

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RENE ESCARES, DEFENDANT AND APPELLANT.

G. R. Nos. 11128-33. December 23, 1957

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On September 13, 1950, six separate informations for robbery were filed in the Court of First Instance of Rizal against Salvador Poblador, Armando Gustillo and Rene Escares. When these cases were called for hearing on March 2, 1951, Rene Escares was still at large and, by agreement of the parties, they were tried jointly against Salvador Poblador and Armando Gustillo. A decision was thereafter rendered against them finding them guilty of the crimes charged and convicting them accordingly.

On April 21, 1954, Rene Escares was arraigned and pleaded not guilty in each of the six above-mentioned cases but later he asked permission to withdraw his former plea of not guilty and substitute it for a plea of guilty. The trial court granted the petition and forthwith it rendered a decision of the following tenor:

"When these cases were called for trial, the accused asked permission to withdraw his former plea of not guilty and substitute it with that of guilty in all these cases. The Court granted said petition, and the accused forthwith freely and voluntarily pleaded guilty in all these cases.

"Wherefore, the Court finds the accused Rene Escares guilty of the crimes charged in the information in all these cases, and, in accordance with the provisions of Article 70 of the Revised Penal Code, hereby sentences said accused to twelve (12) years, six (6) months, and one (1) day in all the cases, with all the accessories of the law, and to pay the costs."

Rene Escares appealed from the decision but having taken the case to the Court of Appeals, the latter certified it to us on the ground that the only issue involved is one of law.

The only question raised in this appeal refers to the penalty imposed on the appellant. He contends that since he pleaded guilty to all the crimes charged and there is no aggravating circumstance to offset it, the penalty to be imposed on him should be reduced to the minimum.

It should be noted that the imposable penalty in each of the six cases where appellant pleaded guilty in accordance with paragraph 5, Article 294, of the Revised Penal Code, is prison correctional in its maximum period to prison mayor in its medium period, which should be applied in its minimum period in view of the mitigating circumstance of plea of guilty, not offset by any aggravating circumstance, or from 4 years 2 months and 1 day to 6 years one month and 10 days. Applying the Indeterminate Sentence Law, the appellant should be sentenced for each crime to an indeterminate penalty the minimum of which shall not be less than 4 months and 1 day of arresto mayor nor more than 4 years and 2 months of prison, correctional, and the maximum shall not be less than 4 years 2 months and 1 day of prison correctional nor more than 6 years 1 month and 10 days of prison mayor. But in applying the proper penalty, the trial court imposed upon appellant the three fold rule provided for in paragraph 4 of Article 70 of the Revised Penal Code. This is an error for said article can only be taken into account, not in

the imposition of the penalty, but in connection with the service of the sentence imposed.

The penalty imposed upon appellant by the trial court should therefore be modified in the sense that he should suffer in each of the six cases an indeterminate penalty of not less than 4 months and 1 day of arresto mayor and not more than 4 years 2 months and 1 day of prision correctional, plus the corresponding accessory penalties provided for by law. These penalties should be served in accordance with the limitation prescribed in paragraph 4, Article 70, of the Revised Penal Code.

Modified in the sense above indicated, we affirm the decision of the trial court, with costs against appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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