

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. FROILAN LAGRIMAS, ACCUSED, HEIRS OF PELAGIO CAGRO, HEIRS-APPELLANTS, MERCEDES AGUIRRE DE LAGRIMAS, MOVANT-APPELLEE.

G.R. No. L-25355. August 28, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

The Civil Code, under the conditions therein specified, recognizes the liability of the conjugal partnership for fines and indemnities imposed upon either husband or wife "after the responsibilities enumerated in article 161 have been covered," in the absence of any separate property of the offending spouse or its insufficiency.[1] How such an obligation "may be enforced against the partnership assets" is the question, one of first impression, raised in this appeal from a lower court order, based on the assumption of the total exemption of the conjugal partnership from the liability thus incurred, prior to the stage of liquidation. The result was to set aside the preliminary attachment and thereafter the writ of execution in favor of the heirs of the murdered victim, appellants before us, the judgment against the accused imposing not only the penalty of reclusion perpetua but also the indemnification to such heirs having attained the status of finality. In view of the failure, apparent on the face of the appealed order, to respect what the Civil Code ordains, we reverse and remand the case for further proceedings.

The brief of appellants, the heirs of Pelagio Cagro, the murdered victim, discloses that on February 19, 1960 an information was filed against the accused, Froilan Lagrimas, for the above murder committed on February 15, 1960 in Pambujan, Samar. Thereafter, appellants as such heirs, filed on February 27, 1960 a motion for the issuance of a writ of preliminary attachment on the property of the accused, such motion being granted in an order of March 5, 1960. After trial, the lower court found the accused guilty of the crime charged and sentenced him to suffer the penalty of reclusion perpetua and to indemnify the appellants as such heirs in the sum of P6, 000. 00 plus the additional sum of P10, 000.00 in the concept of damages, attorney's fees and burial expenses. An appeal from the judgment was elevated to this Court by the accused but thereafter withdrawn, the judgment, therefore, becoming final on October 11, 1962.

A writ of execution to cover the civil indemnity was issued by the lower court upon motion of appellants. A levy was had on eleven parcels of land in the province declared for tax purposes in the name of the accused. The sale thereof at public auction was scheduled on January 5, 1965 but on December 29, 1964 the wife of the accused, Mercedes Aguirre de Lagrimas, filed a motion to quash the writ of attachment as well as the writ of execution with the allegation that the property levied upon belonged to the conjugal partnership and therefore could not be held liable for the pecuniary indemnity the husband was required to pay. The then judge of the lower court granted such motion declaring null and void the order of attachment and the writ of execution, in accordance with Article 161 of the, new Civil Code. Another judge of the same lower court set aside the above order, sustaining the legality of the preliminary attachment as well as the writ of execution. Thereafter, upon appellee filing a motion for the reconsideration of the above order giving due course to the writ of execution, a third judge, then

presiding over such court, the Hon. Ignacio Mangosing, revived the original order of March 5, 1960, declaring such attachment and the writ of execution thereafter issued as null and void.

This order of August 7, 1965, now on appeal, was premised on the following considerations: "It can be readily seen from the above quoted provisions of law that only debts contracted by the husband or the wife before the marriage, and those of fines and indemnities imposed upon them, may be enforced against the partnership assets after the charges enumerated in article 161 have been covered. So that, as long as the obligations mentioned in said article 161 have not been paid, the assets of the partnership cannot be made to answer for indemnities like the one being sought to be enforced in the instant case. And, before the obligations enumerated in said article 161 can be paid, the conjugal partnership properties should first, by necessity, be liquidated, and liquidation can take place only after the dissolution of the partnership thru the occurrence of any of the causes mentioned in article 175 of the same Code, one of which is death of one of the spouses. Since both are still living there can not be any dissolution, imprisonment for life of the husband notwithstanding, in the absence of, a judicial separation of property properly decreed in accordance with the provisions of article 191 thereof. Moreover, the fines and indemnities sought to be charged against the financial properties of the accused and his wife are not such debts and obligations contracted by said accused for the benefit of the conjugal partnership." [2]

The conclusion arrived at by Judge Mangosing follows: "We sympathize with the predicament of the widow and other heirs of the deceased Pelagio Cagro, but the law is clear on the matter. The indemnities adjudged by the Court in their favor may only be charged against the exclusive properties of the accused if he has any, or against his share in the partnership assets after liquidation thereof if any still remains after the payment of all the items' enumerated in article 161 of the said Civil Code." [3]

Hence this appeal, the heirs of Pelagio Cagro assigning as sole error the quashing and annulling of the writs of attachment and execution aforesaid. As stated at the outset, we find the appeal meritorious.

The applicable Civil Code provision [4] is not lacking in explicitness. Fines and indemnities imposed upon either husband or wife "may be enforced against the partnership assets after the responsibilities enumerated in article 161 have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; * * *." It is quite plain, therefore, that the period during which such a liability may be enforced presupposes that the conjugal partnership is still existing. The law speaks of "partnership assets". It contemplates that the responsibilities to which enumerated in Article 161, chargeable against such assets, must be complied with first. It is thus obvious that the termination of the conjugal partnership is not contemplated as a prerequisite. Whatever doubt may still remain should be erased by the concluding portion of this article which, provides that "at the time of the liquidation of the partnership such spouse shall be charged for what has been paid for the purposes above-mentioned."

What other conclusion can there be than that the interpretation placed upon this provision in the challenged order is at war with the plain terms thereof? It cannot elicit our acceptance. Nor is the reason for such a codal provision difficult to discern. It is a fundamental postulate of our law that every person criminally liable for felony is also civilly liable. [5] The accused, Froilan Lagrimas, was, as noted, found guilty of the crime of murder and sentenced to reclusion perpetua as well as to pay the indemnification to satisfy the civil liability incumbent upon him. If the appealed order were to be upheld, he would be in effect exempt therefrom, the heirs of the offended party being made to suffer still further.

It would follow therefore that the Civil Code provision, as thus worded, precisely minimizes the possibility that such additional liability of an accused would be rendered nugatory. In doing justice to the heirs of the murdered victim, no injustice is committed against the family of the offender. It is made a condition under this article of the

Civil Code that the responsibilities enumerated in Article 161 covering primarily the maintenance of the family and the education of the children of the spouses or the legitimate children of one of them as well as other obligations of a preferential character are first satisfied. It is thus apparent that the legal scheme cannot be susceptible to the charge that for a transgression of the law by either husband or wife, the rest of the family may be made to bear burdens of an extremely onerous character

The next question is how practical effect would be given this particular liability of the conjugal partnership for the payment of fines and indemnities imposed upon either husband or wife? In the brief for appellants, the heirs of Pelagio Cagro, they seek the opportunity to present evidence as to how the partnership assets could be made to respond, this on the assumption that the property levied upon does not belong exclusively to the convicted spouse.

In *Lacson v. Diaz*,^[6] which deals with the satisfaction of the debt contracted by husband or wife before marriage by the conjugal partnership, likewise included in this particular article, it was held: "Considering that the enforceability of the personal obligations of the husband or wife, against the conjugal assets, forms the exception to the general rule, it is incumbent upon the one who invokes this provision or the creditor to show that the requisites for its applicability are obtaining."

Without departing from the principle thus announced, we make this further observation. Considering that the obligations mentioned in Article 161 are peculiarly within the knowledge of the husband or of the wife whose conjugal partnership is made liable, the proof required of the beneficiaries of the indemnity should not be of the most exacting kind, ordinary credibility sufficing. Otherwise, the husband or the wife, as the case may be, representing the conjugal partnership, may find the temptation to magnify its obligation irresistible so as to defeat the right of recovery of the family of the offended party. That result is to be avoided. The lower court should be on the alert therefore in the appraisal of whatever evidence may be offered to assure compliance with this codal provision.

WHEREFORE, the appealed order of August 7, 1965 is set aside and the case remanded to the court of origin for the reception of evidence in accordance with this opinion. With costs against appellee Mercedes Aguirre de Lagrimas.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Castro, Capistrano, Teehankee and Barredo, JJ., concur.
Reyes and Zaldivar, JJ., are on official leave.

[1] According to Article 163 of the Civil Code: "The payment of debts contracted by the husband or the wife before the marriage shall not be charged to the conjugal partnership. Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership. However, the payment of debts contracted by the husband or the wife before the marriage, and that of fines and indemnities imposed upon them, may be enforced against the partnership assets after the responsibilities enumerated in article 161 have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership such spouse shall be charged for what has been paid for the purposes above-mentioned." Article 161 in turn provides: "The conjugal partnership shall be liable for: (1) All debts and obligations contracted by the husband for the benefit of the conjugal partnership, and those contracted by the wife, also for the same purpose, in the cases where she may legally bind the partnership; (2) Arrears or income due, during the marriage, from obligations which constitute a charge upon property of either spouse or of the partnership; (3) Minor repairs or for mere preservation made during the marriage upon the separate property of either the husband or the wife; major repairs shall not be charged to the partnership; (4) Major or minor repairs upon the conjugal partnership property; (5) The maintenance of the family and the education of the children of both husband and wife, and of

legiti-mate children of one of the spouses; (6) Expenses to permit the spouses to complete a professional, vocational or other course."

[2] Record on Appeal, pp. 72-73.

[3] Ibid, pp. 73-74.

[4] Article 163, Civil Code.

[5] Article 100, Revised Penal Code.

[6] G.R. No. L-19346, May 31, 1965.

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