

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ERNESTO AQUINO, DEFENDANT AND APPELLANT.***G.R. No. L-2730. February 27, 1950*

Ponente: TORRES, J.

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Defendant-appellant herein was indicted in the Court of First Instance of Manila on an information which charged him with serious physical injuries through reckless imprudence, committed in the City of Manila on the 27th day of March 1948. Upon arraignment on April 19, 1948, he pleaded not guilty, but through representations made by counsel that appellant, who was a student, be permitted to finish "the present semester of the school year before entering Jail," the hearing of his case was postponed to January 4, 1949.

On that date, the accused withdraw his former plea of not guilty and, soon after the reading for the second time of the information filed against him, entered a plea of guilty. In view thereof, and in answer to a question by the court, the accused having stated that on March 27, 1948, he drove the motor vehicle mentioned in the information, without license, with the recommendation of the prosecution, and pursuant to the provisions of paragraph (d) of Section 67 of Act No. 3992, the court, on January 4, 1949, sentenced him to imprisonment for one year, and to pay the costs.

On the same date of the judgment, and without objection of the fiscal, the accused moved for the reconsideration thereof, praying that in view of his voluntary plea of guilty "a lighter indeterminate sentence" be given him. Said petition for reconsideration was set for hearing on January 10, 1949, but, on the same date, defendant filed a notice of appeal. The record shows that when this case was before the lower court for the hearing of the motion for reconsideration, the accused, either by himself or his lawyer, failed to appear and the court, having lost jurisdiction to act, by reason of the appeal, on said motion for reconsideration, denied the same on January 10, 1949.

In his brief the accused assails the correctness of the Judgment of the lower court on the ground that the latter erred: (1) in not taking into consideration "the sickly condition and appearance of the accused at the trial," and in imposing upon him "a rather heavy and excessive penalty not commensurate with the offense committed;" (2) in "questioning the accused notwithstanding the fact that he had pleaded guilty only to the charge or offense as alleged and set forth in the information, which in effect compelled the accused to testify against himself 5" and (3) in imposing an unusually heavy penalty on the accused contrary to the usual and generally accepted practice in the courts on similar offenses.

The brief of the accused contains a statement wherein he recites facts which are not alleged in the information, and which We, for obvious reasons, cannot consider reliable. As already stated, upon his withdrawal of the plea of not guilty and his plea of guilty, no evidence was taken at the hearing of this case in the lower court. His plea of guilty is an admission of all the allegations and facts set forth in the information which reads:

"That on or about the 27th day of March, 1948, in the City of Manila, Philippines, the said accused, being the

driver and person in charge of civilian Jeep bearing Plate No. 2783 with defective brakes, did then and there willfully and unlawfully drive, operate and manage the same in a reckless, negligent and imprudent manner westward along Legarda St., in said City, by then and there giving the said vehicle a speed greater than was reasonable and proper under the circumstance, and by not taking the necessary precautions to avoid damage to property and accident to persons, causing as a consequence of his said recklessness, imprudence and lack of precautions the said vehicle so driven, operated and managed by him to hit, as in fact it hit, one Dimas Serrano who was at the time boarding civilian Jeepney bearing Plate No. TPU-14383 parked in front of House No, 613 Legarda, thereby inflicting upon the said Dimas Serrano physical injuries, to wit: (1) Fracture, simple, pertrochanteric, femur, right with varus deformity; (2) Wound lacerated, antero-medial ankle, left, which have required and will require medical attendance for a period of from six to eight months and which have incapacitated and will incapacitate him from performing his customary labor for the same period of time."

As may be seen, the latter part of the information which describes the nature and seriousness of the physical injuries inflicted by appellant upon Dimas Serrano, and which "required and will require medical attendance for a period of from six to eight months and which have incapacitated and will incapacitate him from performing his customary labor for the same period of time," have undoubtedly guided the court in imposing upon this appellant the penalty of one year of imprisonment.

Appellant criticizes the lower court in questioning him as to whether or not he had a license to drive a motor vehicle. But the accused having answered the question voluntarily, he cannot now contend that he was compelled to testify against himself. It is well settled that, in cases like the one before Us, the trial judge has discretion to ascertain the true facts before rendering judgment against an accused who has pleaded guilty. (Sec. 5, Rule 140, Rules of Court; U.S. vs. Talbanos, 6 Phil. 541; U.S. vs. Rota, 9 Phil. 426; U.S. vs. Agcaoili, 31 Phil. 91; U.S. vs. Jamad, 37 Phil. 305.)

Moreover, the court could not have taken judicial cognizance of the sickly condition and appearance of the accused at the trial of this case, because, as stated above, his plea of guilty dispensed with the necessity of taking any evidence to substantiate the allegations of the information. Neither his alleged sickly condition and appearance (Art. 13, par. 9, Rev. Penal Code), as exemplified by a medical certificate Exhibit A annexed to the supplementary petition for reconsideration of the judgment, can have any bearing on the instant case as a mitigating circumstance. This accused is charged and convicted of a violation of a special law (Act No. 3992, The Revised Motor Vehicle Law) and the provisions of the Revised Penal Code are, pursuant to its Article 10, not, therefore, applicable thereto.

Upon carefully viewing this case, We are of the opinion that if appellant was really in such physical condition, as is described in said Exhibit A, he should not have driven that civilian jeep "with defective brakes," along Legarda street of this City, and thus violated the provision of paragraph (d) of Section 67 of Act No. 3992. This law, approved on December 3, 1932, after the enactment of Act No. 3315 (The Revised Penal Code) which took effect on the 1st day of January 1932, has superseded the provisions of Article 365 of the Revised Penal Code in cases of offenses resulting from criminal negligence of the offender while operating a motor vehicle; the purpose of the lawmaker being to curb such violations by prescribing therefor a more severe penalty than that provided by the Revised Penal Code for ordinary cases of reckless imprudence.

Premised on all the foregoing, we, therefore, modify the judgment appealed from in the sense that the penalty imposed upon this appellant shall consist of an indeterminate penalty, ranging from six months and one day to one year and six months of imprisonment. With costs.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Feria, J., no part.

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