

LUCAS BUISER, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-32377. October 23, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

Petitioner Lucas Buiser was convicted of the crime of less serious physical injuries thru reckless imprudence in Criminal Case No. SP-1253 of the Court of First Instance of Laguna and sentenced to "suffer imprisonment of two (2) months of arresto mayor and to indemnify Damian Bautista in the sum of P500.00 with subsidiary imprisonment in case of insolvency, and to pay the costs." The said sentence was affirmed by the Court of Appeals in a Decision promulgated on May 14, 1970 in CA-G.R. No. 08350-CR.

The petitioner instituted this appeal by certiorari before this Court on two (2) issues, to wit: (a) that the decision of the lower court is contrary to the evidence presented in the case; and (b) that the decision erroneously imposed subsidiary imprisonment in the event of his insolvency to pay the indemnity. The petition was given due course only in respect of the second issue, pursuant to the Resolution dated August 27, 1970.

Petitioner contends that the Court of Appeals erred in not extending in his favor the benefits of Republic Act No. 5465 which took effect on April 21, 1969. Said law abolished subsidiary imprisonment in case of insolvency or failure on the part of the accused to pay the indemnity or pecuniary liabilities imposed on him. He argues that inasmuch as Republic Act No. 5465 became effective when his appeal was still pending in the Court of Appeals, he should have been extended the benefit of the same in accordance with Article 22 of the Revised Penal Code which declares that:

"Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is de-fined in rule 5 of article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same."

In his Comment to the petition, the Solicitor General expressed agreement with the contention of the petitioner which he finds to be well-taken.

The petition should be granted insofar as the issue of subsidiary imprisonment is concerned. The decision of the Court of First Instance was correct in imposing subsidiary imprisonment in the event of the insolvency of the petitioner to pay the adjudged indemnity of P500.00, such being the law in force at that time. However, Republic Act No. 5465, approved on April 21, 1969 amended Section 39 of the Revised Penal Code by eliminating subsidiary imprisonment in case of failure to pay the indemnity. The petitioner is entitled to the benefit of the said amendment in obedience to the rule giving retroactive effect to penal laws which are more favorable to an accused person. There can be no question that the abolition of the liability to suffer subsidiary imprisonment in case of failure to pay the civil indemnity arising from a crime is more favorable to the accused. The petitioner is not shown to have been a habitual criminal so as to be excluded from the beneficent effects of Article 22 of the Revised Penal Code. The retroactive application of the amendment to Article 39, as introduced by Republic Act

No. 5465, has been upheld by Us in "People vs. Dorian," 55 SCRA 435.

WHEREFORE, the petition is hereby GRANTED insofar as the issue of subsidiary imprisonment is concerned. The judgment rendered by the Court of Appeals in CA-G.R. No. 08350-CR should be deemed AMENDED by eliminating the imposition of subsidiary imprisonment in case of insolvency to pay the indemnity of P500.00. No costs.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

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