

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LEON MALLARI Y LAGMAN AND LAO YU, DEFENDANTS AND APPELLANTS.

G. R. No. 41311. August 28, 1934

Ponente: DIAZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-41311/>

DIAZ, J.:

The herein defendants Leon Mallari y Lagman and La Yu appealed from the judgment sentencing them respectively to the penalties of six years, ten months and one day of prision mayor and three years, eight months and one day of prision correccional, with the corresponding accessory penalties and the costs, on the ground that said judgment was not in accordance with the law. In their brief, they contend that the trial court committed the four alleged errors enumerated therein.

All the questions raised by said appellants in their assignment of errors alleged to have been committed by the trial court are purely questions of fact. After carefully reviewing the evidence of record, this court is fully convinced that the facts are as stated in the opinion of the trial court, to wit:

The appellants herein invited Ellizar Dimson to accompany them to a certain Japanese hospital, the appellant Lao Yu promising to give a tip of one peso to both Dimson and the appellant Mallari, whom he pretended to have met by chance at Dasmarinas Street in the City of Manila. Said appellants, simulating not to know each other, engaged said Dimson in conversation and brought him to Intramuros by way of Victoria Street. Upon arriving at the yard of the school building situated on said street, the appellant Lao Yu requested appellant Majlari to change a 10-peso bill, which he carried, for the purpose of giving them the tips he had promised. Under the pretext that he had no money with him, Mallari tried to pass the bill to Dimson, asking him to change it, but Dimson answered that he did not have enough money to make the change. In order to convince the appellants that he really did not have enough money, Dimson took his wallet from his pocket to show them its contents, whereupon Mallari immediately grabbed Dimson by both hands and wrested the wallet from him, emptying the contents thereof, which amounted to ₱1.50, into his hand. After taking Dimson's money, Mallari ran away and in order to prevent Dimson from making any noise or calling the attention of the neighborhood to the incident, the appellant Lao Yu threatened to strike him if he made any outcry. Saying this, he ran away and followed the appellant Mallari, who had already gone some distance. Then Ellizar Dimson, with the help of a street-car inspector and policeman Bartolome Rulloda, who happened to be passing, pursued the appellants. The latter, upon seeing that their attempt at escape was futile, stopped. Mallari went to meet policeman Rulloda to ask him what happened while the appellant Lao Yu hid on the ground floor of the house at number 96 San Juan de Letran Street. In answer to Mallards question, policeman Rulloda asked him why they robbed Dimson of his money. Mallari answered asking his pardon. When asked where the money was, Mallari replied that Lao Yu, his co-appellant, had it. After Lao Yu's capture in the said house, he was required to return the money to Dimson and he delivered to policeman Rulloda the exact "sum of P1.50 which had been taken from the former.

The evidence shows that the appellant Leon Mallari is not a habitual delinquent but merely a recidivist, having been convicted of the crime of robbery by the Court of First Instance of Manila in criminal case No. 24027 of said court on May 15, 1922.

The Attorney-General contends that Lao Yu is likewise a recidivist but the evidence in support of his contention merely consists in the appellant's testimony that in 1927 he had been sent to the Boys' Training School for theft. This admission does not constitute sufficient evidence of recidivism on the ground that his having been sent to the said training school necessarily implies that although he had been accused of said offense no judgment of conviction had been rendered against him. And this is so, because under Act No. 3203, which was approved on December 3, 1924, and in force in 1927,—the same having been amended by Act No. 3559 only on November 26, 1929, and by article 80 of the Revised Penal Code on January 1, 1932,—only minors under 18 years of age, who were accused of an offense not punishable by reclusion perpetua or death, were sent to the institution specified therein or to the Boys' Training School of the City of Manila. Said Act provided that in such cases, instead of rendering judgment of conviction against them, the court should order the suspension of all further proceedings and commit such minors to any of the aforesaid institutions. The pertinent provisions of said Act, as stated in sections 3 and 7 thereof, read as follows:

"SEC. 3. Whenever any boy or girl less than eighteen years of age shall be accused in any court of an offense not punishable by life imprisonment or death, the court, before passing sentence of conviction, shall suspend all further proceedings in the case and shall commit such minor to the custody of any of the institutions mentioned in sections one and two of this Act, until said minor shall have reached his majority or for such less period as to the court may seem proper, subject to the conditions provided in section seven hereof, or may allow him to remain and be cared for elsewhere, under probation and subject to visitation and supervision of a probation officer, as hereinafter provided, whom the court may require to report from time to time on the case:
* * *."

"SEC. 7. Any minor delinquent committed to an institution in accordance with sections three and five of this Act or allowed to stay elsewhere, may be paroled by the head of the institution, under such conditions as the latter may prescribe subject to the approval of the Public Welfare Commissioner, or may be returned to the court for either sentence or dismissal. The probation period of the minor allowed to stay at a place other than the institutions mentioned in sections one and two of this Act shall rest with the probation officer and at its termination he shall return such minor to the court for either sentence or dismissal."

Such is exactly the provision of the penultimate paragraph of article 80 of the Revised Penal Code, which reads as follows:

"In case the minor fails to behave properly or to comply with the regulations of the institution to which he has been committed or with the conditions imposed upon him when he was committed to the care of a responsible person, or in case he should be found incorrigible or his continued stay in such institution should be inadvisable, he shall be returned to the court in order that the same may render the judgment corresponding to the crime committed by him."

The evidence does not show whether or not the appellant Lao Yu was convicted under section 7 aforesaid. It cannot be presumed that he was, for the reason that the circumstance of recidivism, like any other circumstance or fact which may alter the degree of liability of an accused or affect him in one way or another, should be proven as satisfactorily as the crime itself with which he is charged. It is obvious, therefore, that Lao Yu is not a recidivist.

There is no question that the act of the appellants constitutes the crime of robbery as defined and penalized in article 294, subsection (5) of the Revised Penal Code. The aggravating circumstances of recidivism and craft should be taken into consideration in the case of the appellant Leon Mallari, and that of craft alone in the case of

the appellant Lao Yu. Therefore, the judgment appealed from is in accordance with the law in so far as it affects the appellant Leon Mallari. With respect to the appellant Lao Yu, however, it should be modified by imposing upon him the same penalty as that imposed upon the former on the ground that the aggravating circumstance of craft, which was taken into consideration against him, is not compensated by any mitigating circumstance.

Now then, in applying the provisions of Act No. 4103 to this particular case of the appellants, as required by sections 1 and 2 thereof, what minimum of the aforesaid penalty should be imposed? Should such minimum necessarily be taken from the penalty of *arresto mayor* merely because, according to rule 4 of article 61 of the Revised Penal Code, said penalty is the next lower to the minimum of the penalty prescribed for the offense committed by said appellants, to wit: *prision correccional* to *prision mayor* in its medium period, that is, from six months and one day to ten years?

In the judgment rendered by this court in the case of *People vs. Ducosin*, for frustrated murder (59 Phil., 109), this question appears to have been decided in the affirmative. In fact, it was said therein that inasmuch as the penalty imposed upon Ducosin was ten years and one day of *prision mayor*, which is the minimum of the penalty prescribed for said crime, which penalty extends from ten years and one day to seventeen years and four months, the penalty next lower in degree is *prision correccional* in its maximum degree to *prision mayor* in its medium degree, that is, four years, two months and one day to ten years; and that "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." Under the said ruling, the minimum degree of said penalty imposed upon Ducosin was fixed at seven years, which period is really within the range of said next lower penalty.

It is to be noted, however, that in said case it has not been stated in unequivocal and express terms that the minimum of the penalty to be imposed upon an accused should necessarily and invariably be fixed within the range of the penalty next lower in degree as determined in conformity with said rule 4 of article 61 of the Revised Penal Code. Such ruling could not have been sustained then nor can it be sustained now on the ground that to do so would amount to annulling or denying to the courts the discretion granted them by Act No. 4103, which discretion is necessarily inferred from the text thereof which reads as follows':

"* * * 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."
(Section 1.)

If the intention of the Legislature in enacting the law in question had been to restrict the courts in the use of their discretion by not permitting them to fix the minimum of the penalty to be imposed except within the range of the penalty next lower to that prescribed for the offense, it would have so expressly stated or at least, it would have stated that said minimum should never exceed the maximum of said next lower penalty just as it clearly said that "it shall not be less than the minimum imprisonment period of the penalty next lower to that prescribed by said Code for the offense." Inasmuch as it has not so stated, this court cannot restrict the terms thereof, much less supply the deficiency, which is more or less imaginary, on the ground that in the law under consideration there is not the least indication that such was the intention of the Legislature. On the contrary, the fact that it has provided that the minimum of a penalty should not be less than a certain limit specified therein is an indication that it intended to place no other restriction than this on the exercise of such discretion by the courts.

This court is of the opinion that the rule established by said Act is that the courts may fix the minimum of the penalty to be imposed upon an accused from the minimum of the penalty next lower to that prescribed for the offense to a period which, without being the same maximum penalty which should be imposed upon him would

give the Board of Indeterminate Sentence, created by virtue of section 3 of Act No. 4103, sufficient time to make use of the discretion granted it by section 5 of the same Act, so that it may recommend at the proper time the release under parole of said accused if he deserves such clemency. Such minimum penalty should not be so short as not to give said board or the officials concerned sufficient time to study and observe the conduct of the accused and his progress or the changes he has undergone during his imprisonment for the purpose of properly determining his fitness to return to society without being a menace to the welfare thereof. Neither should it be too long, that the penalty thus imposed upon him would fail to serve as a deterrent to the commission of another crime or as a lesson for his guidance thereafter. In determining such minimum penalty, the age of the accused, his general health and physical condition, the degree of his mentality and morality, and his previous criminal record, if any, should necessarily be taken into consideration.

In view of the foregoing, and taking into consideration the age of the appellants, the nature of their offense, the criminal record of the appellant Mallari and the means employed by both in the commission thereof, the judgment appealed from is hereby modified by sentencing the appellant Leon Mallari to suffer the indeterminate penalty of from two years of prision correccional to six years, ten months and one day of prision mayor, and the appellant Lao Yu to the indeterminate penalty of one year of. prision correccional to six years, ten months and one day of prision mayor, with the proportionate costs against both. So ordered.

Street, Malcolm, Abad Santos, Hull, Vickers, and Goddard, JJ., concur.

BUTTE, J., with whom concur AVANCENA, C, J., VILLA-REAL, and IMPERIAL, JJ., dissenting:

The foregoing decision changes the rule of law laid down in the case of *People vs. Ducosin* (59 Phil., 109) rendered on December 14, 1933. After an extended consideration of the legislative history and .the objects to be attained by the Indeterminate Sentence Law, this court by unanimous vote declared that the minimum imprisonment period to be determined under said Act should be placed anywhere within the range of the penalty next lower to the maximum penalty assessed by the court in conformity with the provisions of the Revised Penal Code. Under this interpretation a reasonable interval between the minimum and the maximum penalties is always assured and the defendant cannot be deprived of the benefits of the Indeterminate Sentence Law. The modification to the doctrine of the *Ducosin* case made in this case by the majority of the court leaves it to the uncontrolled discretion of the trial judge to put the minimum penalty in the same period and the same degree as the maximum penalty. It is true that the majority have inserted in their opinion words of admonition to the trial courts to the effect that a reasonable interval should always be fixed in the judgment and it is probable that in the great majority of cases the result would be the same, namely, that the minimum penalty will fall within the range of the penalty next lower to that assessed by the court as the maximum. However, the rule laid down in the *Ducosin* case which definitely assures every defendant of such a reasonable interval seems to me more consonant with the spirit of the Indeterminate Sentence Law and a more accurate expression of the intention of the Legislature as disclosed by the legislative history of the Act.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.