

SPECIAL THIRD DIVISION

[G.R. No. 176566, October 02, 2009]

ELISEO EDUARTE Y COSCOLLA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

R E S O L U T I O N

CHICO-NAZARIO, J.:

For Resolution is accused-appellant's Motion for Reconsideration, Compassion and Reduction of Penalty dated 26 May 2009.

On 16 April 2009, this Court affirmed *in toto* the decision of the Court of Appeals dated 12 August 2004 convicting accused-appellant of the crime of Robbery. The dispositive portion of Our decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is DENIED. The Decision dated 12 August 2004 of the Court of Appeals in CA-G.R. CR No. 26716 affirming the conviction of Eliseo Eduarte y Coscolla for the crime of Robbery and sentencing him to suffer the prison term ranging from 4 years and 2 months of *prision correccional* as minimum to 8 years [of] *prision mayor* as maximum, is hereby affirmed *in toto*. He is ordered to pay private complainant Catherine Navarra the amount of P8,875.00 by way of restitution.^[1]

In this instant motion, accused-appellant, being aware that it is no longer practicable to change the Court's verdict guilty against him or to shake the Court's faith in the credibility of his accuser, instead pleads, out of compassion for him and his family, that we reduce the maximum period of his sentence from eight years to six years in order that he may apply for probation and continue to work as a messenger at Unilever Philippines, where he has been employed since 1994 or for more than 15 years.

Accused-appellant discloses that he is the sole breadwinner of his family. If he is imprisoned, there will be no one to support his wife and two children. If his wife, who is a plain housewife, works as a domestic helper or nanny for other people's children, no one will be left at home to care for their children.

Accused-appellant stresses that, except for this case, he has no previous criminal record. He appends several Certifications,^[2] in addition to those he already attached during trial, issued by his immediate superiors at Unilever Philippines, the parish priest in his parish and the Barangay Chairperson of his *barangay* at Cristobal Street, Paco Manila, to attest that he is a person of good moral character with a good reputation in his community.

Accused-appellant further emphasizes that since the imposable penalty on him under the Indeterminate Sentence Law ranges from a minimum of *arresto mayor* maximum (4 months and 1 day to 4 years and 2 months) to a maximum of *prision mayor* medium (6 years and 1 day to 8 years), his prayer for the reduction of his maximum penalty to six (6) years, so that he may be eligible for probation, is not too much to ask considering that only one (1) day separates 6 years from the minimum of the maximum penalty (6 years and 1 day to 8 years) imposable by law for the offense charged.

Counsel for accused-appellant believes that the ends of justice and the best interests of the public and that of accused-appellant and his family will be served by allowing accused-appellant to avail himself of the benefits of probation. Counsel for accused-appellant, who personally knows the latter, asserts that accused-appellant is not a vagrant or a good-for-nothing bum in need of correctional treatment that can be provided by putting him in a penal institution. In fact, he has, for the past fifteen years, been steadily and gainfully employed in a reputable corporation where his immediate superiors have vouched for his good character and conduct.

The penalty for simple robbery, the felony committed by accused-appellant, is provided for in Article 294 of the Revised Penal Code. Said article reads:

ART. 294. Robbery with violence against or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

x x x x

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases.

The penalty prescribed under Article 294(5) is *prision correccional* in its maximum period to *prision mayor* in its medium period, that is, four (4) years, two (2) months and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law,^[3] the penalty imposable should be an indeterminate penalty whose minimum term should be within the range of the penalty next lower in degree, which is *arresto mayor* in its maximum period to *prision correccional* in its medium period, or four (4) months and one (1) day to four (4) years and two (2) months, and whose maximum term should be the proper period of *prision correccional* in its maximum period to *prision mayor* in its medium period, or four (4) years, two (2) months and one (1) day to ten (10) years, taking into account the proven modifying circumstance.

In our decision dated 16 April 2009, we inadvertently declared that the medium period of the maximum term of the indeterminate sentence is *prision mayor* in its minimum period which has a range of 6 years and 1 day to 8 years. This has to be rectified. The medium period of the maximum term is six (6) years, one month (1) month and eleven (11) days to eight (8) years and twenty (20) days.

After taking a second hard look at the records and transcripts of stenographic notes (TSN), as well as the state of affairs of accused-appellant's life, we opt to modify the