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[ G.R. No. L-5684. January 22, 1954 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, ANTONIO ESPADA, OFFENDED-PARTY-APPELLEE, VS. PELAGIO MOSTASESA AND PAULINO DUMAGAT, ACCUSED AND APPELLANTS.**

**D E C I S I O N**

**LABRADOR, J.:**

In the above entitled criminal case, accused-appellants were found guilty of the crime of coercion and were sentenced by the Court of Appeals, as follows:

“\* \* \* the penalty is increased to 4 months and 1 day of *arresto mayor*, and that appellant should also be sentenced either to return the articles in question to the complainant or to indemnify him in the sum of P632, with subsidiary imprisonment in case of insolvency, \* \* \*.”

When the case was returned to the Court of First Instance for the execution of the above sentence, said court issued an order of execution for P600, the value of two bales of tobacco obtained by the accused from the offended party. The provincial sheriff levied upon certain real properties of the accused Paulino Dumagat to secure the payment thereof, notwithstanding the fact that in compliance with the judgment, the accused had delivered to him (the sheriff) two bales of tobacco. So the accused presented a motion in court praying that the order of execution be set aside. The offended party opposed the petition, and the court sustained this opposition, denying the petition to set aside the order. Against this order of denial, the accused have

prosecuted this appeal.

In their brief, the accused claim that tobacco is a fungible thing and that, in accordance with article 1953 of the Civil Code, the obligation of one who receives money or fungible things is to return to the creditor the same amount of the thing owed of the same kind or species and quality.

The civil liability of the accused-appellants, in the case at bar, is not governed by the Civil Code, as contended, but by articles 100-111 of the Revised Penal Code. In accordance therewith, the sentence is for the return of the very thing taken, *restitution*, and if this can not be done, for the payment of P600 in lieu thereof, *reparation*.

This amount represents the value of the two bales of tobacco taken, at the time of the taking, and this value was fixed by the court presumably in accordance with the evidence adduced during the trial.

The purpose of the law is to place the offended party as much as possible in the same condition as he was before the offense was committed against him. So if the crime consist in the taking away of his property, the first remedy granted is that of restitution of the thing taken away. If restitution can not be made, the law allows the offended party the next best thing, reparation. The Spanish jurist Viada, commenting on this provision of the law said:

“En las causas por robo, hurto, etc., en que no hayan sido recuperados durante el proceso los objetos de dichos delitos, debe condenarse a los reos a su restitucion, o, en su defecto, a la indemnizacion correspondiente en el cantidad en que hayan sido valorados o tasados por los peritos; \* \* \*.” (3 Viada 6).

Reparation may not be made by the delivery of a similar thing (same amount, kind or species and quality), because the value of the thing taken may have decreased since the offended party was deprived thereof. Reparation, therefore, should consist of the price of the thing taken, as fixed by the court (article 106, Revised Penal Code).

In the case at bar, the court considered the payment of P600 as the next best thing, if the property taken could not be returned. No valid objection can be raised against this decision; money is the standard of value, and, except in financial crises, it does not fluctuate in value as much as merchandise or things, especially those bought and sold in the ordinary course of commerce. In any case, the judgment of the Court of Appeals ordering restitution, or the payment of the value of the property taken, is now final and executory and can no longer be subject to modification.

The appeal is hereby dismissed, with costs against accused-appellants. So ordered.

*Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.*

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