

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VALERIANO DUCOSIN, DEFENDANT AND APPELLANT.

G.R. No. 38332. December 14, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This appeal from a judgment of the Court of First Instance of Manila convicting the appellant of the crime of frustrated murder was referred by the first division to the court in banc for the proper interpretation and application of Act No. 4103 of the Philippine Legislature approved on December 5, 1933, commonly known as the "Indeterminate Sentence Law". As this is the first case which has come before us involving the Indeterminate Sentence Law, it will be convenient to set out here some of its provisions.

Section 1 of Act No. 4103 is as follows:

"Hereafter, in imposing a prison sentence for an offense punished by acts of the Philippine Legislature, otherwise than by the Revised Penal Code, the court shall order the accused to be imprisoned for a minimum term, which shall not be less than the minimum term of imprisonment provided by law for the offense, and for a maximum term which shall not exceed the maximum fixed by law; and where the offense is punished by the Revised Penal Code, or amendments thereto, the court shall sentence the accused to such maximum as may, in view of attending circumstances, be properly imposed under the present rules of the said Code, and to a minimum which shall not be less than the minimum imprisonment period of the penalty next lower to that prescribed by said Code for the offense. Except as provided in section two hereof, any person who shall have been so convicted and sentenced and shall have served the minimum sentence imposed hereunder, may be released on parole in accordance with the provisions of this Act."

Section 2 is as follows:

"This Act shall not apply to persons convicted of offenses punished with death penalty or life imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year; nor to those already sentenced by final judgment at the time of approval of this Act, except as provided in section five hereof."

Section 3 of Act No. 4103 creates a "Board of Indeterminate Sentence" to be composed of the Secretary of Justice as chairman and four members to be appointed by the Governor-General, with the advice and consent of the Philippine Senate. This section describes the qualifications of the members. Section 4 gives the board authority to adopt rules of procedure and provides for the compensation of the members.

Section 5 makes it the duty of the board to study the physical, mental and moral record of the prisoners who shall be eligible to parole and authorizes the board to determine the proper time for the release of such prisoners. After a prisoner has served the "minimum penalty" imposed upon on him and the board is satisfied that such prisoner is

fitted by his training for release and that there is a reasonable probability that he will not violate the law again and that his release "will not be incompatible with the welfare of society", the board may in its discretion authorize the release of such prisoner on parole. The board may also recommend the release on parole of other prisoners previously convicted of any offense other than those named in section 2.

Section 6 provides for the surveillance of prisoners released on parole for a period "equivalent to the remaining portion of the maximum sentence imposed upon him or until final release and discharge by the Board of Indeterminate Sentence." Section 7 provides that a certified copy of the board's order of conditional or final release shall be filed with the court and with the Chief of Constabulary.

Section 8 provides that any prisoner who violates any of the conditions of his parole, who violates any law during the period of surveillance for which he has been convicted, shall be subject to re-arrest and confinement and "shall serve the remaining unexpired portion of the maximum sentence for which he was originally committed to prison" unless the board grants a new parole.

Section 9 provides that Act No. 4103, the Indeterminate Sentence Law, shall not be construed to impair the powers given to the Governor-General under section 64 of the Administrative Code or the Organic Act of the Philippine Islands.

By its terms, Act No. 4103 became law upon its approval, that is to say, on December 5, 1933.

In the case before us, Valeriano Ducosin was tried on September 30, 1932, for the crime of frustrated murder upon the following information:

"That on or about the 23d day of September, 1932, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully and feloniously, and with intent to kill, treacherously attack, assault and wound one Rafael Yanguas by then and there suddenly and without any warning, stabbing the latter with a knife, thereby inflicting upon him several wounds in different parts of the body, some of which are necessarily mortal, thus performing all the acts of execution which would produce the death of the said Rafael Yanguas as a consequence, but which, nevertheless, did not produce it by reason of causes independent of the will of said accused, that is, by the timely intervention of medical assistance.

"Contrary to law."

Upon arraignment the accused pleaded guilty and was sentenced to ten years and one day of prison mayor with the accessory penalties prescribed by law and to pay the costs. The penalty for the crime of murder, under article 248 of the Revised Penal Code, is reclusion temporal in its maximum period to death. Under article 50, the penalty for a frustrated felony is the one next lower in degree to that prescribed for the consummated felony, which in the present case is prison mayor in its maximum period to reclusion temporal, in its medium period, or from ten years and one day to seventeen years and four months. The accused having pleaded guilty, this extenuating circumstance, in the absence of any aggravating circumstance, fixes the penalty within the minimum period, that is to say, from ten years and one day to twelve years, leaving to the discretion of the court the precise time to be served within said range, i. e., not less than ten years and one day nor more than twelve years. The penalty imposed by the trial judge being within this range is correct and therefore is the penalty prescribed by the Revised Penal Code for the offense which this accused has committed.

As Act No. 4103, the Indeterminate Sentence Law, was enacted after this appeal was lodged in this court, we are now required to revise the sentence imposed upon the appellant and to bring the same into conformity with Act No. 4103.

It will be observed from section 1 of said Act that the court must now, instead of a single fixed penalty, determine

two penalties, referred to in the Indeterminate Sentence Act as the "maximum" and "minimum". The prisoner must serve the minimum penalty before he is eligible for parole under the provisions of Act No. 4103, which leaves the period between the minimum and maximum penalty indeterminate in the sense that he may, under the conditions set out in said Act, be released from serving said period in whole or in part. He must be sentenced, therefore, to imprisonment for a period which is not more than the "maximum" nor less than the "minimum", as these terms are used in the Indeterminate Sentence Law.

This leads up to the important question: How shall the "maximum" and the "minimum" penalty be determined?

The maximum penalty must be determined, in any case punishable by the Revised Penal Code, in accordance with the rules and provisions of said Code exactly as if Act No. 4103, the Indeterminate Sentence Law, had never been passed. We think it is clear from a reading of Act No. 4103 that it was not its purpose to make inoperative any of the provisions of the Revised Penal Code. Neither the title nor the body of the Act indicates any intention on the part of the Legislature to repeal or amend any of the provisions of the Revised Penal Code. The legislative history of the Act further shows that attention was called to the necessity for taking care "so as not to bring the provisions of this bill in conflict with the provisions of our penal laws, especially with those treating with penalties." (Committee Report, House of Representatives, H-3321, Ninth Philippine Legislature, Third Session.)

The last mentioned report gives an illustration of the application of the Indeterminate Sentence Law to offenses penalized by the Revised Penal Code:

"Suppose that a man is found guilty of malversation of public funds in the amount of P10,000. No mitigating nor aggravating circumstances are present. Under this law the court may impose on him a maximum sentence not exceeding ten years and eight months but not less than nine years, four months and one day (see art. 217, No. 3, Revised Penal Code), and a minimum which shall not be less than four years, two months and one day (the minimum imprisonment period of prison correccional in its maximum to prison mayor in its minimum. See article 61, Revised Penal Code). The court, therefore, may sentence the accused to be imprisoned for not less than five years nor more than ten years or for not less than seven years or more than ten years and eight months, etc."

It will be seen from the foregoing example that the "maximum" is determined in accordance with the provisions of the Revised Penal Code. In the example given reference is made to article 217, paragraph 3, of the Revised Penal Code which provides that the defendant shall suffer the penalty of prison mayor in its medium and maximum period. The penalty is placed in the medium degree because of the absence of mitigating or aggravating circumstance, that is to say, anywhere between nine years, four months and one day and ten years and eight months in the discretion of the court. In the case on appeal here the penalty was imposed in the minimum of the proper penalty under the Revised Penal Code because of the plea of guilty, that is to say, between ten years and one day and twelve years in the discretion of the court. This discretion is in nowise impaired or limited by Act No. 4103. The trial court, in conformity with the discretion conferred upon it by the Revised Penal Code, might have assessed the penalty at, let us say, eleven years. We wish to make it clear that Act No. 4103 does not require this court to assess the said penalty at 12 years, which is the longest time of imprisonment within the minimum degree.

We find, therefore, that ten years and one day of imprisonment conforms to the provisions and rules of the Revised Penal Code and is therefore fixed and established as the maximum of the sentence which shall be imposed upon the appellant.

We come now to determine the "minimum imprisonment period" referred to in Act No. 4103. Section 1 of said Act provides that this "minimum which shall not be less than the minimum imprisonment period of the penalty next lower to that prescribed by said Code for the offense." We are here upon new ground. It is in determining the

"minimum" penalty that Act No. 4103 confers upon the courts in the fixing of penalties the widest discretion that the courts have ever had. The determination of the "minimum" penalty presents two aspects: first, the more or less mechanical determination of the extreme limits of the minimum imprisonment period; and second, the broad question of the factors and circumstances that should guide the discretion of the court in fixing the minimum penalty within the ascertained limits.

We construe the expression in section 1 "the penalty next lower to that prescribed by said Code for the offense" to mean the penalty next lower to that determined by the court in the case before it as the maximum (that is to say the correct penalty fixed by the Revised Penal Code, see our discussion above). In the example which the Legislature had before it in the Committee Report above mentioned, the maximum of the sentence was correctly stated to be the medium degree of prision mayor in its medium and maximum period. The penalty next lower is prision correccional in its maximum degree to prision mayor in its minimum degree (article 61, paragraph 4, Revised Penal Code), that is to say, anywhere from four years, two months and one day to eight years. The Indeterminate Sentence Law, Act No. 4103, simply provides that the "minimum" shall "not be less than the minimum imprisonment period of the penalty next lower." In other words, it is left entirely within the discretion of the court to fix the minimum of the penalty anywhere between four years, two months and one day and eight years. In the example given by the committee they stated that the court might fix the minimum penalty at five years or seven years.

In the case before us on this appeal the next lower penalty to the maximum already determined as aforesaid, is prision correccional in its maximum period to prision mayor in its medium period, that is to say, from four years, two months and one day to ten years. As stated, it is in the discretion of the court to fix the time of imprisonment within the said range without reference to the technical subdivisions of maximum degree, medium degree and minimum degree, and in this particular the courts are vested as stated with a wider discretion than they ever had before.

We come now to the second aspect of the determination of the minimum penalty, namely, the considerations which should guide the court in fixing the term or duration of the minimum period of imprisonment. Keeping in mind the basic purpose of the Indeterminate Sentence Law "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness" (Message of the Governor-General, Official Gazette No. 92, vol. XXXI, August 3, 1933), it is necessary to consider the criminal, first, as an individual and, second, as a member of society. This opens up an almost limitless field of investigation and study which it is the duty of the court to explore in each case as far as is humanly possible, with the end in view that penalties shall not be standardized but fitted as far as is possible to the individual, with due regard to the imperative necessity of protecting the social order.

Considering the criminal as an individual, some of the factors that should be considered are: (1) His age, especially with reference to extreme youth or old age; (2) his general health and physical condition; (3) his mentality, heredity and personal habits; (4) his previous conduct, environment and mode of life (and criminal record if any); (5) his previous education, both intellectual and moral; (6) his proclivities and aptitudes for usefulness or injury to society; (7) his demeanor during trial and his attitude with regard to the crime committed; (8) the manner and circumstances in which the crime was committed; (9) the gravity of the offense (note that section 2 of Act No. 4103 excepts certain grave crimes—this should be kept in mind in assessing the minimum penalties for analogous crimes).

In considering the criminal as a member of society, his relationship, first, toward his dependents, family and associates and their relationship with him, and second, his relationship towards society at large and the State are important factors. The State is concerned not only in the Imperative necessity of protecting the social organization

against the criminal acts of destructive individuals but also in redeeming the individual for economic usefulness and other social ends. In a word, the Indeterminate Sentence Law aims to individualize the administration of our criminal law to a degree not heretofore known in these Islands. With the foregoing principles in mind as guides, the courts can give full effect to the beneficent intention of the Legislature.

It is our duty now to assess the minimum imprisonment period under Act No. 4103 in the case before us on this appeal. Unfortunately, as this defendant was convicted before Act No. 4103 became effective, and as we know nothing of his antecedents because his plea of guilty rendered it unnecessary to take any testimony, we are confined to the record before us. He plead guilty to all of the acts which constitute the crime of murder and only the timely intervention of medical assistance prevented the death of his victim and the prosecution of the appellant for murder. He was given the full benefit of the plea of guilty in the fixing of the maximum of the sentence. With such light as we have received from the record in this case, we have concluded that a reasonable and proper minimum period of imprisonment should be seven years, which is within the range of the penalty next lower in degree to the maximum, that is to say, within the range from four years, two months and one day to ten years of prision correccional in its maximum period to prision mayor in its medium period. We repeat that Act No. 4103 does not require the court to fix the minimum term of imprisonment in the minimum period of the degree next lower to the maximum penalty.

The judgment of the court below is modified to this extent: that the defendant-appellant is hereby sentenced to a maximum penalty of ten years and one day of prision mayor in its maximum degree, and to a minimum imprisonment period of seven years, and as thus modified, the judgment appealed from is affirmed. With costs de oficio.

Avanceña, C. J., Street, Malcolm, Villa-Real, Abad Santos, Hull, Vickers, and Imperial, JJ., concur.

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