

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MORO MACBUL, DEFENDANT-APPELLANT.*G.R. No. 48976. October 11, 1943*

Ponente: OZAETA, J.

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Appellant pleaded guilty to an information for theft of two sacks of papers valued at P10 belonging to the Provincial Government of Sulu, alleged to have been committed on March 9, 1943, in the municipality of Jolo; it being also alleged that he was a habitual delinquent, having been twice convicted of the same crime on November 14, 1928, and August 20, 1942. The trial court sentenced him to suffer one month and one day of arresto mayor as principal penalty and two years, four months, and one day of prision correccional as additional penalty for habitual delinquency.

The trial court found two mitigating circumstances: plea of guilty under paragraph 7, and extreme poverty and necessity under paragraph 10, of article 13 of the Revised Penal Code; but it took into account the aggravating circumstance of recidivism in imposing the principal as well as the additional penalty.

The only question raised here by counsel for the appellant is the correctness of the consideration by the trial court of recidivism as an aggravating circumstance for the purpose of imposing the additional penalty for habitual delinquency, counsel contending that recidivism should not have been taken into account because it is inherent in habitual delinquency. While that contention is correct, as we have decided in the case of *People vs. Tolentino*, 1 Off. Gaz., 682, it is beside the point here because the error committed by the trial court lies not so much in its having considered recidivism as an aggravating circumstance for the purpose of penalizing habitual delinquency, as in its having considered appellant as a habitual delinquent at all, it appearing from the information that his two previous convictions were more than ten years apart. "A person shall be deemed to be habitually delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of robo, hurto, estafa, or falsification, he is found guilty of any of said crimes a third time or oftener." (See last paragraph, article 62, No. 5, of the Revised Penal Code.) Therefore, appellant's first conviction, which took place in November, 1928, cannot be taken into account because his second conviction took place in August, 1942, or fourteen years later. Hence, within the purview of the Habitual Delinquency Law appellant has only one previous conviction against him, namely, that of 1942.

The trial court considered extreme poverty and necessity as a mitigating circumstance falling within No. 10 of article 13 of the Revised Penal Code, which authorizes the court to consider in favor of an accused "any other circumstance of a similar nature and analogous to those above mentioned." The trial court predicates such consideration upon its finding that the accused, on account of extreme poverty and of the economic difficulties brought about by the present cataclysm, was forced to pilfer the two sacks of papers mentioned in the information from the Customhouse Building, which he sold for P2.50, in order to be able to buy something to eat for various minor children of his. (The stolen goods' were subsequently recovered.) The Solicitor General interposes no objection to the consideration of such circumstance as mitigating under No. 10 of article 13. We give it our stamp

of approval, recognizing the immanent principle that the right to life is more sacred than a mere property right. That is not to encourage or even countenance theft but merely to dull somewhat the keen and pain-producing edges of the stark realities of life.

Conformably to the recommendation of the Solicitor General, the sentence appealed from is modified by affirming the principal penalty and eliminating the additional penalty, without costs.

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

CONCURRING

BOGOBO, J.,

I concur in the result. In view of the far-reaching significance of the doctrine enunciated in the foregoing opinion—that extreme poverty is a mitigating circumstance—and of the fact that such a rule deviates from established precedents, I deem it appropriate to set forth my reasons for subscribing to the new principle.

I believe that extreme poverty and necessity is a mitigating circumstance, not only because it is an analogous mitigating circumstance under No. 10 of art. 13 of the Revised Penal Code, as stated in the above opinion, but also for the reason that it is an incomplete exempting circumstance contemplated in No. 1 of said article 13, in relation to Nos. 5 (irresistible force) and 6 (uncontrollable fear) of art. 12. The trial court found that the accused committed the crime of theft "por extrema pobreza y necesidad," and considered this as an analogous mitigating circumstance within the meaning of No. 10, art. 13 of the Revised Penal Code. Such a finding is based on the fact that on March 9, 1943, the accused took the two sacks of papers and sold the same for P2.50 because he is the father of several minor children and they and he had nothing to eat on that day.

The Supreme Tribunal of Spain has refused to recognize extreme poverty as a mitigating circumstance by analogy in cases of robbery and theft. (See sentences of April 20, 1871; July 12, 1904; April 18, 1907; and July 9, 1907).

As for Philippine jurisprudence, as far as I know, this question has never been squarely passed upon by this court. Possibly one of the reasons is that in view of the well-established doctrine of the Spanish Supreme Court, above referred to, it seems to have been taken for granted by the legal profession here that extreme poverty and need is not a mitigating circumstance by analogy in cases of robbery and theft.

In spite of precedents and a widespread belief to the contrary, I do not hesitate to hold the proposition that extreme poverty and need is a mitigating circumstance analogous to two of the circumstances enumerated in art. 13. These two are:

- "That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation." (No. 6)
- "Such illness of the offender as would diminish the exercise of will-power without however depriving him of consciousness of his acts." (No. 9)

It will be noted that there is a common idea underlying these two mitigating circumstances, namely, that the offender either by a powerful impulse or through illness had no effective control over himself at the time he committed the crime. Was this the state of mind of the defendant herein when he took the papers? I believe so because the thought that his little children would starve on that day must have temporarily dulled his conscience and driven him to steal. The spectre of hunger of his loved ones terrified him into stealing. The reason for Nos. 6 and 9 of art. 13, above quoted, being the same as in the instant case, the rule of analogy authorized in No. 10 of

that article should be applied. The ancient principle upheld by the Roman jurists, *Eadem dispositio, ubi eadem ratio* is of puissant logic and is eminently just.

Furthermore, the facts of this case come within the purview of No. 1 of art. 13, which provides:

"Art. 13. Mitigating circumstances.—The following are mitigating circumstances:

"1. Those mentioned in the preceding chapter, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant."

In other words, the offense of the accused herein may be properly considered as mitigated by incomplete exemption from criminal liability, under Nos. 5 and 6 of art. 12, (irresistible force and uncontrollable fear of an equal or greater injury.)

The first question in this aspect of the case is whether No. 1 of art. 13 refers only to those' exempting circumstances which contain two or more requisites (self-defense, defense of relatives or of a stranger, and avoidance of an evil or injury in Nos. 1 to 4, art. 11.) The answer is negative because No. 1 of art. 13 refers to the preceding chapter relative to justifying and exempting circumstances, and the preceding chapter, which consists of arts. 11 and 12, includes circumstances which are not composed of several requisites. In *People vs. Oanis*, G. R. No. 47722, (July 27, 1943) we held that improper performance of a duty (No. 5, art. 11) is a mitigating circumstance.

Coming now to irresistible force, No. 5 of art. 12 provides that "any person who acts under the compulsion of an irresistible force" is exempt from criminal liability. It is true that according to the doctrine of the Supreme Tribunal of Spain, the irresistible force must be external, proceeding from a third person (S. of Feb. 28, 1891). But considering that the law makes no distinction between force within the accused himself and from another person, and that one type of force is just as compelling as another, I think it is but right to hold that such force need not be exerted by another person.

This being so, why should the offense of the accused herein be mitigated by extreme poverty and need ? Because misery and hunger impelled him to steal, although such force was not absolutely irresistible, under No. 5 of art. 12. His condition was sufficiently grave to drive him to take the papers, but it was not utterly inevitable that he should do so.

The same considerations apply in regard to uncontrollable fear of an equal or greater injury (No. 6, art. 12). The accused, desperate because of fear that his little children would starve, stole the papers, but his fear was not absolutely uncontrollable.

Taking irresistible force and uncontrollable fear together, I believe that the force and the fear which coerced the accused herein to steal are of the same nature contemplated in Nos. 5 and 6 of art. 12, but they are of less degree than that required for complete exemption from criminal responsibility. Therefore, I am of the opinion that according to No. 1 of art. 13, there is a mitigating circumstance of incomplete exemption from criminal liability under Nos. 5 and 6 of art. 12 of the Revised Penal Code.

I am not unmindful of the possible objection that the doctrine herein enunciated may encourage theft and robbery and undermines the right of property, and is therefore revolutionary. But so long as extreme poverty and need is not declared an exempting but only a mitigating circumstance, the rule herein announced is fully warranted. The crime itself is condemned, though the punishment is tempered. It can not be successfully contended that a mitigating circumstance fosters crime. It is easy to understand the conservatism of the precedents and of the attitude of the legal profession, but considerable water has flowed under the bridge during the last two decades. Governments and peoples all over the world have visualized more clearly the sufferings and hardships of the poor.

Humanitarian ideas have loomed larger on the horizon. More and more, legislation in all countries has been removing from the bending backs of the underprivileged the unbearable burdens which had been crushing and overwhelming their existence. More and more, lawmaking bodies throughout the world have seen to it that the toiling masses participate, as much as possible, in the good things of life. More and more, legislatures have realized that extreme poverty is brought about by general social conditions and through no fault of the poor. More and more, legislation has remedied the sinister state of affairs which seemed to consider poverty a crime.

Therefore, the original interpretation of laws must give way to a new one, which should be attuned to the spirit of the age all over the earth. Although the wording of the articles of the Penal Code under discussion has not been changed, their interpretation may be changed in order that they may not become anachronistic. Considering that social conditions often unfold faster than legislation, it is a salutary function of the courts so to formulate their interpretation of old laws as to adjust them to contemporary exigencies of the public weal. This is not judicial legislation at all because the lawmakers intended that the law which they approved should govern for many years to come, and that therefore it should be interpreted by the courts in such a way as to meet new problems, provided the fundamental objectives of the law are distinctly kept in view. In the instant case, theft is punished, so the principle of crime repression is carried out; and the penalty is moderated because of extreme poverty and need, so the idea of punishment according to the circumstances of each case is also recognized.

Finally, so long as there is widespread unemployment and so long as relief work, both private and governmental, is inadequate, the punishment for stealing because of hunger should be lessened, but not waived or lifted. Unless and until there is a job for every person willing to work, to mete out the ordinary or highest penalty for stealing due to dire necessity flies in the face of the principle of social justice. It is tantamount to exacting the pound of flesh in accordance with the letter of the law.

The foregoing considerations are strengthened by the leeway given to the courts in determining what in each case constitutes a mitigating circumstance by analogy. The lawmaker, fully aware of the impossibility of laying down an exhaustive enumeration of circumstances that would extenuate a crime, has formulated a general statement in No. 10 of art. 13. It is thus that each case must be judged by the courts on its own merits, the only condition being that there must be similarity or analogy to one or more of the nine circumstances specifically mentioned in said art. 13. Commenting on a similar provision of the Spanish Penal Code (No. 8, art. 9), Groizard makes these observations:

"Recuerdense una por una las siete circunstancias atenuantes que ya Uevamos examinadas, y se advertira la exactitud de lo que venimos diciendo. Todas y cada una son generalizaciones y en todas se hallara que la libertad, o la inteligencia, o la intencion aparecen mutiladas en bastante grado para influir en la responsabilidad de los actos humanos. Descender a demostrar esta verdad, lo tenemos por inutil: su evidencia no han de ponerla en duda los que recuerden el texto de los numeros y el espiritu que las vivifica.

"Pero ese estudio amplio, vastisimo; estudio en el cual parece que se pierde el hombre dentro de la humanidad; esas grandes corrientes, puntos cardinales, moldes en que todos se funden, aunque el Iegislador crea que lo abarcan todo, podria suceder que se equivocase, y logico en su aspiracion de ser un reflejo de la justicia moral, al trazar el circulo en que queda a salvo el principio de que parte, en prevision de que algun caso quedase sin definir y f uera de las clasificaciones hechas, que ni por su generalidad, ni por su alcance, pudiera engendrar una regla de aplicacion constante, un canon, fue preciso establecer el unico criterio que pudiera apreciarle con entera conciencia: aludimos al criterio de los Tribunales.

"De aqui la circunstancia 8.a, que, en rigor, no es mas que una regla generica para todo lo que hallandose f uera del cuadro de las anteriormente f ormuladas pudiera correr igual suerte que estas, cuando lo exigieran igual identidad y analogia, ElCodigo Penal de 1870, Concordado y Comentado, Vol. 1, p. 401." (Italics supplied).

Although perhaps many decades will have to elapse before the penal codes of the world recognize extreme poverty and need as an exempting circumstance, yet I believe that in the meantime it is in keeping with the humanitarian ideas of this generation to recognize the cruel pangs of hunger as a factor that mitigates the penalty. Possibly the growing atmosphere favorable to the submerged classes will eventually uphold the stand of Judge Paul Magnaud who about fifty years ago became popularly known in France as the "bon juge" because of his significant decisions acquitting those who had been impelled to steal on account of the excruciating tortures of hunger. Be that as it may, I am convinced that the doctrine herein declared responds to the heart-throbs of mankind.

All in all, I am persuaded that the principal penalty fixed by the trial court, one month and one day of arresto mayor, extreme poverty and need having been considered as a mitigating circumstance by analogy, fits the facts of the the instant case.

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