

**ENGRACIO OBEJERA and MERCEDES INTAK,
PLAINTIFFS-APPELLEES, VS. IGA SY, DEFENDANT-APPELLANT.***C.A. No. 34. April 29, 1946*

Ponente: JARANILLA, J.

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By virtue of the appeal filed against the decision of the Court of First Instance of Batangas annulling, on the ground of force and intimidation, the deed of transfer executed on April 19, 1942 (Exh. "Y"), whereby the plaintiffs-appellees agreed to transfer to the defendant-appellant their property assessed at P2,230.00 in case they failed to return to the defendant on December 31, 1942 the balance of P3,697.00 and pieces of jewelry worth P400.00 allegedly deposited with the plaintiffs on January 2, 1942, the above-entitled case was submitted to this court for review.

On December 13, 1941, plaintiffs and defendant sought refuge in the house of Leon Villena, barrio lieutenant of Dalig, Batangas, Batangas, on account of the Japanese invasion of the Philippines.

On January 2, 1942, news having spread that the Japanese forces were closing in and were committing barbarous acts, which gripped the people in terror, plaintiffs and defendant, after consultation with their host Leon Villena, decided to hide their things and valuables in a dug-out belonging to Leon Villena about thirty meters away from his house. The defendant placed in said dug-out her money allegedly amounting to P5,021.00 and jewelry worth P400.00 in her own container; Leon Villena and his wife also placed therein their own things; the plaintiffs also placed their things and money allegedly amounting to P3,000. They did this at night and covered the dug-out with palay belonging to Leon Villena and the defendant Iga Sy.

On February 18, 1942, at the instance of the defendant who desired to move to another house, the plaintiffs and the defendant, together with Leon Villena, among others, went to the dug-out to take out the defendant's container and discovered, to their consternation, that their money and things, except for a few papers, had been lost.

One day during the first week of April, 1942, the defendant reported the loss of her money and jewels, causing the arrest and investigation of Leon Villena, two others and the plaintiff Engracio Obejera, who were released shortly after, except Engracio Obejera who was released only on April 19, 1942 after he, with his wife, had consented to execute Exhibit Y which document was sought to be annulled by the plaintiffs-appellees herein.

The defendant-appellant contends that she deposited her money and jewelry with the plaintiffs and that the plaintiffs, acknowledging liability for the loss of her money and jewelry, offered to transfer property under Transfer Certificate of Title No. 666 and accordingly executed the document in question. On the other hand, the plaintiffs deny the alleged deposit, deny knowledge of the loss of the defendant's money and jewelry, and claim that their consent to the deed of transfer was obtained through violence and intimidation.

After a careful consideration of the nine assignments of error and examination of the evidence of this case, the contention of the defendant-appellant cannot be sustained. The alleged deposit cannot be believed and is contrary

to the ordinary course of nature and the ordinary habits of life (Sec. 69 [z], Rule 123, Rules of Court). Leon Villena, the barrio lieutenant, policemen Ruperto Buenafe and Apolonio Corpus, and Mayor Barberabe were uniform in their testimony that in their investigation of the case, the plaintiff Engracio Obejera admitted that he agreed to keep and be responsible for the defendant's things. It appears, however, that Leon Villena himself and his son Balbino participated in the hiding, and acknowledged liability for the loss, of the defendant's things. Exhibit 1, apparently prepared for the benefit of the defendant, reads as follows, "I, Mercedes Intak, wife of Engracio Obejera who was the companion of chief Leon Villena and the latter's son Balbino Villena in hiding (under ground) the money and jewels of Iga Sy * * *," and mentions nothing regarding the alleged deposit. And the deed of transfer (Exh. "Y") states, "* * * and we, on the other hand, the said Leon Villena and Balbino Villena, because we are responsible for one-half of the money and jewels still unrecovered, I, Leon Villena, promise to transfer to Engracio Obejera my four parcels of land * * *." Now, if Leon Villena and his son had taken part in the hiding of the defendant's money and jewelry and acknowledged responsibility therefor, as evidenced by the said documents, then his claim and the defendant's claim that Engracio Obejera alone agreed to keep and be responsible for those things is false; and it follows that the same claim of policemen Ruperto Buenafe and Apolonio Corpus and Mayor Barberabe are likewise false.

It should also be considered, in this connection, that the dug-out into which the plaintiffs and the defendant hid their money and valuables belongs to Leon Villena; that the plaintiffs and the defendant only sought refuge in his house; that neither the plaintiffs nor the defendant had, therefore, control over, or absolute and exclusive access, to the dug-out, as proved by the fact that when the defendant decided to take her things with her because she was going to move to another house, two days before the discovery of the loss, she asked their host Leon Villena to allow and help her remove her things. Under these circumstances, it is hard to believe that plaintiff Engracio Obejera would assume responsibility over the defendant's things hidden in a place not belonging to him but to Leon Villena, in whose house they only sought refuge and were like guests, and especially at a time when the confusion and fear resulting from the Japanese invasion and fast advance so gripped everyone that nobody could be sure of his own things and even of his life. The more natural conclusion is that plaintiffs and defendant decided to hide their things in the dug-out of their host Leon Villena, thinking it to be the safest and hoping, like many and all others, in those horrible days, that they might recover them, if at all, after the confusion and uncertainty. This, in case Leon Villena himself, as was the most natural thing to happen, did not offer to his guests to take care of their things by hiding them in his dug-out, for he and his son, as a matter of fact, took part in the safekeeping and they even covered the dug-out afterwards with their own palay together with the palay of the defendant; later he had to give his consent and actually accompanied the plaintiffs and the defendant when the latter wanted to take out her things from the dug-out; and then, after the discovery of the loss, he and his son admitted liability for the loss of the defendant's things as evidenced by both exhibits "1" and "Y".

Even if the defendant's theory of deposit were sustained, any obligation arising therefrom was extinguished upon the loss, without the fault of the depositee and under circumstances which at the time were inevitable (Art. 1182 in connection with Art. 1766, and Art. 1105, Civil Code), of the things allegedly deposited. The evidence of record, in this regard, uniformly shows that the plaintiffs were not in any way responsible for the loss of the defendant's money and jewelry. Both Mayor Roman L. Perez and Chief of Police Apolonio Corpus testified that they did not find any evidence that the plaintiffs, who also lost their own valuables, could be in any manner connected with the loss. Even the documents, exhibits "1" and "Y", so much relied upon by the defendant and evidently prepared for her benefit, having been written on the same typewriter, do not state any such connection.

In the case of Lizares vs. Hernaez and Alunan (40 Phil., 981, 991), the Supreme Court held:

" 'In this bailment ordinary care and diligence are required of the bailee and he is not liable for the inevitable loss or destruction of the chattel, not attributable to his fault. If while the bailment continues, the chattel is

destroyed, or stolen, or perishes, without negligence on the bailee's part, the loss, as in other hirings, falls upon the owner, in accordance with the maxim *res perit domino x x.*"

To the same effect are the cases of *Crame Sy Panco vs. Gonzaga* (10 Phil., 646, 648), in which it was held that the death of the carabaos in that case being fortuitous, the obligation of the defendants therein to return them was extinguished as a matter of fact and of law; of *Insular Government vs. Bingham* (13 Phil., 558, 571), in which the defendant therein was absolved from the obligation to deliver to the Government of the Philippine Islands a revolver with ammunition which went down and were lost when his boat was sunk in a storm through no fault of his or his crew; and of *Yap Kim Chuan vs. Tioqui* (31 Phil., 433, 440), in which the defendant therein was held not responsible for the wetting sustained by the goods and merchandise of the plaintiffs therein as a result of the torrential rainfall.

It necessarily follows that the deed of transfer dated April 19, 1942 (Exh. Y), whereby the plaintiffs paid P500.00 to the defendant and further promised to transfer their property under Transfer Certificate of Title No. 666 in case they failed to return on December 31, 1942 the balance of the loss for which, as already stated, they cannot be held liable, is null and void for lack of cause or consideration (Art. 1275, Civil Code). This also applies to the document dated April 11, 1942, exhibit "1".

But these two documents are also null and void upon the other ground that the consent of the plaintiffs therein was obtained through duress and intimidation. The continued detention of the plaintiff Engracio Obejera from April 11 to 19, 1942 by the mayor and policemen of Batangas, in spite of the fact that they had not found any evidence against the plaintiffs; the fact that the municipal policemen applied continuous pressure on the plaintiffs to make good the loss, so that the plaintiff's wife, accompanied by policeman Ruperto Buenafe, had to raise, with much difficulty, the amount of P500.00 to secure the settlement of the case; the fact that Mayor Roman L. Perez, although he never intended to keep the plaintiff Engracio Obejera in detention as he did not believe him guilty at all and did not consider himself empowered to order his detention, did not, nevertheless, release the plaintiff until he and his wife consented to execute the deed of transfer, exhibit "Y", in spite of their continuous protestations of innocence and supplications of mercy; and the fear created in the minds of the plaintiffs that they would be delivered to the Japanese soldiers and suffer cruel punishment, if not death, in their hands, unless they executed the said deed of transfer, all show very clearly the irresistible force and intimidation employed, in this case, to coerce the plaintiffs into executing the said document, rendering it, therefore, null and void for lack of free consent (Arts. 1265, 1267, 1268, Civil Code).

In *Jalbuena vs. Ledesma*, 8 Phil., 601, 605, we held:

"In this instance the signing of an undertaking appears to have been insisted upon by the judge in the presence and at the instance of the opposing party, and to have been expressly made the condition of nonimprisonment, amid circumstances of procedure quite unusual in courts of justice, in a tribunal convened under military auspices and exercising extraordinary powers. So that there would be reason to say that the consent of the surety was obtained by coercion, even if the judge had jurisdiction over the case."

In this connection, we reaffirm what we declared in *Vales vs. Villa*, (35 Phil., 769, 789-790) thus:

"But when his sense, judgment, and his will rebel and he refuses absolutely to act as requested, but is nevertheless overcome by force or intimidation to such an extent that he becomes a mere automaton and acts mechanically only, a new element enters, namely, a disappearance of the personality of the actor. He ceases to exist as an independent entity with faculties and judgment, and in his place is substituted another - the one exercising the force or making use of the intimidation. While his hand signs, the will which moves it is another's. While a contract is made, it has, in reality and in law, only one party to it; and, there being only one party, the one using the force or the intimidation, it is unenforceable for lack of a second party."

The contention that plaintiffs offered to transfer their property in acknowledgment of their responsibility for the loss of her things appears groundless. Aside from the fact that it cannot be believed, as already stated, that there was constituted in this case a deposit, we are of the opinion that such an offer, made by way of compromise in order that plaintiff Engracio Obejera might only escape continued detention and gruelling punishment or even death in the hands of the Japanese soldiers, for the alleged loss for which he was not in any way criminally liable, is not an admission of debt and is not admissible in evidence against the plaintiffs (Sec. 9, Rule 123, Rules of Court).

"An offer to compromise is not a confession of debt and is not admissible in evidence (Code of Civ. Proc, sec. 346). In a criminal case for theft (U.S. vs. Maqui, 27 Phil. Rep., 97) this court said that the weight both of authority and reason sustains the rule which admits evidence of offers to compromise, in criminal cases, but permits the accused to show that such offers were not made under a consciousness of guilt, but merely to avoid the inconvenience of imprisonment or for some other reason which would justify a claim by the accused that the offer to compromise was not in truth an admission of his guilt and an attempt to avoid the legal consequences which would ordinarily ensue therefrom." (U. S. vs. Torres and Padilla, 34 Phil., 994, 999.)

"On account of its consensual character a compromise, to be valid and effective, requires in its performance meeting of the minds in a certain, spontaneous and free way with regard to a definite object or objects; and in case it be shown and proved that there was error, deceit, violence or intimidation, the compromise would be null and void because the consent given therein is null and void through lack of the indispensable requisites for its validity and effectiveness." (Hernandez vs. Barcelon, 23 Phil., 599, 608.)

Wherefore, the decision of the court a quo is hereby affirmed in toto with costs against the defendant-appellant.

So ordered.

Moran, C.J., Paras, Feria, Pablo, and Briones, JJ., concur.

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