

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ONG TA, DEFENDANT AND APPELLANT.

G.R. No. 47289. November 18, 1940

Ponente: LAUREL, J.

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LAUREL, J.:

On January 3, 1938, the following information was filed against Ong Ta, a minor, of Chinese parents, for the crime of murder:

"That on or about the 30th day of December, 1937, in the City of Manila, Philippines, the said accused, with intent to kill and with evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and wound with a knife or sharp instrument one Chan Suy Hua inflicting upon him several wounds on the stomach and other parts of his body, which wounds directly caused the death of the said Chan Suy Hua.

"Contrary to law."

The accused entered a plea of guilty upon arraignment, but reserved the right to prove that he was a minor below 18 years of age. Considering the seriousness of the crime charged, the trial court caused the defendant, with his consent, to be placed on the witness stand. The defendant reiterated all that was contained in the confession which he had previously made before the city police. He also testified that he was a minor below 18 years of age, producing his landing certificate of residence, and which claim was not contested by the prosecution.

On January 13, 1938, the trial court issued an order finding Ong Ta guilty of murder and committing him, for being a minor below 18 years of age, pursuant to Article 80 of the Revised Penal Code, as amended by Act No. 4117 and Commonwealth Act No. 99, to the Philippine Training School for Boys, under the supervision of the Commission of Public Welfare, with the requirement that at the end of said period of custody the said Ong Ta be returned to the Court with a final report on his conduct as well as a recommendation as to the future disposition of the case, and that during the period of said confinement, a report on his conduct be submitted to the Court every six months.

On January 26, 1940, after considering the unfavorable report and recommendation of the Director of Public Welfare, submitted January 18, 1940, the lower court rendered final judgment convicting him of murder and sentencing him to fourteen years, eight months and one day of reclusion temporal, to indemnify the heirs of the deceased, Chan Suy Hua, in the amount of P2,000, to suffer the accessory penalties of the law, and to pay the costs. On April 10, 1940, the attorney de oficio appointed by the court to represent the defendant-appellant in this appeal filed a motion recommending that the judgment of the lower court be affirmed, on the ground that it is in accordance with the evidence and the law applicable to the case.

The question involved in this appeal refers to the application of the proper penalty. The penalty for murder is reclusion temporal in its maximum period to death. (Art. 248, Revised Penal Code.) Appellant having committed the crime while a minor, over 15 and under 18 years of age, the penalty next lower in degree than that prescribed by law, shall be imposed in the proper period; that is, prision mayor in its maximum period, to reclusion temporal

in its medium period. Considering the mitigating circumstance of plea of guilty, which is not offset by any aggravating circumstance, the penalty should be imposed in its minimum period or from ten years and one day to twelve years of prision mayor. In the present case, paragraph 2 of article 68 of the Revised Penal Code should be applied and in accordance with the Indeterminate Sentence Law, which the trial court failed to apply, the appellant should be, and is hereby, sentenced to an indeterminate penalty of from five years of prision correccional to ten years and one day of prision mayor. Thus modified, the decision appealed from is affirmed in all other respects, with costs. So ordered.

Avanceña, C.J., Imperial, Diaz, and Horrilleno, JJ., concur.

Judgment modified.

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