

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. PLARIDEL DIMALANTA, DEFENDANT AND APPELLANT.

G.R. No. L-5196. November 13, 1952

Ponente: JUGO, J.

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JUGO, J.:

On January 4, 1950, an information was filed against Plaridel Dimalanta in the Court of First Instance of Quezon City, charging him with theft of electric current belonging to the Manila Electric Company, valued at P333, by using a "jumper," committed in the month of April, 1949.

On the same day, at noon, upon being arraigned, he pleaded guilty. The court in public session forthwith sentenced him to suffer six (6) months and one (1) day of prision correccional, to indemnify the Manila Electric Company in the sum of P333, with the proper subsidiary imprisonment in case of insolvency, not to exceed one-third (1/3) of the principal penalty.

On January 11, 1950, the appellant filed a motion with the trial court entitled "Motion for Appeal" on the ground that, in view of his plea of guilty, the penalty was excessive. Having filed a bail bond of P3,000 subscribed by the Plaridel Surety and Insurance Company, the court ordered his provisional release.

On January 19, 1950, Atty. Senen S. Ceniza, in behalf of the defendant, filed a motion entitled "Urgent Motion for Permission to Change Plea of Guilty to Not Guilty," based on the following grounds:

"1. That his plea of guilty was made on the instruction of a certain person who told him to plead such, so that the penalty should be a fine and that some body will take charge of paying such fine: and

"2. That had this case been tried on its merits he would have been able to prove his innocence."

He prayed that the judgment rendered on January 4 be set aside and the case be set for trial on the merits, allowing the accused to change his plea of guilty to that of not guilty.

On January 21, in open court, said motion was denied and the appeal was given due course. On January 21, 1950, the trial court issued the following order:

"ORDEN

"A peticion del abogado Ceniza, que representa al aqui aeusado, se da por retirada su ir ocion de 19 del actual, y dese curso a la apdacion interpuesta por dicho acusado.

"Asl se ordena.

"Dada en sesion publica del Tribunal en la ciudad de Quezon, Filipinas, a 21 de enero de 1950.

"(Fdo.) CEFERINO DE LOS SANTOS

Juez"

The accused now appeals to this Court, making the following assignments of error:

"I

"The lower court erred in not granting the 'Urgent Motion for Permission to Change Plea of Guilty to not Guilty' of counsel for accused.

"II

"The lower court erred in giving indemnity to the offended party, the Manila Electric Company, in the sum of P333 value of the alleged 6,660 kilowatts of electric current stolen.

"III

"Granting that the accused is guilty of the crime charged, the lower court erred in not giving to the accused the benefits of the Indeterminate Sentence Law.

"IV

"The lower court erred in imposing upon the appellant the penalty of six (6) months and one (1) day of prison correccional."

Inasmuch as the attorney of the accused withdrew his motion that the appellant be allowed to change his plea of guilty to that of not guilty, the court could not and aid not deny said motion. Commenting on said withdrawal, the Solicitor General says:

"There can be no clearer proof than the above quoted order which forms part of the records, that his Honor, the trial judge, did not deny the urgent motion. The motion was considered withdrawn (se da por retirada) upon petition of the same counsel who filed the motion. The appellant's counsel on appeal (different from his counsel in the lower court) having indicated no mistake in the records, or denied that defendant's trial counsel in truth and in fact petitioned for the withdrawal of the motion in order to give way for the appeal to proceed, there should be no reason to doubt the regularity of all the proceedings had in the lower court which regularity should be presumed. There is, consequently, no necessity to enter upon a discussion of the right of accused to change his plea of guilty to one of not guilty. Granting the existence of such right, the fact is, that the appellant desisted, perhaps after a sober second thought, from changing his plea, when he withdrew, through counsel, his motion to change his plea."

The appellant in withdrawing his motion to change his plea must have taken into consideration that the withdrawal of his plea of guilty might deprive him of a mitigating circumstance. There is no reason now to order a new trial.

With regard to the contention of the appellant that he should have been given the benefits of the Indeterminate Sentence Law, it is clear that he is not entitled to them, for the reason that the penalty imposed upon him does not exceed one (1) year (sec. 2, Act No. 4103). The application of the Indeterminate Sentence Law is based upon the penalty actually imposed in accordance with law and not upon that which may be imposed in the discretion of the court.

As no error has been committed by the trial court, the judgment appealed from is affirmed, with costs against the appellant. It is so ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

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