

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FIDEL FORTUNO, DEFENDANT AND APPELLANT.***G.R. No. 48619-22. June 12, 1942*

Ponente: PARAS, J.

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These four cases are before us in third instance. The defendant-appellant was convicted in the Court of First Instance of Manila, upon appeal from the Municipal Court, of four separate offenses of estafa and sentenced to undergo imprisonment in G. R. No. 48519 for two months and one day, arresto mayor, and in each of the other three cases for three months and eleven days, arresto mayor, to indemnify the offended parties respectively in the sums of P140, P94.50, P83.50 and P189, with subsidiary imprisonment in case of insolvency, and to pay the costs.

Appellant's counsel de oficio has not assigned any error in the appealed judgments which, as a matter of fact and of law, are correct. The offenses charged are penalized with arresto mayor in its medium and maximum periods, which should be imposed in the minimum degree in G. R. No. 48519 in view of appellant's plea of guilty in the Municipal Court, and in the medium degree in the other three cases in view of the absence of any modifying circumstance, it being a settled rule that the appellant's plea of guilty entered upon appeal in the Court of First Instance cannot be considered a mitigating circumstance. (People vs. Hermino, 36 Off. Gaz., 221G; People vs. Bawasanta, 36 Off. Gaz., 2237; People vs. Javier, 36 Off. Gaz., 2701; People vs. Cariaga. G. R. No. 46215, October 18, 1938; People vs. Jose y Payumo, 39 Off. Gaz., 306.)

At the risk of repetition, the following considerations are advanced in support of our adherence to the above-mentioned rule: (1) The reason for the existence of the mitigating circumstance of plea of guilty is that it reveals to a certain extent an act of repentance, a moral disposition favorable to the defendant's reform and submission to the law (People vs. De la Cruz, 36 Off. Gaz., 354, cited in People vs. Hermino, supra), the evident purpose of the statute being to encourage such repentance which not only ennoble the soul and tends to avoid recidivism but also saves the Government from the expenses of a trial and the judicial and executive officials from much trouble (People vs. Javier, supra). Such repentance cannot be attributed to the herein appellant who not only did not plead guilty in the competent court of origin (Municipal Court) but appealed, first, to the Court of First Instance and, then, to this Court. (2) The contrary rule will open the door to cases wherein the defendant intentionally abstains from pleading guilty in the justice of the peace or municipal court in the hope of being acquitted and, upon conviction and on appeal to the Court of First Instance, pleads guilty merely for the purpose of enjoying the benefit of such mitigating circumstance. In such cases the spontaneous willingness on the part of the defendant to admit the commission of the offense charged, the very thing rewarded by the mitigating circumstance in question, is certainly absent. (3) While a trial de novo in the Court of First Instance technically means a trial in the same manner, with the same effect, and upon the same issues as when the case was tried in the Municipal Court, in accordance with the rules of practice in the appellate court (Crisostomo vs. Director of Prisons, 41 Phil., 468), it does not follow that all the proceedings in the lower court have thereby been wiped out so as to preclude the ascertainment of whether the defendant voluntarily pleaded guilty for the purpose of

determining the presence of said mitigating circumstance (*People vs. Bawasanta, supra*).

It appears that the appellant was sentenced by this Court to undergo imprisonment in five other cases, namely, G. R. No. 48459 for four months and one day, G. R. No. 48492 for four months and one day, G. R. No. 48523 for three months and eleven days, G. R. No. 48460 for two months and one day, and G. R. No. 48614 for a period ranging from four months and twenty days to one year, eight months and twenty-one days. As the most severe penalty imposed upon the appellant is from four months and twenty days to one year, eight months and twenty-one days, and the sum total of his several penalties does not exceed threefold the length of time corresponding to the maximum limit thereof, we cannot for the present make the pronouncement that article 70 of the Revised Penal Code, as amended by Commonwealth Act No. 217, is applicable. However, in anticipation of its future application, we may state that, if in accordance with the Indeterminate Sentence Law the appellant should be entitled to be released on parole after service of the minimum limit of the aforesaid indeterminate penalty (from four months and twenty days to one year, eight months and twenty-one day's), or of a greater period below the maximum limit threefold the length of which is less than the sum total of all the penalties imposed upon him, his aggregate prison term would be reduced to not more than three times the period thus served.

Subject to the limitation herein expressed, the judgments appealed from will be, as the same are hereby, affirmed, with costs against the appellant. So ordered.

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

DISSENTING

BOCOBO, J.,

Much to my regret, I am constrained to dissent from the opinion of the majority that the appellant's plea of guilty in the Court of First Instance cannot be considered a mitigating circumstance.

In the first place, Rule 119, section 8 of the new Rules of Court (formerly section 2473 of the Revised Administrative Code) provides:

"SEC. 8. Effect of appeal.—After the notice of appeal, all the proceedings and judgment of the justice of the peace or municipal court are vacated, and the case shall be tried in all respects anew in the Court of First Instance as if it were a case originally instituted in that court." (Underlining supplied.)

No plainer language could have been employed to convey the idea that the proceedings in the Municipal Court are to be disregarded. However, the majority opinion makes those proceedings a controlling factor in the determination of the penalty, by considering the fact that the accused did not plead guilty before the Municipal Court. In MO doing, the majority opinion rejects the clear and manifest intendment of Rule 119, which is, that the case in the Court of First Instance shall be deemed to have never been tried in the Municipal Court and shall to all intents and purposes be treated as though it had been originally instituted in the Court of First Instance. By the unequivocal terms of said Rule 119, section 8, we are not authorized to look back into what transpired in the Municipal Court to find out whether or not the accused pleaded guilty there. We can only inquire into his plea upon arraignment in the Court of First Instance.

Furthermore, in the majority opinion the failure of the accused to plead guilty before the Municipal Court is counted against him. and his confession of guilt in the Court of First Instance is absolutely ignored. What, then, was the use of the arraignment in the Court of First Instance as part of the regular procedure there, if the admission of guilt by the accused is completely discarded and rendered of no consequence whatsoever, except to

dispense with the presentation of evidence? Why should not all the consequences of the arraignment become effective?

Secondly, article 13, subsection 7 of the Revised Penal Code provides:

ART. 13. Mitigating circumstance.—The following are mitigating circumstances:

"* * * * *

"7. That the offender hail voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution."

What "evidence for the prosecution" is referred to in the above legal provision? It cannot be the government proof in the Municipal Court because such evidence and the proceedings in said court are not to be taken into consideration at all in the Court of First Instance, as already explained. Therefore, the "evidence for the prosecution" is that which would have been offered in the Court of First Instance if the accused had not confessed his guilt to said court.

In this connection, it might be argued that it is dangerous to permit the accused to discover the evidence for the government in the Municipal Court by going to trial there, and then take up his case to the Court of First Instance so as to prepare his defense accordingly in the latter court. However, there is no such danger, because if the defense has found out the course of action planned by the prosecution, so has the latter learned the method and the line of evidence of the defense. Hence, both sides start on the same basis, neither having any advantage over the other, when the trial begins in the Court of First Instance.

Thirdly, if one of the objectives contemplated by the Revised Penal Code in establishing this mitigating circumstance is to reward the accused for having spared the government the trouble and expense of a trial, such purpose was actually attained as far as the trial in the Court of First Instance was concerned. If it should be said that the government was compelled to have the case tried in the Municipal Court because of the failure of the accused to confess his guilt there, this matter is discussed in the following fourth point.

Fourthly, this Court in *People vs. Hermino* (36 Off. Gaz., 2216), gave as a reason for the doctrine followed by the majority in the instant case, the requirement that the accused should repeat at the first opportunity. It not infrequently occurs, however, that before such first opportunity for confession arrives, the accused "is advised, rightly or wrongly, by his attorney or friends to go to trial. In the bewildered state of mind of the accused, he often yields to such promptings, though his better nature may tell him otherwise. Such yielding may evince a weakness of purpose (which may be partly explained by his temporary mental agitation) but does not necessarily denounce an intense perversity of mind, particularly when the accused later confesses in another court.

Moreover, what mitigates the offense is a voluntary confession of guilt. Such repentance being a spontaneous act, is it any the less meritorious because it came before the Court of First Instance rather than before the Municipal Court? Should there be a sort of railroad time-table for the moral processes of a human being? Can anyone say that an earlier confession is per se worthier than a later one? Does not this matter depend upon the depth and the sincerity of the moral regeneration rather than on any schedule of time for its appearance? Therefore, in view of the cherished policy of the law to encourage repentance on the part of the criminal, a confession of guilt should be considered as a mitigating circumstance, whether it is made earlier in the Municipal Court or later in the Court of First Instance. And for the reasons just stated, I am unable to subscribe to the conclusion of the majority that no sincere repentance can be attributed to the accused because he not only failed to plead guilty in the municipal court but also appealed, first to the Court of First Instance and then to this Court. Moreover, the courts are open to all who seek justice, and the fact that the accused resorts to the Court of First Instance and to this Court does not

necessarily mean he was not repentant because his counsel might want to raise questions of law and other questions not connected with the principal fact of his having committed the act charged.

The majority also state that there can be no spontaneity in the confession of guilt before the Court of First Instance because the defendant may intentionally abstain from pleading guilty before the municipal court in the hope of being acquitted and upon conviction and on appeal to the Court of First Instance, he may plead guilty merely for the purpose of enjoying the benefit of such mitigating circumstance. But, as already indicated, (1) the accused is often advised to go to trial in the municipal court, and (2) there can be no schedule of time for such spontaneous act as confession of guilt. Furthermore, if for any reason the attorney for the accused entertains some hope for his client's acquittal, it is not improper for him to advise his client not to plead guilty, because such acquittal may be based on a question of law.

In the fifth place, what could have been the reason behind Rule 119, section 8 of the new Rules of Court in providing that the trial in the Municipal Court shall be disregarded in the Court of First Instance, which shall consider it as never having been tried in the former court? It must have been to make the case in the latter court independent in every respect, in order to give a free hand to the Court of First Instance, unhampered by any proof, incident, order, or judgment in the Municipal Court. Now, the arraignment is one of such incident. Why then should the plea of guilty in the Court of First Instance be authorized by the plea of not guilty in the Municipal Court? Would this not make the case in the Court of First Instance dependent upon that in the Municipal Court?

Lastly, it is a just and sound principle that criminal laws should be liberally construed in favor of the accused. The majority seem to have overlooked this fundamental principle, which has a peculiar significance in this case because it touches upon confession as one of the methods of salvaging human wreckage. Whenever possible we should throw the life-saver of mitigating circumstance to those criminals who are drowning, without worrying over any legal technicality. Often these technicalities, when set against the historic and tremendous problem of human amelioration, are but resonant though inconsequential traditions. As between the unmistakable wording of Rule 119, section 8 of the new Rules of Court and the previous decisions of this Court which ignored the clear provisions of section 2473 of the Administrative Code, the choice should not be hard to make. The doctrine of stare decisis is in no sense inviolate whenever it is evident that a mistake has been committed. Fortunately, this Court has never hesitated to rectify its own errors, in order to meet the paramount demands of right and justice. There is thus an awareness that the doctrine of stare decisis is not for its own sake but for the sake of justice.

Therefore, I believe the confession of guilt should be considered a mitigating circumstance in each of the four cases, and the penalty in each of them should be 2 months and 1 day of arresto mayor.

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