

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO CASTUERA, DEFENDANT-APPELLANT.

G.R. No. 62607. December 15, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This appeal has been certified to Us by the Court of Appeals for resolution of the question of law raised therein. Appellant Domingo Castuera, who pleaded guilty to the crime of homicide, seeks modification of the penalty imposed on him by the Court of First Instance of Albay.

The information to which appellant pleaded guilty is quoted as follows:

"That at or about 1:00 o'clock in the afternoon of May 9, 1980, at Barangay Malobago, Municipality of Manito, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with intent to kill, did then and there willfully, unlawfully and feloniously attack assault and hack TEODORICO MADRIGALEJOS with a bolo, thereby inflicting upon the latter mortal wound on the left side of the neck which injuries resulted in the death of the latter, TEODORICO MADRIGALEJOS shortly thereafter.

"ACTS CONTRARY TO LAW."

Having entered his plea, appellant, with leave of court, presented two witnesses to establish the extenuating circumstance that sufficient provocation on the part of the victim immediately preceded the commission of the offense. The testimonies of these witnesses were synthesized by the trial court as follows:

"At about 1:00 o'clock in the afternoon of May 9, 1980 at Barangay Malobago, Manito, Albay, Teodorico Madrigalejos, Asuedo Castuera were having a drinking spree. While they were drinking, appellant passed by. Teodorico called the appellant and invited him to join them which the latter first refused but which he later honored (tsn, November 20, 1980, pp. 4-7). Later on, Teodorico, who kept on drinking, reprimanded appellant and told him, 'I told you already Domingo that when it is time to work you work, when it is time to drink, you drink and let us drink as much as you would like.' Appellant retorted, 'You know me, when I work, I work and when I drink, I drink and I even can drink until morning.' (tsn, November 20, 1980, p. 15).

"Teodorico suddenly stood up and boxed appellant. Appellant, then, unsheathed his bolo and hacked Teodorico hitting him on the left side of the neck (tsn, November 20, 1980, pp. 7-8, pp. 16-17). Teodorico died of 'severe hemorrhage due to incised wound cutting half of the neck left side cutting all the carotid and jugular vein and artery' (postmortem Certificate of Death, Records, p. 5).

"Immediately after the incident, appellant voluntarily surrendered to the authorities."

Concluding that appellant was entitled to three mitigating circumstances, to wit: (1) sufficient provocation on the part of the deceased; (2) voluntary surrender; and (3) plea of guilty, the court rendered a decision, the dispositive part of which reads:

"PREMISES CONSIDERED, this Court hereby finds the accused Domingo Castuera guilty beyond reasonable doubt of the crime of Homicide and hereby sentences him to suffer the penalty of five (5) years of prision correccional to eight (8) years of prision mayor.

"Accused is further required to indemnify the heirs of the deceased victim Teodorico Madrigalejos, as and for the death of the latter, the sum of Twelve Thousand Pesos (P12,000.00), Philippine Currency.

"The convict herein shall be credited in the service of his sentence with the full time during which he has under-gone preventive imprisonment provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted persons (Article 29, Revised Penal Code)."

Appellant admits that the plea of guilty was entered by him voluntarily and with full knowledge of the significance and consequences thereof. The record discloses that the information was read to him in the dialect which he speaks and understands. And as stated by the trial court, "the information was exhaustively, extensively and intensively explained to the accused by this court, the prosecuting fiscal and defense counsel. Likewise, the meaning and implication of his plea of guilty were ventilated thoroughly to the said accused."

Appellant's sole submission in this appeal is that the penalty meted out by the lower court - five years of prision correccional to eight years of prision mayor - is excessive and contrary to law. He claims that the proper penalty should be "prision correccional in its medium period, as minimum, to six (6) years and one (1) day of prision mayor, as maximum." [1]

The penalty prescribed by law for the crime of homicide is reclusion temporal [2], the duration of which is from twelve (12) years and one (1) day to twenty (20) years. [3] It is a divisible penalty consisting of three periods.

The concurrence of three mitigating circumstances, not offset by any aggravating circumstance, calls for an application of Article 64, Rule 5 of the Revised Penal Code, which We quote:

"When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period it may deem applicable, according to the number and nature of such circumstances."

The penalty next lower to reclusion temporal, according to the graduated scale in Article 71 of the same Code, is prision mayor, whose range is from six (6) years and one (1) day to twelve (12) years. Prision mayor is also a single divisible penalty.

Implicit in the above-quoted Rule 5 of Article 64 is that the presence of three mitigating circumstances may be taken into account not only in lowering the basic penalty of reclusion temporal to the next lower penalty of prision mayor, but also in determining the applicable period of the latter penalty. According to the last clause of said Rule 5, such period should be applied "according to the number and nature of such circumstances," which undoubtedly refers to the same mitigating circumstances. Considering that the nature, independently of the number, of the mitigating circumstances of voluntary surrender, and plea of guilty not only manifests the appellant's desire to acknowledge his guilt with evident remorse or to save the government the trouble and expense necessarily incurred in search and capture [4], but evinces as well his predisposition to reformation and rehabilitation, and keeping in mind that appellant would not have committed the offense had the victim not given sufficient provocation immediately before the commission thereof, We hold that the maximum term of the indeterminate sentence of eight (8) years imposed by the lower court should be reduced to seven (7) years, which is within the minimum period of prision mayor.

Applying the provisions of the Indeterminate Sentence Law, the minimum of the sentence should further be reduced by one degree.

As early as *People vs. Ducosin*[5], the very first case decided by this Court involving the application of the Indeterminate Sentence Law, We held that "the Indeterminate Sentence Law, Act No. 1403, simply provides that the 'minimum' shall 'not be less than the minimum imprisonment period of the penalty next lower.'" Otherwise stated, the court has the discretion to fix the minimum imprisonment anywhere within the range of the next lower penalty without reference to the degrees into which it may be subdivided. The range of the next lower penalty, prision correccional, is six (6) months and one (1) day to six (6) years. Since the minimum of the indeterminate sentence imposed by the lower court, five years, is within the range of prision correccional, the same conforms to the provisions of the Revised Penal Code and of Section 1 of the Indeterminate Sentence Law.

In *Ducosin*, however, we laid down the factors and circumstances that should guide the discretion of the court in fixing the term of the minimum period of imprisonment. As We said in that case, "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' x x x 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 impe-rative necessity of protecting the social order."

In conformity with the principle adverted to in *Ducosin* and considering the circumstances that have persuaded Us to reduce the maximum period of the indeterminate sentence, We exercise Our discretion in imposing the proper penalty by reducing the minimum of the appellant's sentence to two (2) years of prision correccional

WHEREFORE, the judgment of the lower court is accord-ingly modified, so as to impose upon the appellant an indeterminate penalty ranging from two (2) years of prision correccional, as minimum, to seven (7) years of prision mayor, as maximum. The judgment appealed from is affirmed in all other respects. Costs de officio.

SO ORDERED.

Makasiar, (Chairman), Aquino, Guerrero, Abad Santos, and De Castro, JJ., concur.
Concepcion, Jr., J., on leave.

[1] p. 4, Appellant's brief.

[2] Article 249, par. 2, Revised Penal Code.

[3] Article 27, par. 7, id.

[4] *People vs. Gervacio*, 24 SCRA 960.

[5] 59 Phil. 109.

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