

DIGEST OF UNPUBLISHED DECISIONS OF THE
SUPREME COURT AND COURT OF APPEALS

I

CRIMINAL LAW; WHERE CRIME IS NOT GRAVE THREAT BUT ATTEMPTED HOMICIDE OR DISCHARGED OF FIRE-ARMS. — Where, while pointing a carbine at B, A said: "confess now your sin because this will be your last," and then the gun exploded, the words spoken cannot be considered as a threat, grave or otherwise, "but as a statement of his intention of carrying out, then and there, his purpose of injuring the offended party; so the crime committed by A "might be either attempted homicide, if coupled with the intention to kill (Arts. 51, 249 or 250, second paragraph, RPC), or mere discharge of firearms (Art. 254), or the light felony of drawing a weapon in a quarrel not in lawful self-defense (Art. 285, No. 1), but never the crime of grave threats charged in the information and defined in said Article 282 of the Revised Penal Code." *People of the Philippines vs. Floro Castrodes, CA-G.R. No. 93838, February 11, 1953, Feliz, J.*

II

CRIMINAL LAW; THEFT; ACCUSED EXEMPT FROM CRIMINAL LIABILITY BECAUSE OF HIS RELATIONSHIP WITH THE OFFENDED PARTY. — Where one is found guilty of the crime of theft committed against his own grandfather he is exempt from criminal liability under the provisions of Article 332, No. 1 of the Revised Penal Code. *People of the Philippines vs. Cesar Patubo, CA-G.R. No. 10616-R, August 15, 1953, Feliz, J.*

III

EVIDENCE; EXTRA-JUDICIAL CONFESSION NOT CORROBORATED BY EVIDENCE OF THE CORPUS DELICTI INSUFFICIENT FOR CONVICTION. — Where the accused, in an extra-judicial confession, confess that they used dynamite for fishing, they can not be convicted of the crime of fishing with dynamite if the said extra-judicial confession is not corroborated by any evidence of the corpus delicti. *People of the Philippines, Plaintiff-Appellee vs. Juan Pambujan, et al., Defendants-Appellants, CA-G.R. No. 10599-R July 28, 1953, Concepcion, J.*

IV

CRIMINAL LAW; RECKLESS NEGLIGENCE. — A jeep was parked at right side of a street facing north. On the same side of the street about 6 meters behind the jeepney, likewise facing north a weapon carrier was parked. A truck driven by G came from the south of the street going northward. As it

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Pablo, Montemayor, Bautista Angelo, Tuazon, Jugo and Labrador, JJ. concur.

Bengzon J., took no part.

REYES, J., dissenting:

I dissent insofar as the majority opinion holds that Ordinance No. 10, series of 1947, of the municipality of Malabon, Rizal, as modified by the Secretary of Finance, is valid and enforceable.

Under the Revised Administrative Code, the legislative power of a municipality is lodged in the municipal council. It is true that the exercise of that power by the council is subject to a certain degree of supervisory control on the part of certain officers of the National Government. And as an instance of this supervisory control, it is provided in section 4 of Commonwealth Act No. 472 that if a municipal ordinance increases the rate of a license tax on business, occupation or privilege in certain cases by more than 50 per cent, "the approval of the Secretary of Finance shall be secured." But having in mind the principle of separation of powers which pervades the system of government ordained by our Constitution, I take it that the veto power thus conferred upon the Secretary of Finance only authorizes that officer to approve or disapprove an ordinance that is submitted to

was about to pass the parked weapons carrier, another truck driven by C suddenly appeared from behind, and in trying to overtake G's vehicle either bumped into the latter or caused it to veer into the right and collide with the weapons carrier parked on the side of the street. Because of the force of the impact, the right front tire of G's truck bumped over the left front tire of the weapons carrier and both cars were dragged towards and rammed against the parked jeepney. *Held:* C is criminally liable because his own reckless negligence was the immediate cause of the accident. (1) While the operator of a motor vehicle is not compelled to trail behind another and may overtake and pass to the front of the one that precedes him, he may do so only if the road is clear and when the conditions are such that his attempt to pass would be reasonably safe and prudent (U.S. vs. Knight, 26 Phil. 216; Peo. vs. Pascual, G. R. No. 25677, March 7, 1932 (56 Phil. 842, Unpub.) Peo. vs. Enriquez (CA), 40 O. G. No. 5, 984. (2) C can not shift the blame for the accident on G, for G was suddenly placed in an emergency and compelled to act instantly; and he "is not guilty of negligence if he makes such a choice and that would have been required in the exercise of ordinary care, but for the emergency" (5 Am. Jur. 600-601). (3) Even were G guilty of contributory negligence, such negligence on G's part still would not absolve C from criminal responsibility, since D's own reckless negligence was the immediate cause of the accident. (Peo. vs. Nido, 60 Phil. 1023; Peo. vs. Enriquez (CA), supra.

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. CRESCENCIO DE FIESTA, DEFENDANT-APPELLANT, C. A. R. NO. 8769, OCT. 5, 1953, R. Reyes, J.

V

CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; CASE AT BAR.—The accused, a duly appointed clerk of the civil registrar in the Office of the Municipal Treasurer of Ubay, Bohol, and temporarily designated as assistant postmaster of the same municipality, had among other duties, to help in postal transactions, such as to sell postage stamps, to issue or cash postal money orders and to receive deposits or pay withdrawals in the Postal Savings Bank. In the morning of June 14, 1948, Dionisio Borlongan presented himself to the accused for the purpose of making a deposit of P700.00 in the name of his wife, Estrella Agrosino de Borlongan, a depositor in the Postal Savings Bank. To this end he delivered the amount of P700.00 and his wife's deposit book to the accused

him in accordance with the above-quoted provision of the Commonwealth Act, and that it does not empower him to change, alter or modify the terms of the ordinance, for that would be investing an executive officer with legislative functions. Where a municipal ordinance, therefore, increases or decreases in certain cases the rate of a license tax on business, occupation or privilege by more than 50 per centum and the Secretary of Finance increases or decreases the new rate prescribed in the ordinance, the action of the Secretary of Finance can only be taken as a recommendation, so that the modified ordinance will have no effect until it is repassed by the municipal council, in the same way that a tax bill already approved by the Legislature but returned to that body by the President with a recommendation for an increase or decrease in the rate of tax does not become a law unless repassed by the Legislature with the changes proposed by the Chief Executive.

It is, therefore, my opinion that Ordinance No. 10, series of 1947, of the municipality of Malabon which has been modified by the Secretary of Finance, cannot be enforced unless repassed by the municipal council as so modified. The judgment below should accordingly be modified.

I concur

(Sgd.) RICARDO PARAS

who then recorded the fact of the deposit in the deposit book. Afterwards the accused returned the deposit book to Borlongan and also delivered to him an official receipt the corresponding number of which, as it appears in the deposit book, is No. A-201901. Sometime in July, 1950, when Borlongan and his wife went to the central office of the Postal Savings Bank in Manila to make withdrawal from her deposit, it was discovered that the amount of P700.00 which they deposited on June 14, 1948, was not taken up in the postal account because the accused never reported said deposit in his record of collections, nor did he deliver said amount to the postmaster of Ubay, Bohol. It was also discovered that Official Receipt No. A-201901 had previously been issued for a deposit of P2.00 in the Postal Savings Bank made by the accused himself in his own name on April 3, 1948, according to his pass book, which is the only entry appearing therein. *Held*: "The accused is guilty of the complex crime of malversation through falsification of public or official document committed by a public officer or employee.

"The accused's contention that he cannot be held guilty of malversation because his appointment is merely that of clerk and hence not an accountable officer, and also that the postal savings deposits are not government funds, is entirely without merit. The name of the office occupied by the appellant is of little consequence; the nature of the duties which he performed is the factor which determines whether or not the case falls within the purview of Article 217 of the Revised Penal Code (U.S. vs. Velasquez, 32 Phil. 157), and the fact that as part of his duties, he received public money for which he was bound and failed to account is decisively against him. Article 222 of the Revised Penal Code cited by the defense is of no avail because the purpose of this article is to extend the provisions of the Code on malversation to private individuals without excluding public officers. Moreover, this article expressly includes properties belonging to private individuals that are deposited with the government by public authority. (People vs. Velasquez, 72 Phil. 98; People vs. Castro, 61 Phil. 861; and People vs. Sibulo, G.R. No. 40714).

"The crime of falsification was likewise committed by appellant because he made it appear in the deposit book that Official Receipt No. A-201901 was issued for the deposit of P700.00, when that was not and could not be so, because said Official Receipt No. A-201901 had been previously issued to him for his deposit of P2.00 in the Postal Savings Bank.

"The crime committed in the case at bar is the complex crime of malversation through falsification of public or official document committed by a public officer or employee, defined and punished in Article 217 of the Revised Penal Code in connection with Article 171, par. 4, of the same legal body. According to Article 48 of the Revised Penal Code, as amended by Act No. 4000 of the Philippine Legislature, the penalty imposed upon appellant in this case is the one attached by law to the most serious crime, the same to be applied in its maximum period. The more serious crime is that of falsification, covered by Article 171, par. 4, of the Revised Penal Code, that is, *prision mayor* and a fine not to exceed five thousand pesos, the maximum period of which, in so far as the penalty of incorporation is concerned, being from 10 years and 1 day to 12 years. The next lower degree of the penalty prescribed in this Article 171, which is also to be imposed in virtue of the Intermediate Sentence Act, is *prision correccional* in its full extent, or from 6 months and 1 day to 6 years. Although the trial judge has not divided the maximum period of *prision mayor* into three periods in imposing the maximum of the indeterminate sentence, as he could have done, we are not inclined to increase the maximum of the penalty actually imposed upon the defendant." *People vs. Escalante, CA-G.R. No. 10141-R, promulgated July 22, 1953.*

CIVIL PROCEDURE; REDEMPTION OF REAL PROPERTY SOLD TO SATISFY JUDGMENT; CASE AT BAR. — On March 22, 1941, the sheriff of Bulacan, at public auction, sold a parcel of land belonging to judgment debtor, A, for the sum of P529.00 to the spouses J and R. Said buyers then conveyed their right and interest in the said land to M. On Oct. 7, 1943, A wrote a letter to the sheriff offering to redeem the property, but this offer was not heeded, upon the ground that the period of redemption had expired on March 22, 1942. A brought action against the sheriff, including J, R and M. After due trial, the Court of First Instance rendered a decision dismissing the case. A appealed, maintaining that the period of redemption, scheduled to expire on March 22, 1942, was suspended by the hostile military occupation of the Philippines; that the courts in Bulacan were not reestablished until after said date, or on May 2, 1942; and that, in view of the conditions prevailing in the Philippines during the occupation, A should have been allowed to redeem the property in question in October, 1943, when he offered to do so. Moreover, according to the stipulation submitted in the lower court, M, who acquired the rights of J and R, as purchasers at the auction sale of the property in dispute, received as products thereof, during the period of redemption, at least, one hundred twenty (120) *cavanes* of palay per year, at the conservative price of P3.00 per *cavan*, or an aggregate of P960.00; hence A maintains that, pursuant to Sec. 30, Rule 39, of the Rules of Court, such sum of P960.00 "shall be a credit upon the redemption money to be paid" and that, inasmuch as said amount of P960.00 exceeds the sale price of P529.00, the land in question should be considered as duly redeemed and A entitled to its possession and enjoyment, as owner thereof. *HELD*: The legal provision granting the judgment debtor a period of one year within which to redeem his property sold at an execution sale, is not in the nature of a statute of limitations of action. It merely gives him an option — which he is free to exercise or not — to redeem said property within the aforementioned period. *Alberto vs. De los Santos et al, CA-G.R. No. 5741-R, promulgated July 28, 1953.*

ID.; NOTICE OF INTENTION TO REDEEM UNNECESSARY.— Section 30, Rule 39 of the Rules of Court — which should be construed liberally in favor of the right of redemption (31 Am. Jur. 521; 35 C.J. 68) — does not specifically require, however, a previous notice of intention to redeem or a previous demand for accounting, as a condition precedent to the crediting of the rents and profits upon the redemption to be paid.

ID.; RENTS AND PROFITS PENDING REDEMPTION.— The right, granted the judgment debtor, to demand, prior to the expiration of the period of redemption, a statement of the rents and profits received by the purchaser of the property, and extending said period for five days, after receipt of said statement, has for its sole purpose to relieve the judgment debtor of the obligation — which, otherwise, he would have — to tender payment of the full amount of the sale price. Should the aforementioned demand be made, he would have to tender payment only of the balance of the price, after deducting the value of the rents and profits received by the purchaser of the property or his successor in interest. *Alberto vs. De los Santos et al, CA-G.R. No. 5741-R, promulgated July 28, 1953.*

ID.; ID. — Such tender of payment could be made after the expiration of the period of redemption provided it is not more than five days from receipt of the statement of accounts asked by the judgment debtor from the purchaser. Although not bound to demand this statement before the expiration of said period, it would, however, be unwise for the judgment debtor not to do so, unless he offers to pay the full price of the sale within said period, for the rents and profits received

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might not suffice to satisfy this price. When the price is more than covered by the rents and profits, there would appear to be no legal justification to hold that the redemption has not taken place *ipso facto*, the purchaser being already in possession of more than what he is entitled to receive. *Alberto vs. De los Santos et al.*, CA-G.R. No. 5741-R, promulgated July 28, 1953.

ID.; LAW GOVERNING EXECUTION SALES. — Execution sales are governed, primarily, not by the law on sales incorporated into the Civil Code, but by the Rules of Court, which are based upon the principles, not of the Roman Law (after which the Civil Code is mainly patterned), but of the Common Law. *Alberto vs. De los Santos et al.*, CA-G.R. No. 5741-R, promulgated July 28, 1953.

ID.; PURCHASER IN EXECUTION SALE DOES NOT ACQUIRE TITLE TO THE PROPERTY NOR RIGHT TO ITS POSSESSION. — The buyer in an ordinary execution sale, unlike a *pacto de retro* purchaser, does not acquire title to the property subject to a resolutive condition — the redemption. Neither does he acquire the right to its possession. The title remains in the judgment debtor, who, likewise, retains the right to continue in possession of the property, if he holds the same, and to receive the rents and/or profits thereof, without any obligation to turn them over, or to account therefor, to the buyer, irrespective of whether the right of redemption is exercised or not. *Alberto vs. De los Santos et al.*, CA-G.R. No. 5741-R, promulgated July 28, 1953.

ID.; RENTS AND PROFITS PENDING REDEMPTION. — The buyer at the auction sale is not entitled to receive the rents bought, except where the property is held by the tenant. But even then said purchaser is bound to credit such rents and profits "upon the redemption money to be paid." Thus, he becomes a debtor for those rents and profits, in relation to the owner of the property, who, in turn, is his debtor for the amount, either of the judgment (if the buyer is the judgment creditor), or of the price paid at the execution sale, with interest thereon at the rate of 1% per month, which, by the way, clearly indicates that buyer does not own the property and has no right to appropriate the fruits thereof, prior to the expiration of the period of redemption. *Alberto vs. De los Santos et al.*, CA-G.R. No. 5741-R, promulgated July 28, 1953.

ID.; EXECUTION SALE; COMPENSATION IN CASE OF REDEMPTION. — The conditions essential to compensation being, accordingly, present (see Articles 1278, 1279 and 1290, Civil Code of the Philippines), the same takes place and the obligations involved are extinguished to the extent of the concurrence thereof. *Alberto vs. De los Santos et al.*, CA-G.R. No. 5741-R, promulgated July 28, 1953.

ID.; DEMAND FOR ACCOUNTING OR AN OFFER TO REDEEM UNNECESSARY. — The theory of the lower court, to the effect that a demand for accounting or an offer to redeem must be made before the expiration of the period of redemption, as a prerequisite to the compensation, is borne out, neither by the provisions of the Civil Code concerning compensation nor by those of the Rules of Court. What is more, said theory has been impliedly, but, clearly, rejected by the Supreme Court in the case of Syquia vs. Jacinto (60 Phil. 861). *Alberto vs. De los Santos et al.*, CA-G.R. No. 5741-R, promulgated July 28, 1953.

CORPORATION LAW; WHEN THE JURIDICAL PERSONALITY OF A CORPORATION MAY BE DISREGARDED. — While, normally, courts regard that entity, they disregard it "to prevent injustice, or the distortion or hiding of the truth, or to let in a just defense" (Fletcher, *Cyclopedia of Corporations*, Permanent Edition, pages 139-140), and also when "the corporation is the mere alter ego or business conduit of a person (Idem, page 136). It is also well-settled that, although a corporation does not lose its entity or sepa-

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Pepsi-Cola Bottling Co., versus Almeda et al., Cases Nos. 679-(1) & 679-V (2), Judge Yanson.

1. ILLEGAL STRIKE; ITS EFFECTS ON THE EMPLOYMENT STRIKERS. — As of the time the order declaring the strike illegal, has become final, the relationship between management and the strikers, *ipso facto*, is terminated. Since the workers were not dismissed, but, by operation of law, they lost their right to return to work by reason of their own acts, the relationship of the parties may be again renewed if and when a new contract of employment is entered into.

2. IBID; WHO ARE RESPONSIBLE THEREOF. — When a strike is declared illegal because of violence committed by some of the strikers, all the strikers, not only those who committed the illegal acts in furtherance of the strike, must be held responsible thereof.

Atty. Vicente J. Francisco for petitioner. *Attys. Cid, Rafael, Villaluz* for respondents.

RESOLUTION

Both parties filed a motion each for the reconsideration of the order of the trial court, dated June 12, 1953, the dispositive portion of which reads as follows, to wit:

"WHEREFORE, in order to restore and maintain the status quo provided by Section 19, the Company is hereby ordered to reinstate in the meanwhile the said thirty-two (32) laborers, without back pay, considering that the employer offered re-employment, although temporary in nature; and to submit to this Court the names of the strikers who committed the illegal acts in furtherance of the strike, for proper action."

The facts upon which this order was based are: On March 12, 1953, respondents presented to the company president, J. P. Clarkin, certain labor demands (Exhibit "A"). They were, thereafter, invited to a conference by Management (Exhibit "B") but the parties, however, did not meet until Mr. Clarkin left the Philippines on April 12, 1952. On April 23, 1952, new demands were presented by respondents to Mr. J. Pascual, Treasurer of the Company, giving the Management two (2) days within which to answer them. The workers, assisted by the Union President and counsel, had, however, agreed to wait, until April 28, 1952, when they were made to understand that the President was out for the reply of Mr. Pascual. The matter of collective bargaining and the grant of the demands of the laborers had to be delayed.

In the meanwhile, the company, on April 30, 1952, filed in the Court a petition, requesting the issuance of an order to enjoin the union from declaring a strike. In the conference before the Court the labor leaders made assurance, after they had manifested that the union did not have any intention of declaring a strike, that they will not declare one. The injunction prayed for was not issued in view of this assurance. On May 3, 1952, new demands consisting of five (5) items, which demands are similar to that presented by the union to the company on April 23, 1952, were presented to the company. These demands were transmitted to the company's President by means of a telegram.

In a general meeting held for the purpose of hearing the report of Mr. Laguian, the members of the union unanimously voted and decided to stage a strike, which, in fact, they declared on May 8, 1952. As a consequence of this strike, the syrup which was already prepared and placed in the tanks of the plant costing P2,000.00, among others, was spoiled; and, on the following day, a picket line was maintained and the employees, brokers, distributors and drivers were, by means of threat, prevented from getting into the premises of the Company. Under these facts, the Court after one hearing, in an order issued, declared the strike not only unjustified, but also illegal. The Court says:

"x x x unjustified because all the strikers know beforehand that Treasurer Pascual had no authority to act on their demands and consequently they should have waited for Clarkin's answer before staging the strike; unjustified, because it was declared after Respondents, through their legitimate representatives, had