

FRANCISCO ESGUERRA, PETITIONER, VS. THE PEOPLE OF THE PHILIP-PINES AND HON. PABLO S. VILLANUEVA, IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH VI, REGIONAL TRIAL COURT, MALOLOS, BU...

G.R. No. 69885. June 27, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Francisco Esguerra was accused of murder qualified by evident premeditation in Criminal Case No. 4271-M of the defunct Court of First Instance of Bulacan. He was found guilty but the court him the benefit of two (2) mitigating circumstances, namely: surrender and intoxication which is not habitual or intentional. He was sentenced "To suffer an imprisonment of from Ten (10) years and One (1) day, as minimum, to Twelve (12) years, as maximum;" (Rollo, p. 43.)

Francisco Esguerra now claims that "the respondent judge erred in the application of the law with respect to the correct penalty to be imposed in the presence of two (2) mitigating circumstances and applying the Indeterminate Sentence Law." (Rollo, p. 5.) He prays that the decision against him "be modified in the sense that the minimum penalty will instead be Four (4) years, Two (2) months and One (1) day of prision correccional." (Rollo, p. 8.)

The petition has some merit.

The penalty for murder is reclusion temporal in its maximum period to death. (Art. 248, Revised Penal Code) Considering the presence of two mitigating circumstances and absent any aggravating circumstance, the penalty should be one degree lower (Art. 65, par. 5, R. P.C.) e., prision mayor in its maximum period to reclusion temporal in its medium period — 10 years and 1 day to 17 years and 4 months.

Applying the Indeterminate Sentence Law, the maximum of the penalty should be within the range of 10 years and 1 day to 17 years and 4 months. The maximum penalty (12 years) imposed by the respondent judge is correct for it is within the range.

The minimum of the indeterminate sentence is one degree lower than prision mayor maximum to reclusion temporal medium, i.e., prision correccional in its maximum period to prision mayor in its medium period — 4 years, 2 months and 1 day to 10 years. The minimum penalty (10 years and 1 day) imposed by the respondent judge is not correct for it is beyond the range of the applicable penalty.

The Office of the Solicitor General recommends a minimum sentence of 8 years and 1 day which is within the range of the penalty.

WHEREFORE, the petition is partly granted. The prison sentence imposed on the petitioner is hereby modified. He shall suffer an indeterminate sentence of 8 years and 1 day of prision mayor, as minimum, to 12 years of prision mayor, as maximum. No costs.

SO ORDERED.

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

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