

## **BONIFACIO MOLESA, PETITIONER AND APPELLANT, VS. THE DIRECTOR OF PRISONS, RESPONDENT AND APPELLEE.**

*G. R. No. 39998. January 24, 1934*

Ponente: ABAD SANTOS, J.

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### **ABAD SANTOS, J.:**

This is an appeal from an order of the Court of First Instance of Manila, denying a petition for a writ of habeas corpus filed by the appellant.

The record shows that the appellant, upon his plea of guilty, was convicted by the Court of First Instance of Iloilo of the crime of rape, and sentenced to suffer twelve years and one day of reclusion temporal. After serving about seven years of his sentence, he filed in the Court of First Instance of Manila a petition for a writ of habeas corpus. The petition was based on the theory that the penalty originally imposed upon the petitioner should be reduced by reason of the presence of two mitigating circumstances, namely, lack of instruction and plea of guilty. The Director of Prisons opposed the petition on the following grounds:

"(1) The defendant is a habitual delinquent as shown by his commitment papers attached to the record of this case, and therefore not entitled to the benefits of the Revised Penal Code.

"(2) The alleged lack of instruction relied upon by the petitioner, could not have been taken into account by the trial court in imposing upon him the minimum period of the prescribed penalty, inasmuch as it is not a mitigating circumstance in cases of rape."

After due hearing, the lower court denied the petition with costs.

The contention that the appellant is not entitled to the benefits of the Revised Penal Code because he is a habitual delinquent, is absolutely without merit. Under existing law habitual delinquency exists only with regard to the crimes of robo, hurto, estafa, or falsification. (Article 62, subsection 5 [c], of the Revised Penal Code.) As the appellant is now serving sentence for the crime of rape, he can not be deemed a habitual criminal within the purview of article 22 of the Revised Penal Code.

The decision of the Court of First Instance of Iloilo fails to show why the court imposed the penalty prescribed by law for the crime of rape in its minimum degree. Appellant, however, takes for granted that in the imposition of the penalty, the trial court took into consideration the mitigating circumstance of lack of instruction. This assumption is, in our opinion, unjustified. This court has held that the mitigating circumstance of lack of instruction should not be taken into consideration in connection with the crime of rape. "It has been held in numerous decisions that article 11 of the Penal Code should not be applied, as an attenuating circumstance, to persons charged with the crime of rape. No one is so ignorant as not to know that the crime of rape is wrong and in violation of the law." (United States vs. Gamilla, 39 Phil., 234, 235.) In the absence of an express showing to the contrary, it will be presumed that the trial court acted in accordance with the decisions of this court on the subject, and did not, therefore, take into consideration the appellant's lack of instruction as a mitigating circumstance. Having in mind the practice of trial courts, it is fair to assume that the Court of First Instance of

Iloilo imposed the minimum penalty on the appellant because of his voluntary plea of guilty. It follows that the appellant had already been given the benefits of a plea of guilty as contemplated by the Revised Penal Code.

Appellant's contention that the lower court erred in not computing in his favor the time allowed for good conduct, can not now be entertained. The question is prematurely raised. Even if the time allowed for good conduct is taken into account, the appellant's sentence has not yet expired. Hence he has no right to be released.

The order appealed from is, therefore, affirmed with costs against the appellant. So ordered.

Street, Vickers, Imperial, and Butte, JJ., concur.

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