

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MELCHOR INTAL Y DAVID, DEFENDANT AND APPELLANT.

G. R. No. 10585. April 29, 1957

Ponente: REYES, A., J.

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REYES, A., J.:

While on trial for double murder, the appellant in this case pleaded guilty to the lesser offense of double homicide and was sentenced by the trial court to an indeterminate penalty of from 10 years and 1 day of prison mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum, in addition to indemnity and costs.

The appeal impugns only the penalty thus imposed and for that reason the case has been certified to us by the Court of Appeals.

The material facts appear in the following excerpt from the decision appealed from:

"At this stage of the proceeding's, when the prosecution has already rested its case and the defense has presented three witnesses, the accused manifested to the Court his willingness to plead guilty to the lesser crime of double homicide. The prosecution, represented by Asst. Fiscal Carlos Gulman Cruz and private prosecutor, Atty. Alfonso Felix, Jr. offered no objection, and thereupon the accused" moved the Court to permit him to withdraw his former plea of not guilty to be substituted with that of guilty to the lesser crime of double homicide. The prosecution also moved to be allowed to amend the information so as to change the crime from double murder to double homicide. Both motions were granted and Fiscal Cruz accordingly amended the information. Arraigned on the new information the accused, assisted by Counsel, voluntarily pleaded to the crime of double homicide asking at the same time that he be allowed to prove the mitigating circumstance of physical infirmity. The prosecution admitted the existence of this mitigating circumstance.

"There is no aggravating circumstance alleged in the amended information. There is, therefore, only one qualifying circumstance of physical infirmity. * * *."

It is contended for the appellant that his plea of guilty to the amended charge should also have been considered as a mitigating circumstance. Citing *People vs. Noble* (77 Phil., 93), the Solicitor General replies that an offer to plead guilty to a lesser offense cannot be considered as a mitigating circumstance under article 13 of the Revised Penal Code. The case cited is not in point because there the accused merely made an offer to plead guilty to a lesser offense, whereas in the present case the accused actually entered a plea of guilty to an information charging a lesser offense. The case in point is that of *People vs. Calma* (G. R. No. L-7565, promulgated June 16, 1955). In that case, the accused, while on trial for murder, signified his intention to plead guilty to the lesser offense of homicide if the information was amended accordingly, whereupon the fiscal moved that the information "be amended from murder to homicide," and the motion having been granted, the accused pleaded guilty and was sentenced for homicide. This Court, on appeal, took the plea into account as a mitigating circumstance in fixing the penalty. Following this precedent, we have to agree with the present appellant that his plea of guilty to the amended charge should be considered as an extenuating circumstance.

There being thus two mitigating circumstances to consider with no aggravating circumstance to offset them, the penalty imposable should be one degree lower than that prescribed by law, or prision mayor, the same to be applied in its maximum period because of the complex nature of the offense committed. *People vs. Gonzales*, 73 Phil., 549.) Applying the Indeterminate Sentence Law, the penalty to be imposed upon appellant should be the maximum period of prision mayor, that is 10 years and 1 day to 12 years, as maximum, and prision correctional in its maximum period, or 4 years 2 months and 1 day to 6 years, as minimum. (*People vs. Dosal*, 92 Phil., 877). The penalty imposed by the trial court should, therefore, be modified.

There is nothing to the point made by the Solicitor-General that according to the evidence presented by the prosecution the accused is guilty of two separate crimes of homicide. The case having been submitted on a plea of guilty to the amended information for double homicide, we cannot go beyond the allegations therein contained.

Wherefore, with the only modification that appellant is sentenced to an indeterminate penalty of not less than 4 years, 9 months and 11 days of prision correctional, and not more than 10 years, 8 months and 1 day of prision mayor, the decision appealed from is affirmed, without costs in this instance.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Endentia, and Felix, JJ., concur.

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