

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SEVERO FONTABLA Y FORTO, DEFENDANT AND APPELLANT.

G.R. No. 43126. July 05, 1935

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The information filed in this case substantially charges the appellant with having treacherously and premeditatedly killed Agaton Punzalan. Upon arraignment, the appellant pleaded guilty. The court, however, permitted the appellant to testify in order to see whether or not a mitigating circumstance was present in the commission of the crime.

After hearing the appellant's testimony, the court declared him guilty of murder and, taking into consideration in his favor the mitigating circumstance of having pleaded guilty, sentenced him to reclusidn perpetut, to indemnify the heirs of the deceased in the sum of P500, and to pay the costs.

We find no error committed in the appealed sentence in not taking into consideration in favor of the appellant thfc alleged fact that prior to the commission of the crime the deceased had been calling him criminal, it not appearing, as in fact it does not appear, how long before had the deceased made this imputation to him.

The court, in imposing upon the appellant the penalty of reclusion perpetua which is the medium period of that prescribed by law, took into -consideration the mitigating circumstance of having pleaded guilty, which compensated for the aggravating circumstance of premeditation alleged in the information.

However, it further appears that the appellant, after the commission of the crime, voluntarily surrendered himself to the authorities. Article 13, subsection 7, of the Revised Penal Code, considers as mitigating circumstance voluntary surrender to the authorities as well as voluntary confession of guilt prior to the presentation of the evidence for the prosecution. Under the law, any of these facts constitutes mitigating circumstance. Although these circumstances are considered mitigating in the same subsection of article 13, when both are present they should have the effect of mitigating the penalty as two independent circumstances. If any of them must mitigate the penalty to a certain extent, when both are present they should produce this effect to a greater extent.

The Supreme Court of Spain, interpreting article 10, subsection 15, of the Spanish Penal Code (article 10, subsection 15, of the former Penal Code of the Philippines) which considers nocturnity or uninhabited place as aggravating circumstance, held in two decisions (April 5, 1884, and November 11, 1890) that when both are present they should be considered as only one circumstance. However, the same Supreme Court of Spain in subsequent decisions (April 27, 1897, and July 13, 1901), clarifying the doctrine laid down in the two former decisions, held that the former should not be taken as an absolute rule and that said circumstances of nocturnity and uninhabited place, when present together, may be considered separate when they appear to be independent of one another. This doctrine is more reasonably applicable in cases of mitigating circumstances favorable to the accused.

In invoking and applying these precedents, we have in mind that the two mitigating circumstances present in the case at bar, the voluntary surrender of the accused to the authorities and his having pleaded guilty, which are facts subsequent to the commission of the crime, are new circumstances not found in the old Penal Code which recognized only the circumstances present at the same time of the commission of the crime as capable of mitigating the penalty. The reasoning which sanctioned the establishment of said doctrine has the same or greater force for adopting it in the interpretation of article 13, subsection 7, of our present Revised Penal Code.

Wherefore, inasmuch as two mitigating circumstances and only one aggravating circumstance were present in the commission of the crime, the penalty prescribed by law should be imposed in its minimum period.

Modifying the appealed sentence so that instead of reclusion perpetua, the indeterminate penalty of from twelve years and one day, as the minimum, to seventeen years, four months and one day of reclusion temporal, as the maximum, is imposed upon the appellant, and it being understood further that the indemnity which he is sentenced to pay is P1,000, the same is affirmed in all other respects, with costs. So ordered.

Hull, Vickers, Goddard, and Diaz, JJ., concur.

Judgment modified.

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