

**ISABELA SUGAR CO., INC. AND ENRIQUE J.C. MONTILLA,
PETITIONERS, VS. JUDGE HIGINIO B. MACADAEG, ELIAS JEREOS,
AND HEIRS OF JOSE YULO, NAMELY, ALICIA YULO DE LAUREL,
HERMINIA YULO...**

G.R. No. L-5924. October 28, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a proceeding instituted by petitioners to annul an order of the Court of First Instance of Manila, Hon. Higinio B. Macadaeg, presiding, compelling petitioner Enrique J. C. Montilla to answer certain questions propounded to him by counsel for the respondents herein, in the course of the taking of Montilla's deposition in civil case No. 15273 of the Court of First Instance of Manila, in which the respondents herein are plaintiffs and the petitioners, defendants. In order to understand the issue involved in this proceeding, it is necessary that a brief resume of the circumstances constituting the background of the questions propounded be given.

Petitioner Enrique J. C. Montilla and his relatives own more than 95 per cent of the outstanding shares of stock of the petitioner Isabela Sugar Co., Inc., and respondents Elias Jereos and the heirs of Jose Yulo only about 1/20 of 1 per cent thereof. At the outbreak of the last war the Isabela Sugar Co., Inc. was indebted to the Philippine National Bank in the sum of P591,902.69. During the occupation this amount was increased to P1,097,038.14. Late in the year 1944, Montilla paid this obligation to the bank in Japanese military notes in a private capacity. After the liberation, the bank agreed to recognize as valid the payment made by Montilla to the extent of 60 per cent or P658,222.88. Thereupon, the stockholders resolved in a meeting to recognize this sum as an obligation of the company in Montilla's favor. When the Supreme Court subsequently ruled that payments made during the occupation with military notes were valid, the stockholders approved another resolution recognizing the company's obligation to the full extent of the military notes paid, namely P1,097,038.14.

On December 4, 1951 respondents herein filed the complaint in civil case No. 15273, alleging that Montilla should be allowed to recover from the company only the actual value of the depreciated currency with which he had paid the company's obligation to the bank, i.e., only P18,283.97, and at the same time asked for the taking of his deposition. In the course of the taking of the deposition, two questions were propounded to him, thus:

- Q.—Referring to this property in Pennsylvania, is it not a fact that you bought that property on December 7, 1943 from Alicia Ortiz de Arcega for the price of P65,278.50 in Japanese notes and you sold it on October 11, 1944 to Severo Capiral for P20,000 Japanese money? In other words, you earned and made a profit?
- Q.—Did you pay any war profit tax for the sale of those three properties mentioned by you?

Upon the propounding of the above questions, counsel for Montilla objected. At first the objection seemed to have been only on the ground that they are immaterial, irrelevant and impertinent, but in the discussion that ensued between counsel for one and the other side, it became apparent that it was objected to also on the ground that

"there is nothing therein (complaint) that justifies or permits opposing counsel to ask questions relating to profits that the witness may have made during the war." Upon the submission of the questions for the consideration of the judge before whom the case was pending, under the provisions of section 17, Rule 18 of the Rules of Court, respondent Judge Macadaeg ruled that the first question could be asked because it was not immaterial or irrelevant, but that the second one was incriminatory. Thereupon, counsel for Montilla moved to reconsider the ruling, alleging that the principal objection to the question was that it had a tendency to incriminate the deponent. Judge Macadaeg, however, ruled that it is not incriminatory, and that even if it were so, it was too late for the witness to invoke the constitutional privilege. It is against the two orders of Judge Macadaeg that this proceeding by certiorari is being prosecuted.

When the deposition of a witness is being taken under the provisions of Rule 18 of the Rules of Court, the party objecting to a question claimed to be immaterial or irrelevant may object thereto, but such party can not prevent the witness from answering the question (section 17, Rule 18) because the relevancy or materiality will only be decided upon the trial when the deposition is introduced as evidence (section 29, Rule 18). An exception to this general rule obtains when the questions propounded are annoying, embarrassing, or oppressive to the deponent (section 18, Rule 18, Rules of Court), in which case the matter may be submitted to the trial judge for a ruling, or when the constitutional privilege against self-incrimination is invoked by the deponent or by counsel on his behalf, to enforce the constitutional privilege defined in section 79, Rule 123, Rules of Court, in which latter case also the staying hand of the trial judge may also be demanded. It was under this latter circumstance that the trial judge's orders were issued.

Under the allegation in respondents' answer that Montilla's payment to the bank should be recognized by the company only to the extent of the value of the money paid, respondents' claim that they had the right to ascertain the source of the money with which the payment was made might appear to justify the asking of the first question. The real value of the payment may be gauged by the actual value of the property from the proceeds of whose sale the payment was made. Respondents' theory would therefore seem to be that if the real value of the property that Montilla sold was only P60,000, for instance, even if the payment was actually P200,000, such payment should be credited to him only to the extent of said actual value of P60,000. Under the above theory, the price which Montilla paid for the Pennsylvania property might have some relevancy sufficient to justify its admission as evidence. But as the relevancy of a subject is no ground for its exclusion in a deposition, it is not here necessary to make a ruling thereon.

It is evident, however, that the question as to the price that Montilla paid for the property would have a tendency to incriminate him, within the meaning of section 79 of Rule 123, Rules of Court, even if the question did not contain how much it was sold for and was limited to how much he had bought it for. In analyzing the import and application of the constitutional privilege now subject of the action, Chief Justice Marshall explained that usually a crime or a criminal act may contain two or more elements and that a question would have a tendency to incriminate, even if it tends to elicit only one of said elements:

"Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the Court to be the true sense of the rule that no witness is compellable to furnish any one of them against himself. It is certainly not only a possible but a probable case that a witness, by disclosing a single fact, may complete the testimony against himself, and to every effectual purpose accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. The fact of itself might be unavailing; but all other facts without it would be insufficient. While that remains concealed within his bosom, he is safe; but draw it from thence, and he is exposed to a prosecution. The rule which declares that no man is compellable to accuse himself would most obviously be infringed by compelling a witness to disclose a fact of this description. * * * It would seem, then, that the Court ought never to compel a

witness to give an answer which discloses a fact that would form a necessary and essential part of a crime which is punishable by the laws." (Marshall in Aaron Burr's Trial, Robertsons Rep. I, 208, 244, quoted in VIII Wigmore, p. 355).

In the case at bar, when the disputed question (No. 1) was propounded to the petitioner Montilla, he had already declared that he had sold the property for P200,000, so that if he would answer that he purchased it for P65,278.50, he would be directly admitting having made a profit, which is one of the elements of the offense defined in the War Profit Tax Law (Republic Act No. 55). It is claimed by respondents that the witness is not incriminated because the War Profit Tax Law taxes the increase in the net worth of an individual from December 8, 1941 to February 26, 1945 (section 1, Republic Act No. 55). It is sufficient to state in answer to this contention that if an individual is shown to have paid only P68,000 for property which he had sold for P200,000 and is credited to the full extent of the P200,000 (which in this case witness paid to the bank for his company), he must certainly have been enriched to the extent of the difference or, in the words of the law, his net worth in 1945 resulted in an excess over his net worth in 1941.

It is also contended that even if the question as to the price paid for the Pennsylvania property were incriminating, the privilege was waived when Montilla answered all the questions about the purchase of the property, the date thereof, the price paid, etc. with the answer "I do not remember". We cannot agree to this contention. Witness' invariable answer of "I do not remember" is clearly a refusal to answer, and the privilege is not deemed waived thereby.

It is evident, therefore, that the respondent judge violated the constitutional privilege claimed in this proceeding when he ordered the petitioner Enrique J.C. Montilla to answer the questions propounded to him by counsel for the respondents. The writ must be granted and the orders complained of annulled, and the writ of preliminary injunction issued made permanent. With costs against respondents Elias Jereos and heirs of Jose Yulo. So ordered.

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

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