

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JUDGE GERMAN G. LEE, JR., BRANCH 35, REGIONAL TRIAL COURT OF NEGROS ORIENTAL, AND ROMAN AMIL, RESPONDENTS.

G.R. No. 66859. September 12, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the correctness of the sentence rendered by Judge German G. Lee, Jr., who imposed on Roman Amil, 57, a straight penalty of six years and one day of prision mayor for homicide. He applied the rule in *People vs. Nang Kay*, 88 Phil. 515, involving a con-viction for illegal possession of firearms which is punished by imprisonment for not less than five years and not more than ten years.

Nang Kay was sentenced to five years and one day since an indeterminate sentence would be unfavor-able to him. It would lengthen his prison sentence.

But the instant case is not a prosecution under a special law. It is a homicide case. The applica-tion of the Indeterminate Sentence Law is mandatory if the imprisonment would exceed one year. It would be favorable to the accused (*People vs. Alvarez*, 101 Phil. 516). Fiscal Servilliano Elvinia, Jr. objected to the straight penalty.

Judge Lee found that the homicide was attended by the two generic mitigating circumstances provocation and voluntary surrender to the authorities. There was no aggravating circumstance. Hence, the penalty of reclusion temporal must be lowered by one degree or to prision mayor. The maximum of the indeterminate sen-tence should be taken from prision mayor minimum.

By applying the Indeterminate Sentence Law, the penalty has to be reduced by one degree or to prision correccional from which the minimum sentence has to be taken.

The certiorari resorted to by Fiscal Elvinia is proper because his purpose is to correct a manifest error of the trial court amounting to excess of juris-diction and to favor the accused. The proceeding did not place the accused in double jeopardy.

WHEREFORE, the petition is granted. The judgment of the trial court is modified. The accused is hereby sentenced to imprisonment of three (3) years of prision correccional medium as minimum to seven (7) years of prision mayor as maximum. No costs.

SO ORDERED.

Makasiar (Chairman), Escolin, Gutierrez, Jr., and Cuevas, JJ., concur.

Abad Santos, J., see dissenting opinion.

Concepcion, Jr., and Guerrero, JJ., on leave.

DISSENTING OPINION

ABAD SANTOS, J.:

The respondent judge should have applied the Indeterminate Sentence Law.

The penalty for homicide is reclusion temporal. Present two mitigating circumstances with no aggravating circumstance, the penalty is reduced to prision mayor in its full extent. The maximum of the indeterminate sentence should be taken from prision mayor in its full extent, that is, anywhere from 6 years and 1 day to 12 years in the same manner that the minimum of the indeterminate sentence should be taken from prision correccional in its full extent.

It is not for this Court to impose a sentence on the accused, Roman Amil. What this Court should do is to direct the respondent judge to impose an indeterminate sentence on Amil within the allowable range. It should be noted that in the imposition of an indeterminate penalty a certain degree of discretion is reposed on the judge and he should not be deprived of this power.

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