of the law to cases submitted to him for decision with warning that a repetition of the same will be severely dealt with.

In the present case, respondent repeated the same error by imposing upon complainant the subsidiary imprisonment of one hundred and forty-one (141) days in case of his insolvency to pay the indemnity of P1,135.00 to the offended party in the criminal case filed against him. As already stated, the imposition of subsidiary imprisonment can be made only in case of non-payment of the fine.

Furthermore, respondent did not apply Act No. 4103 as amended by Act No. 4225, otherwise known as the Indeterminate Sentence Law. Respondent imposed a penalty without determining two (2) penalties, referred to in the said law as the "maximum" and "minimum" terms. As we have said in Administrative Matter No. 1553-CFI (Re: Penalty Imposed by Judge Teofilo Guadiz, Jr., CFI, Branch V, Nueva Ecija, in Criminal Case No. 604, entitled, "People of the Philippines versus Froilan Maglaya"), promulgated on September 12, 1980:

"The need for specifying the minimum and maximum periods of the indeterminate sentence is to prevent the unnecessary and excessive deprivation of liberty and economic usefulness of the accused, since he may be exempted from serving the entire sentence, depending upon his behavior and his physical, mental and moral record. The requirement of imposing an indeterminate sentence in all criminal offenses, whether punished by the Revised Penal Code or by special laws, with definite minimum and maximum terms, as the Court deems proper within the legal range of the penalty specified by the law must, therefore, be deemed mandatory."

Except the indivisible penalties, all the other penalties prescribed in the Revised Penal Code, have minimum and maximum periods for easy determination of the indeterminate sentence to be imposed, in terms of specific

number of years, months and days both in its minimum and maximum periods.

It bears repeating, but with greater emphasis, what We said in the first case of the respondent, "Ajeno vs. Inserto", supra, that "when respondent accepted his position he owed it to the dignity of the court, to the legal profession and to the public, to know the very law he is supposed to apply in a given controversy. Even in the remaining years of his stay in the judiciary he should keep abreast with the changes in the law and with the latest decisions and precedents. Although a judge is nearing retirement he should not relax in his study of law and court decisions. Service in the judiciary means a continuous study and research on the law from beginning to end." In the instant case, respondent's ignorance of the law as charged, has been demonstrated more glaringly for having also failed to apply the Indeterminate Sentence Law, in addition to mis-applying the subsidiary provisions of the Revised Penal Code, as amended.

WHEREFORE, in view of all foregoing, We find and hold respondent Judge Sancho Inserto GUILTY as charged.

Accordingly, a fine equivalent to his actual salary for two (2) months is imposed upon him, with the stern warning that a repetition of the same or similar offense or shortcoming will be punished with extreme severity.

SO ORDERED.

Barredo (Chairman), Aquino, Concepcion Jr. and , Abad Santos, JJ., concur.

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