

ERNESTO CO Y STO. DOMINGO, PETITIONER, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 52200. August 21, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This petition was given limited due course with the sole issue of whether or not petitioner is entitled to the mitigating circumstance of minority.

Charged with the crime of homicide before the Court of First Instance of Manila, Branch IX for the death of Oscar Ralar y Cristobal in the evening of February 2, 1968 at the corner of Craig and Laong Laan Streets, Sampaloc, Manila, petitioner was found guilty of the accusation, without any mitigating circumstance in his favor. He was sentenced to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of reclusion temporal.

From the foregoing judgment, petitioner appealed to the Court of Appeals. On May 31, 1978, the said court rendered a decision affirming the judgment of the lower court with modification that petitioner should be entitled to the mitigating circumstances of provocation and voluntary surrender. Accordingly, the Court of Appeals reduced petitioner's penalty to an indeterminate term of imprisonment from two (2) years, four (4) months and one (1) day of prison correccional, as minimum to eight (8) years and one (1) day of prison mayor, as maximum.

In this petition, petitioner alleges that the Court of Appeals erred in rejecting his plea of self defense and in not crediting to his favor the additional mitigating circumstances of minority and obfuscation. Since We find no reason to disturb the finding of the respondent court relative to the plea of self defense and provocation was already appreciated in favor of petitioner, and therefore obfuscation which was based on the same circumstance which gave rise to provocation may no longer be credited to him,[1] We limit discussion on petitioner's claim of minority with respect to which the Solicitor General was required to comment.[2]

According to petitioner, he was born on May 7, 1950, so that on February 2, 1968, when the stabbing incident occurred, petitioner was only 17 years old. In support of said claim, petitioner submits to this Court the original copy of the birth certificate showing that Ernesto Co Pineda y Sto. Domingo was born on May 7, 1950. In addition, petitioner invites the attention of this Court to the following:

- (1) Exhibit "H", an extract from the police blotter of the Manila Police Department, Detective Bureau, dated February 3, 1968, wherein it appears that petitioner is 17 years old;
- (2) Exhibit "I", "Salaysay" of petitioner taken before Patrolman R. Rivera, Detective Bureau, Manila Police Department on February 3, 1968, wherein petitioner stated that he was 17 years old;
- (3) Exhibit "3-A", a medical certificate dated March 16, 1968 issued to petitioner by the Philippine General Hospital, wherein it appears that petitioner is 17 years old; and

(4) Page 32 of the transcript of stenographic notes taken at the hearing before the lower court on October 28, 1968, wherein it appears that petitioner in answer to the question of the court a quo stated that he was born on May 7, 1950.

In his comment, the Solicitor General asserts that petitioner has failed to establish his minority. He claims that since the birth certificate was submitted for the first time before this Court, the same is inadmissible in evidence. He also questions the veracity of the birth certificate because the full name of the child in the birth certificate is "Ernesto Co Pineda", while herein petitioner is named "Ernesto Co y Sto. Domingo", alleging that petitioner's "unexplained failure to offer the same in evidence before the court a quo would simply be an attempt to avoid close scrutiny and examination by the prosecution for fear that its falsity might be exposed".

As regards the documents presented as proof of his claim of minority, the Solicitor General claims that the information or data as to his date of birth and age at the time of the fateful incident, as reflected therein were all elicited from and supplied by petitioner himself, while his declaration with respect to his age and date of birth, is equally self-serving.

We find petitioner entitled to the mitigating circumstance of minority.

Although it is true the birth certificate was not presented during the trial, the same must be admitted by Us, if only to satisfy Our sense of justice and fairness, and to stress further that substantial justice may not be denied merely on ground of technicality, following the same course of action We took in *People vs. Jose*,^[3] in which it was held:

"But even on the hypothesis that George Tillman is guilty of the offense charged, the death sentence cannot be imposed upon him as there is in his favor the circumstance of minority or being less than eighteen (18) years of age when he allegedly committed the offense (See Manifestation & Ex Parte Motion, dated October 20, 1975, submitted by Francisco R. Sotto, one of the counsels for accused George Tillman, pp. 283-289 Record). Although the Solicitor General objects to the consideration of this piece of evidence, consisting of the duly authenticated birth certificate of George Tillman showing that he was born on January 18, 1949, as it was not offered and formally presented in evidence during the trial, this Court resolved in its Resolution of January 8, 1976, to consider the circumstance of George Tillman's minority in the imposition of the penalty on him. In the exercise of Our sound discretion and so as not to allow sheer technicality to overcome Our sense of justice in considering the merits of this case, We hereby admit in evidence the birth certificate showing that George Tillman was a minor of seventeen (17) years, five (5) months and sixteen (16) days at the time of the commission of the crime in question since there is no doubt as to its veracity."

The Solicitor General's claim that the discrepancy between the name of the petitioner and the full name appearing in the birth certificate arouses doubts and suspicion is without basis. Petitioner ably explained that the child whose name appears in the birth certificate as "Ernesto Co Pineda" is the same Ernesto Co y Sto. Domingo who is the petitioner herein, said petitioner's name having been shortened to "Ernesto Co y Sto. Domingo" because his father's name is lengthy and consists of two words. At any rate, the birth certificate clearly shows that petitioner Ernesto Co y Sto. Domingo was born to the spouses Pablo Co Pineda and Lucia Sto. Domingo on May 7, 1950.

We are not likewise persuaded by the Solicitor General's contention that petitioner's unexplained failure to present the birth certificate in the court a quo lends doubt as to its veracity. For petitioner has likewise ably explained that he deemed it not necessary anymore to submit the same since the prosecution has not questioned the entries in Exhibits "H", "Q", and "3-A", more particularly as to his age which were uniformly stated as 17 years old. Moreover, in the hearing in the lower court, petitioner has testified that he was 17 years old at the time of the commission of the offense. Contrary to the Solicitor General's contention, petitioner's testimony is not a

self-serving evidence. In *National Development Co. vs. Workmen's Compensation Commission*,^[4] this Court, elucidating on the nature of self serving evidence and the ground for its exclusion, said:

"The right of a party to be present and give evidence as provided in section 49 would be meaningless if it did not include the right to testify in his own behalf. Indeed, the Rules of Court enjoins that 'neither parties nor other persons interested in the outcome of a case shall be excluded.' For a while a party's interest may to some extent affect his credibility, his interest alone is not a ground for disregarding his testimony. The argument that the testimony of an interested party is self-serving and therefore is inadmissible in evidence misses the essential nature of self-serving evidence and the ground for its exclusion. Self-serving evidence is evidence made by a party out of court at one time; it does not include a party's testimony as a witness in court. It is excluded on the same ground as any hearsay evidence, that is the lack of opportunity for cross-examination by the adverse party, and on the consideration that its admission would open the door to fraud and to fabrication of testimony. On the other hand, a party's testimony in court is sworn and affords the other party the opportunity for cross-examination."

The penalty for homicide is reclusion temporal. Considering that petitioner is entitled to special mitigating circumstance of minority, being 17 years old at the time of the commission of the offense, the penalty shall be the next lower than that prescribed by law,^[5] which is prision mayor. Considering further that there are two other ordinary mitigating circumstances of provocation and voluntary surrender, the penalty should be reduced by another one degree,^[6] which is prision correccional in this case "in the period that (the court) may deem applicable, according to the number and nature of such circumstances,"^[7] We are of the opinion that with the mitigating circumstances attendant, petitioner's penalty should be fixed within the medium period. Applying the Indeterminate Sentence Law, petitioner's penalty should be four (4) months, one (1) day of arresto mayor as minimum to three (3) years, two (2) months of prision correccional as maximum.

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals is affirmed with modification that petitioner is hereby sentenced to suffer an indeterminate penalty of four (4) months, one (1) day of arresto mayor as minimum to three (3) years, two (2) months of prision correccional as maximum.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, and Melencio-Herrera, JJ., concur.
Fernandez, JJ., on leave.

[1] Aquino, Revised Penal Code, Vol. 1 p. 240 citing Llanes, CA 52 OG 865; Felipe Luna 76 Phil. 101; Yaon 8 ACR 675; Oscar Ramirez, CA 46 OG 6119, Basalo, 53 Phil. 940.

[2] p. 50, Rollo.

[3] 71 SCRA 281.

[4] 19 SCRA 865.

[5] Art. 68(2) of the Revised Penal Code.

[6] Art. 64(5), *ibid*.

[7] *Ibid*.

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