

45 Phil. 482

[. December 08, 1923]

VICENTE DIAZ, COMPLAINANT, VS. RUPERTO KAPUNAN, RESPONDENT.

D E C I S I O N

MALCOLM, J.:

This action for malpractice brought by Vicente Diaz against Attorney Ruperto Kapunan, has to do with the conduct of Attorney Kapunan during the legal proceedings which followed the business troubles of Vicente Diaz and Secundino de Mendezona, and particularly relates to the conduct of Attorney Kapunan in civil case No. 2098 of the Court of First Instance of Leyte. The ultimate question on which we would concentrate attention concerns the agreement between Diaz and Kapunan at the time of the sale of the property of Mendezona, whereby Kapunan, on the promise of Diaz to pay him P1,000, agreed to desist from further participation in the sale, all in alleged violation of article 1459 of the Civil Code and article 542 of the Penal Code.

Omitting the irrelevant matter interjected into this case, the principal facts of record are the following:

In 1917, Vicente Diaz and Secundino de Mendezona formed a partnership and entered into extensive business transactions in the Province of Leyte. The capital of the partnership was P380,000. Unfortunately, however, the business failed to prosper, with the result that on liquidation, it was found to have suffered a loss of P67,000. When Diaz and Mendezona came to settle up their affairs, they eventually formulated a document of sale and mortgage in which Mendezona recognized a debt in favor of Diaz in the sum of P80,000 and an additional sum of P10,000 owing to Diaz, laid upon the *hacienda*

“Mapuyo,” and to be paid within the term of one year. When the year had expired Mendezona was not to be found and his family was unable to meet the payment. There followed the usual proceedings for foreclosure and sale, which, after considerable delay, resulted in the *hacienda’s* being offered for sale at public auction.

At the time fixed for the sale, December 23, 1922, there appeared Vicente Diaz, accompanied by his lawyer Emilio Benitez, and Attorney Ruperto Kapunan. Luis Velarde, the deputy sheriff of Leyte, is authority for the statement that Kapunan told him that he, Kapunan, was ready to bid on the property up to P16,000 in order to assist the Mendezona family which was in financial straits. At any rate, the bidding was opened by Kapunan offering P12,000 for the property and with Diaz and Kapunan raising the bids until finally Diaz offered P12,500. There the bids stopped on account of Diaz and Kapunan entering into the agreement, of decisive importance, which we next quote in full:

“We,
Vicente Diaz and Ruperto Kapunan, both being the bidders at the auction held for the sale of the properties of Secundino Mendezona, do hereby agree that Don Ruperto Kapunan should withdraw his bid and refrain from bidding at the said auction as he does hereby withdraw his bid, and in consideration thereof, the said Mr. Diaz offers him a premium of one thousand pesos (P1,000) which, out of consideration to said Don Vicente Diaz, Mr. Kapunan accepts and has, for this reason, refrained from bidding in competition with said Mr. Diaz.

“Tacloban, Leyte, December 23, 1922.

(Sgd.)

“V.
DIAZ.

(Sgd.) RUPERTO
KAPUNAN.”

Following
the termination of the sheriff’s sale, Diaz on December 26, 1922, gave Kapunan P500 of the P1,000 mentioned in the above quoted document. Diaz further followed the usual procedure to take over the property of Mendezona pursuant to his bid of P12,500, which covered the amount of

the mortgage with its accumulated interest and with the judicial expenses.

Although it was on December 23, 1922, that Diaz and Kapunan entered into the agreement, Diaz could only wait until January 4, 1923, following, to lay before this court charges against Attorney Kapunan for alleged unprofessional conduct. Undoubtedly, before Kapunan had knowledge of the disbarment proceedings, on January 10, 1923, he presented a motion in the Court of First Instance of Leyte asking that he be permitted to retain the P500 in question, in part payment of his professional fees. Later, on February 4, 1923, when Kapunan must have had knowledge of the disbarment proceedings, he filed another motion, withdrawing his former motion and asking the court to permit him to turn over the P500 to Diaz, which Judge Causing refused to do on the ground that it was a personal matter. Nevertheless, on July 10, 1923, the clerk of the Court of First Instance of Leyte handed the P500 to Diaz who, in turn, receipted for that amount.

From correspondence, it further is evident that the family of Mendezona was led to believe that the P500 would shortly be sent them. Without doubt, the Mendezona family would have been gratified to receive even the P500 pittance out of the business wreck in Leyte of the senior Mendezona.

During much of the time here mentioned, Kapunan was the attorney of Mendezona. Kapunan was given extensive authority by the letter of Mendezona of April 12, 1919. When Kapunan took part in the sale, it must be assumed that he was bidding in representation of his client and for the benefit of the client.

It remains to be said that following the presentation of the charges against Attorney Kapunan in this court, he was given an opportunity to answer, and the usual investigation of his professional conduct was made by the provincial fiscal of Leyte acting under the supervision of the Attorney-General. From the report of the fiscal, indorsed by the Attorney-General, three charges seem to have been considered. The first

two, relating to Kapunan's attempt to represent both parties in the case, and to molest and disturb Diaz by frivolous motions, the law officer of the Government finds not substantiated; and with this conclusion we fully agree. The third charge is more serious and has to do with Kapunan having intervened in the manner in which he did in the sale of the property of his client Mendezona. The Attorney-General is of the opinion on this point that the facts constitute a flagrant violation of the provisions of article 1459 of the Civil Code and article 542 of the Penal Code. "In view thereof, it is recommended that corrective measures commensurate with the irregularity committed by Attorney Kapunan, be taken against him."

Article 1459 of the Civil Code was held in force in the case of *Hernandez vs. Villanueva* ([1920], 40 Phil., 775). It provides that the following persons, naming them, "cannot take by purchase, even at a public or judicial auction, either in person or through the mediation of another." The provision contained in the last paragraph of said article is made to include lawyers, with respect to any property or rights involved in any litigation in which they may take part by virtue of their profession and office. We do not believe this article has been infringed by the respondent because he has not purchased property at a public or judicial auction and because his participation in the auction was in representation of his client. It has been held that an execution sale to the attorney of the defendant is not unlawful if made in good faith, with the consent of the client, and without any purpose of defrauding the latter's creditors. (2 R. C. L., 1011; 1 Thornton on Attorneys at Law, pp. 298, 299; *Smith vs. Smith* [1848], 1 Iowa, 307.)

The more puzzling question relates to the alleged violation by Attorney Kapunan of article 542 of the Penal Code. This article punishes "any person who shall solicit any gift or promise as a consideration for agreeing to refrain from taking part in any public auction." The crime is consummated by the mere act of soliciting a gift or promise for the purpose of abstaining from taking part in the auction. Not permitting our minds to be confused by the varied explanations of Diaz and Kapunan, the document formulated by them and hereinbefore quoted, demonstrates that Kapunan, on the promise of Diaz to pay P1,000,

refrained from further participation in the sale of the property of Mendezona, which is exactly the situation covered by article 542 of the Penal Code.

Public policy discountenances combinations or agreements on the part of bidders at execution sales, the objects and effects' of which are to stifle competition. The courts will consider an agreement between a judgment creditor and one claiming an interest in the thing about to be sold under an execution, that neither shall bid against the other, as void, unless all parties concerned know of the arrangement and consent thereto. Execution sales should be open to free and full competition, in order to secure the maximum benefit for the debtor. Article 542 of the Penal Code is, therefore, a wise provision even though rarely invoked, and should be used to discourage the stifling of bids at judicial sales. (23 C. J., 647; *Packard vs. Bird and Chapman* [1870], 40 Cal., 378; 3 Viada, *Codigo Penal*, 594.)

We conclude that Attorney Kapunan has been guilty of a technical violation of article 542 of the Penal Code. But we cannot adopt the vigorous recommendation of the Attorney-General, for we consider present certain mitigating circumstances which exert an influence in favor of the respondent. In the first place, as disclosed by the judicial records, no reported prosecution under article 542 has been attempted, which is eloquent proof of the practical disuse of this article; and the Spanish jurisprudence, while indicative of the meaning of the article, relies principally on the decisions of the French Court of Cassation. (*See Code of Napoleon*, arts. 222, 223; decisions of the French Court of Cassation of October 16, 1844, May 15, 1857, and January 8, 1863.) In the next place, the complainant Diaz is equally guilty with the respondent Kapunan. And lastly, Kapunan appears to have been acting in good faith for his client, although adopting an irregular procedure, and although attempting to make tardy restitution of the money received by him.

Our judgment is that Attorney Ruperto Kapunan shall stand reprimanded and that the complainant, Vicente Diaz, shall immediately return to the clerk of the Court of

. December 08, 1923

First Instance of Leyte the P500 received by Diaz from the clerk and receipted for by Diaz, and the clerk of court shall transmit the P500 to Secundino de Mendezona or, in case of his absence, to Miss Carmen de Mendezona. Costs shall be taxed in accordance with the provisions of the Code of Civil Procedure. So ordered.

Johnson, Avanceña, Villamor, Ostrand, and Johns, JJ., concur.

Romualdez, J., did not take part.

Date created: June 10, 2014