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SECOND DIVISION

[G.R. No. 123991, December 06, 1996]

FELIX LADINO PETITIONER, VS. HON. ALFONSO S. GARCIA AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*

D E C I S I O N

REGALADO, J.:

A little more circumspection could have avoided this appellate recourse, as well as the routinary referral to the Solicitor General since this is a criminal case on appeal, and rendered unnecessary this opinion reiterating settled and elementary rules of criminal law.

The facts are not in dispute. Petitioner and one Restituto Amistad were charged with the special complex crime of robbery with homicide in Criminal Case No. TG-2450-95 filed in Branch 18 of the Regional Trial Court in Tagaytay City, presided by respondent judge. Both accused pleaded not guilty when arraigned.

At the hearing of the case on February 5, 1996, both accused offered to plead guilty to the lesser offense of simple homicide. In open court, the widow of the deceased victim, as private complainant and the assistant provincial prosecutor representing the People in the case, expressed their conformity thereto. That agreement was unqualifiedly approved by respondent judge.

Pursuant to the plea of guilty to the crime of homicide, the trial court rendered an "Order" on February 19, 1996, reciting the aforestated antecedents, declaring both accused guilty beyond reasonable doubt of the crime of homicide, and sentencing each of them to a prison term of 14 years, 8 months and 1 day to 17 years, 4 months and 1 day of reclusion temporal,[1] and to severally pay the civil liability.

Accused having questioned the penalty imposed on them in light of the provisions of the Indeterminate Sentence Law,[2] and the court below having refused to reconsider the same, the case is now before us via a petition for review on certiorari filed by one of the accused on the lone question of law as to whether or not the indeterminate sentence meted by the trial court is correct. We shall, therefore, go back to basics.

Preliminarily, it will be noted that the indeterminate sentence in question has a range of 14 years, 8 months and 1 day, as minimum, to 17 years, 4 months and 1 day, as maximum. In fine, the minimum is within the range of reclusion temporal in its medium period, while the maximum is reclusion temporal in its maximum period. This latter part, by itself, is erroneous.

As a simple matter of law, the penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal in its entire extent and, in the absence of

modifying circumstances, the penalty should be imposed in its medium period.[3] This has a duration of 14 years, 8 months and 1 day to 17 years and 4 months, and shall be the basis of "an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code."[4] The lower court, accordingly, overshot the permissible maximum of the penalty, by one day to be sure but constitutive of error just the same.

More importantly, it disregarded the further prescription that the minimum of the sentence "shall be within the range of the penalty next lower to that prescribed by the Code for the offense."[5] This would, therefore, be prison mayor in any of its periods as the court, in the exercise of sound discretion and the circumstances of the case, may consider commensurate and proper. Parenthetically, there is no claim that the accused are expected from the coverage of the Indeterminate Sentence Law.

It would appear, therefore, that the lower court may have been bothered or influenced by the fact that the crime originally charged was robbery with homicide with a decidedly higher penalty of reclusion perpetua to death,[6] whereas the accused had been allowed to plead guilty to homicide punishable by reclusion temporal, and yet they would further ask for a still lower minimum of prision mayor. Elsewise stated, the trial court must have also proceeded on the hypothesis that where a lesser penalty has been imposed for an offense lighter than that in the original indictment, because of the agreement among the accused, the prosecutor and the offended party for such reduced liability, the Indeterminate Sentence Law should not apply in toto.

The position taken by the lower court is, therefore, perplexing in view of the fact that it did impose what purports to be an indeterminate sentence, albeit incorrect. Also, it overlooked the fact that it expressly found the accused "GUILTY beyond reasonable doubt of the crime of Homicide." Necessarily, it has to impose the penalty for that felony as prescribed in Article 249, without regard to what would have been the penalty for the original offense charged under Article 294(1), and to comply with the legal consequences flowing therefrom.

The fact that the lesser offense, and its necessarily lower penalty, resulted from a plea bargaining agreement is of no moment as far as the penalty to be imposed is concerned. Plea bargaining is authorized by the present Rules and is in fact required to be considered by the trial court at the pre-trial conference.[7] The felony of homicide which must constitute the basis for the penalty to be imposed having been agreed upon among the requisite parties and approved by the trial court itself, that downgraded offense and its lower penalty shall control the adjudgment of and any further proceedings before the court a quo.

From that undisputable and obvious premise, it follows that the aforecited provisions of Act No. 4103, as amended, shall necessarily apply. Also on that score, it should be kept in mind that to determine whether an indeterminate sentence and not a straight penalty is proper, what is considered is the penalty actually imposed by the trial court, after considering the attendant circumstances, and not the imposable penalty.[8] Corollarily, it would be an unduly strained postulate that a sentence arrived at by a court after a valid plea bargaining should constitute an exception to