

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LAUREANO GONZALEZ, DEFENDANT-APPELLANT.***G.R. No. 48293. April 20, 1942*

Ponente: MORAN, J.

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Appellant, Laureano Gonzalez, was charged in the Court of First Instance of Manila with the crime of estafa through falsification of a public document. The information alleges that on or about the 9th of November, 1940, appellant, as a laborer in the Department of Labor with the duty of running errands, with intent to defraud the Government of the Commonwealth, forged and falsified a public document, which is a reimbursement expense receipt, by preparing the said receipt and writing thereon the signature of Enrique Corpus, chief of the property section of the Department of Labor, making it appear that he officially incurred a transportation expense in the amount of sixty centavos (P0.60) which he claimed to have advanced from his personal funds, when, as a matter of fact he did not incur any such expense, and that Enrique Corpus never approved nor signed said receipt; that appellant thereafter wrote on the forged document his own signature and that of said Enrique Corpus and presented it to Gabriel Nazareno, cashier and disbursing officer, for payment and said cashier did pay; and that the accused misappropriated the amount for his own personal use.

Upon arraignment, defendant pleaded guilty and was sentenced by the trial court to an indeterminate penalty of 6 years and 1 day to 8 years and 1 day of prision mayor, to pay a fine of P100 and to indemnify the Government in the sum of sixty centavos (P0.60). From this judgment he appealed to this Court questioning the propriety of the penalty imposed upon him.

The offense charged and admitted by appellant constitutes the complex crime of estafa through falsification of a public document, and comes under No. 4, Article 315, in connection with Article 171, of the Revised Penal Code, the penalty prescribed being, pursuant to Article 48 of the said code, that which is provided for the more serious offense to be applied in its maximum period. The penalty provided for the more serious offense—falsification of a public document by a public officer—is prision mayor and a fine not to exceed P5,000. Since appellant is entitled to the mitigating circumstances of voluntary surrender and plea of guilty, the penalty next lower to that provided by law should be imposed in accordance with Rule 5, Article 64, of the Revised Penal Code.

But what is the penalty next lower to prision mayor when the latter is to be applied in its maximum period? There are two prevailing theories on this matter: (1) that the next penalty next lower in degree should be prision mayor in its medium period, and (2) that it should be prision correccional in its maximum period. The second theory was laid down by this Court in *U. S. vs. Fuentes*, 4 Phil. 404, but it was later abandoned in *People, vs. Co-Pao*, 58 Phil. 545, and *People vs. Haloot*, 37 Off. Gaz. 2901, wherein the first theory was adopted as a rule. By stare decisis this Court has been consistently following the first theory, but due to special circumstances brought to our attention we have assented to reopen the question and consider anew all the reasons advanced in favor of the one and the other theory.

There can be no doubt that the penalty next lower to another should begin where the latter ends, because, otherwise, if it were to skip over intermediate ones, it would be lower, but not the next lower, in degree. Thus if, for instance, the penalty provided by law is the maximum of prision mayor, the penalty next lower cannot be the maximum of prision correccional, because we would be jumping over the intermediate penalties of prision mayor, minimum and medium. According to Rule 4, Article 61, of the Revised Penal Code, when the penalty prescribed by law is constituted by three periods of a divisible penalty, the higher and the lower ones must be formed by the same number of periods immediately following. And, by analogy, when the penalty prescribed by law is constituted by only one or two periods of a divisible penalty, the higher and the lower ones are formed also by the same number of periods immediately following, according to Rule 5, Article 61, of the same code.

There is no difficulty in the application of the rule where the penalty provided by law is clearly one period of a divisible penalty. The difficulty arises when the law, upon fixing the penalty for a felony, prescribes one composed of three periods to be applied in only one of them by reason of attending circumstances. For instance, in a robbery case, when the offender does not carry arms and the value of the property taken does not exceed P250, the penalty should be prision correccional in its medium period to prision mayor in its minimum period to be applied in its minimum period, according to the penultimate paragraph of Article 299 of the Revised Penal Code. It may be said that the penalty provided by law in this instance is the medium period of prision correccional, a penalty that is complete for it has its three periods, and its limits cannot be exceeded whatever and however numerous the aggravating circumstances present in the crime may be. On the other hand, if we say that in this case the penalty lower in degree to prision correccional in its medium period is prision correccional in its minimum period, the result would be that the penalty for the crime is heavier than the penalty provided for a more serious crime, such as robbery of property of the same value but committed with arms, because in this last crime the penalty to be applied according to the Indeterminate Sentence Law is arresto mayor in its medium period to prision correccional in its minimum period, which is lighter than prision correccional in its minimum period. Should this theory be allowed to prevail, other anomalies would happen, as, for instance, that the author of a frustrated crime of robbery in an inhabited house involving an amount not exceeding P250 would, under the same conditions, have to be punished with a penalty lighter than that of a person directly responsible for a similar offense involving a lesser amount. Again, prision mayor in its minimum period is a lighter penalty than prision mayor in its full extent, and yet the penalty next lower to the former is heavier than the penalty next lower to the latter. Prision mayor in its maximum degree is a graver penalty than prision mayor in its full extent, and yet the penalty next higher to the former is lighter than the penalty next higher to the latter.

Viada, commenting on this matter, says:

"Cual es la pena inmediatamente inferior en grado que debera aplicarse, con sujecion a los arts. 66 y 68, parrafo segundo del 86, al autor del delito frustrado, al complice del consumado y al mayor de quince años y al menor de diez y ocho autor del delito consumado de robo sin armas y por valor que no excedede 500 pesetas? En una sola Sentencia del Tribunal Supremo (la de 13 de Junio de 1872, publicada en la Gaceta de 30 de Julio) se declare que esa pena inferior era la de presidio correccional en su grado minimo. (Vease el considerando 2.º de la citada Sentencia.) Esta resolucion, empero, que fue dictada contra el parecer del Ministerio Fiscal, no ha prevalecido. A haber sido constante esta Jurisprudencia, hubiera resultado la notoria injusticia de que al autor de un delito frustrado de robo, sin armas, por valor mayor de 500 pesetas, se le aplicaria el arresto mayor grado medio, concurriendo una circunstancia atenuante; el grado maximo del propio arreato mayor, no concurriendo circunstancias atenuantes ni agravantes, y el presidio correccional grado minimo, solo cuando concurriesen una o mas agravantes; mientras que si autor del mismo delito frustrado de robo, sin armas, pero por valor menor de 600 pesetas, es decir, de un delito menos grave que aquei, se le habria de imponer siempre la pena dentro de los limites del presidio correccional en su grado minimo. Y fue tanto mas de extrañar la antedicha resolucion, cuando en otras anteriores Sentencias (notoriamente la de 18 de Marzo de 1872, publicada en la Gaceta de 2 de

Abril) ae habia declarado yu que eaa pena inmediateamente inferior aplicable, con arreglo al art. 86, al mayor de quince años y menor de diez y ocho, autor del delito conauroado de robo de que se trata (y por conaiguente al complice del propio delito y al autor del frutrado, a quienea corresponde como a aquei la pena inmediateamente inferior), era la de arretto mayor en su grado media, como minimo de la pena (vease el penultimo considerando de dicha ultima Sentencia). Felizmente, reconociendo el Tribunal Supremo el error cometido en la Sentencia de 13 de Junio de 1872, ha vuelto a la primera resolucio (la de la de Marzo de 1872) en mas de veinte fallen pocterioret at de 13 de Junio antedicho. (Vease, entre otraa las Sentencias de 5 de Julio de 1872, Gaceta de 11 de Aforto; 26 de Septiembre de 1872, Gaceta de 10 de Octubre; 15 de Octubre de 1872, Gaceta de 19 de Noviembre; 20 de Diciembre de 1872, Gaceta de 16 de Febrero de 1873, etc.).

"En todas ellas ae ha declarado que la pena inmediateamente inferior en grado, asi del mayor de quince años y menor de diez y ocho, como del autor del delito frustrado y complice del comumado, cuando se trata del robo sin annas y que no excede de 500 pesetas, ea la de arrtsto mayor en su grado medio a preaidio correccional en so grado minimo, debiendo imponerae al culpable el arresto mayor en su grado media (dos meses y un din a cuatro mesea), que es el minima de la pena." (3 Viada, pp. 394-395.)

In the construction of laws absurdities should be avoided if possible. And the absurdities above indicated may be avoided if we hold, as we do hold now that though, as a general rule, when the penalties prescribed by law are constituted by only one or two periods of divisible penalties, the higher and the lower ones are formed by the same number of periods immediately following, this should not be done when, as in this case, the law prescribes the penalty in connection with another composed of three divisible periods, and the graduation should therefore be made in accordance with Rule 4 of Article 61 of the Revised Penal Code. (Decision of the Supreme Court of Spain of Jan. 4, 1887.)

In the instant case, the penalty provided by law is prision mayor which should be applied in its maximum period, because of the Complex nature of the Offense charged. There being two mitigating circumstances, the accused is entitled to the penalty next lower in degree. For the purpose of determining the penalty next lower, the penalty that should be Considered as a starting point is the whole prision mayor, it being the penalty prescribed by law, and not prision mayor in its maximum period which is only the penalty actually applied because of an attending circumstance. The penalty next lower to prision mayor is prision correccional and this latter penalty should be applied in its maximum because of the circumstance above mentioned. In other words, as we have indicated in the Co-Pao case (58 Phil. 546), the penalty next lower in degree should be determined before imposing it in its maximum, and not the reverse as was done before.

This rule is, however, criticized by this Court in *People vs. Ha loot*, 37 Off. Gaz. 2901, in that it may give "rise to the same anomaly where the prescribed penalty, instead of being the minimum, is the maximum of prision correccional in its medium period to prision mayor in its minimum period, that is, prision mayor in its minimum period, for the reason that the crime was committed in an uninhabited place and by a band (Art. 300, Rev. Pen. Code), inasmuch as in such casethe penalty next tower in degree * * * would be prision correccional in its minimum period, and the same penalty, as the one next lower in degree, would be imposed if the crime were lighter, not having been committed in an uninhabited place and by a band, if aggravating circumstances were present without any mitigating circumstances, which anomaly would consist in the punishment of the crime with the same penalty both when it is more serious and when it is lighter." This reasoning seems to lie on the erroneous theory that for purposes of the Indeterminate Sentence Law the penalty which is taken as the starting point in determining the next lower is the penalty actually imposed after considering all the circumstances modifying liability. According to section 1 of Act No. 4225, the minimum of the indeterminate penalty "shall be within the range of the penalty next lower to that prescribed by the Code for the offense" and the penalty for each offense is provided by the Code without regard to circumstances modifying criminal liability. In other words, for purposes

of the Indeterminate Sentence Law, the penalty next lower should be determined without regard as to whether the basic penalty provided by the Code should be applied in its maximum or minimum period as circumstances modifying liability may require. When, however—and this may be the only exception to the rule—the number of mitigating circumstances is such as to entitle the accused to the penalty next lower in degree, this penalty, in the application of the Indeterminate Sentence Law, should be taken as the starting point for the determination of the penalty next lower.

Applying the Indeterminate Sentence Law to the accused, the maximum of the penalty to be imposed upon him shall be the maximum period of prision correccional, that is, from 4 years, 2 months and 1 day to 6 years. The minimum of the indeterminate penalty shall be within the range of the penalty next lower to that prescribed by the Code for the offense. Prision correccional is the penalty provided by law for the offense and the penalty next lower is arresto mayor which may be applied in any of its periods in the discretion of the court, taking into account not only the circumstances attending the crime but such other circumstances as are material for the determination of a penalty adequate to the peculiar situation of the accused. As we have said in *People vs. Ducoain*, 59 Phil. 109, 117-118, "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' * * * 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."

The law provides also for the offense charged a fine not exceeding P5,000.

The judgment is accordingly modified and the appellant sentenced to an indeterminate penalty of 1 month and 1 day of arresto mayor to 4 years, 2 months and 1 day of prision correccional, and a fine of P100 with subsidiary imprisonment in case of insolvency, to indemnify the Government in the sum of P.60, also with subsidiary imprisonment in case of insolvency, without costs in this instance.

Yulo, C. J. Ozaeta, and Bocobo, JJ., concur.

CONCURRING AND DISSENTING

PARAS J.:

I agree to the doctrine laid down by the Court. I am of opinion however that a correct application of the rule would make the minimum penalty in this case not less than 4 months and 1 day of arresto mayor. The penalty is reduced one degree on account of certain mitigating circumstances and by another degree by virtue of the Indeterminate Sentence Law. If the procedure prescribed in the rule should be followed the penalty lower by two degrees than the maximum of prision mayor would be exactly arresto mayor in its maximum degree which ranges from 4 months and 1 day to 6 months.

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