

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JEAN L. ARNAULT, DEFENDANT AND APPELLANT.

G.R. No. L-4288. November 20, 1952

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In the Court of First Instance of Manila appellant Jean L. Arnault was accused of a violation of section 55 of the National Internal Revenue Code as amplified by section 206 of Revenue Regulations No. 2, in relation to section 121, of the same Code, committed as follows:

"That on or about the 29th day of May, 1950, and for sometime prior thereto, in the City of Manila, Philippines, the said accused, being then the Vice-President of the 'North Manila Development Company, Inc.' and of the 'Associated Estates, Inc.', and duly authorized by resolutions adopted by the respective Boards of Directors of the said two corporations, to act for and represent the same as attorney-in-fact of Ernest H. Burt, a non-resident alien, in the resale of the 'Hacienda de San Juan de Buenavista', in the province of Bulacan, and the 'Hacienda de Tambobong', in the province of Rizal in favor of the Rural Progress Administration, which paid the total sum of P3,500,000 for the said two estates and from which the said accused received for said Ernest H. Burt a total net profit of P1,480,000, the said accused being, therefore, the proper person having the receipt, custody and control or disposal of the said net profit of P1,480,000, subject to income tax, and as such, has the duty under the law to make payment of the corresponding income tax, did then and there wilfully, and unlawfully fail, neglect and refuse, despite repeated demands, to make such payment of the income tax in the amount of P1,089,270 on the said net profit realized by said non-resident Ernest H. Burt in the aforesaid transactions."

In the course of the trial and after five witnesses for the prosecution had testified, the defendant thru counsel asked that he be allowed to withdraw his plea of not guilty and to enter a plea of guilty provided that all previous proceedings had be cancelled and stricken from the record. With the consent of the prosecution, the court granted the request and upon arraignment appellant entered a plea of guilty. Thereafter, he was sentenced thus:

"WHEREFORE, the Court hereby sentences the accused, Jean L. Arnault, to pay a fine of ONE THOUSAND PESOS (P1,000) with subsidiary imprisonment in case of insolvency, to indemnify the Government of the Republic of the Philippines in the sum of ONE MILLION EIGHTY-NINE THOUSAND TWO HUNDRED SEVENTH PESOS (P1,089,270), with subsidiary imprisonment in case of insolvency, and to pay the costs."

From the record of the case we find that the only nonconformity of appellant and his counsel with the above judgment was the indemnity of P1,089,270 with subsidiary imprisonment in case of insolvency. That was to be expected because with defendant's plea of guilty, he must have known that imposition of a penalty was forthcoming, and the penalty of a fine with no prison sentence, excluding of course the indemnity, was relatively light.

However, in the brief for the appellant in support of his appeal, besides assailing the payment of indemnity imposed by the trial court, he also attacks the sufficiency of the information and the applicability of the provisions

of law therein cited. Despite this inconsistency of appellant, we shall proceed to discuss the legal points raised by him.

It is contended that section 121 of the National Internal Revenue Code mentioned in the information is not applicable because it obviously refers to gift taxes, and that what is applicable is section 73 of the same code regarding income tax. We agree to this contention. However, the error in specifying" the wrong provision of law applicable does not vitiate the information. It is a well-settled rule that the real nature of the crime charged in an information or complaint is determined not by the title of the complaint, nor by the specification of the provision of law alleged to have been violated, but by the facts alleged in the complaint or information. (*People vs. Oliveria*, 67 Phil., 427 and the authorities therein cited). The information here clearly mentions and recites the profit realized in the sale of the two estates or haciendas, the income tax due on said profit or income and the failure to pay said income tax. The defendant was therefore sufficiently apprised of the provision of law that he had violated, which violation he admitted in his plea of guilty.

Counsel for the appellant next argues that section 55 of the National Internal Revenue Code mentioned in the information is not applicable. It is true that the first part of said section is not entirely clear, but a careful examination of the whole section particularly the last part shows that what is important in said section and which is applicable in the present case is that the intent of the law particularly Title II of the code under which falls section 55 is that all gains, profits or income of a taxable class shall be charged and assessed with the corresponding tax prescribed by said title, and that said tax may be paid either by the owner of such profit or income or the proper person having the receipt, custody, control or disposal of the same under it which in the present case is the appellant.

It is next contended by appellant that the information describes appellant's role as a mere vice-president of the two corporations—North Manila Development Company, Inc. and the Associated Estates, Inc.—which are the attorneys-in-fact of Burt in the sale of the two estates, and that in holding appellant criminally responsible for failure to pay the corresponding income tax the trial court failed to distinguish between the personality of the two corporations and that of its officers. To dispose of this contention it is sufficient to say that the information clearly alleges that appellant Arnault received the P1,480,000 net profit for Ernest H. Burt. Arnault may have been the vice-president of the two corporations in question but the fact is that he personally received the profit for Burt and under section 55 of the National Internal Revenue Code the income tax on said profit shall be paid by its owner or the person having the receipt, custody, control or disposal of the same. Arnault had such receipt, custody, control or disposal of the money received by him for Burt. That he received this money for Burt but not for the two corporations he clearly admitted in his plea of guilty.

Then appellant argues that since the Internal Revenue Code provides that either the owner of the profit or his agent who receives such profit or gain are liable for the payment of the income tax and inasmuch as the Collector of Internal Revenue is given the choice and discretion to hold criminally responsible and prosecute either one of them for the evasion of the payment of the income tax, this constitutes a delegation of legislative powers which is against the Constitution. We are unable to agree to this contention. It is the Legislature that declares who is or who are responsible for the payment of the income tax under a given set of facts or circumstances. The Collector of Internal Revenue merely executes the law and under the circumstances, determines which of the two—the owner or the agent—should and could have paid the income tax because he had the receipt, custody, control or disposal of the income or profit. In the present case, Burt was not in the Philippines. He did not have the receipt, custody, control or disposal of the profit of P1,480,000. It is not known if he ever received any part of this amount; but the appellant had that amount in his hands and under the law he was charged with the duty of making a return of said income and pay the corresponding income tax for the owner of the income or profit in whose behalf according to

the information he received the same. In selecting appellant Arnault as the person criminally responsible, and to be prosecuted, the Collector of Internal Revenue was merely enforcing and carrying out and executing the law on income tax promulgated by the Legislature. As was said by this court in the case of *Rubi vs. Provincial Board of Mindoro*, 39 Phil., 660:

"The rule has nowhere been better stated in the early Ohio case decided by Judge Ranney, and since followed in a multitude of cases, namely: 'The true distinction therefore is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.' (Cincinnati, W. & Z. R. Co. vs. Comm'rs, Clinton County [1852], 1 Ohio St., 88.) Discretion, as held by Chief Justice Marshall in *Wayman vs. Southard* [1825], 10 Wheat., 1) may be committed by the Legislature to an executive department or official. The Legislature may make decisions of executive departments or subordinate officials thereof, to whom it has committed the execution of certain acts, final on questions of fact. (U. S. vs. *Kinthead* [1918], 248 Fed., 141.) The following tendency in the decisions is to give prominence to the 'necessity' of the case."

It is next contended in behalf of the appellant that the information in this case is fatally defective in that it does not allege or state the date and year when the profit was earned; neither does it state when the two haciendas were sold by appellant or Burt. The basis of this argument is that according to sections 45 and 51 of the National Internal Revenue Code, the return for and payment of income tax for the income of the preceding calendar year should be made on or before March 1st and on or before the 15th day of May, respectively, following the close of the calendar year, and that the income for whose tax appellant is being charged in 1950 should have been earned the preceding year of 1949, a statement and allegation absent in the information. This objection by appellant is too technical. The purpose of an information is to inform defendant of the facts and acts constituting the offense charged, and as long as from the allegations of the whole information the defendant is apprised of said facts and acts, the information is complete and not defective. Section 45 of the National Internal Revenue Code provides that the income tax return shall be filed on or before the first day of March of each year covering the income of the preceding calendar year and section 51 of the same code provides that payment of income tax shall be made on or before the 15th day of May following the close of the calendar year. The information alleges that on or about the 29th day of May, 1950 and for sometime prior thereto, the Rural Progress Administration paid P3,500,000 from which the defendant received for Burt a net profit of P1,480,000, thereby subjecting him to the payment of the corresponding income tax which he refused and neglected to pay despite repeated demands made upon him. From all this, it may fairly be inferred that the two estates were sold before May 29, 1950; so was the profit on the sale received by defendant on or before that date. The demand for payment of the income tax was also made before that date. The sale of the two estates and the receipt of the profit or income by defendant could not have been for any other year except 1949 for the reason that as already stated, the return and payment of income tax is required to be made on or before the first day of March and on or before the 15th day of May, following the close of the calendar year within which the income was received. But even if the sale and receipt of the income had taken place in another year, say 1948 or 1947, defendant could still be held liable under section 73 of the same code and if defendant had any doubt as to the exact time and year within which said income was received, he could have asked that the information be made clear. The best proof that he understood the allegations of the information is that with the aid of his counsel and after five witnesses for the prosecution had testified, he pleaded guilty to the charge.

Lastly, counsel for appellant contends that the trial court erred in sentencing him to indemnify the Government in the amount of the tax due, namely, P1,089,270, with subsidiary imprisonment in case of insolvency. We have carefully studied this phase of the appeal and we agree with the appellant's counsel as well as the Solicitor General who agrees with him that there is no legal sanction for the imposition of payment of this indemnity. It

should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. While section 73 of the National Internal Revenue Code provides for the imposition of the penalty for refusal or neglect to pay income tax or to make a return thereof, by imprisonment or fine, or both, it fails to provide for the collection of said tax in criminal proceedings. As well contended by counsel for appellant, Chapters I and II of Title IX of the National Internal Revenue Code provide only for civil remedies for the collection of the income tax, and under section 316, the civil remedy is either by distraint of goods, chattels, etc. or by judicial action. It is a commonly accepted principle of law that the method prescribed by statute for the collection of taxes is generally exclusive, and unless a contrary intent can be gathered from the statute, it shall be followed strictly. (3 Cooley, Law on Taxation, section 1326, pp. 621-623).

"SEC. 985. Exclusiveness of Statutory Remedy.—The rule as frequently stated is that since taxes are not debts, but obligations imposed by statute, when the status provide a remedy for the collection of taxes under given circumstances, payment of taxes must be enforced in the manner thus provided, and the courts will not lend their aid to the collection of taxes in any other form of action. In other words, where the statute which creates the tax provides a special remedy for its collection, that remedy is exclusive." (15 Am. Jur., 836).

Moreover, section 353 of our Internal Revenue Code throws some light on the intention of the Legislature on this point. It reads thus:

"SEC. 353. Subsidiary penalty.—If the person convicted for violation of any of the provisions of this Code has no property with which to meet the fine imposed upon him by the court, or is unable to pay such fine, he shall be subject to a subsidiary personal liability at the rate of one day for each two pesos and fifty centavos, subject to the rules established in article 39 of the Revised Penal Code." (*Italics supplied.*)

If the law really contemplated the inclusion of indemnity in a conviction for violation of the provisions of the code, particularly the income tax law, the above cited section 353 could have easily provided for subsidiary imprisonment for failure to pay any indemnity included in the decision of conviction. The absence of such provision is clearly indicative of the desire of the Legislature to exclude the collection and payment of a tax from the criminal prosecution; and leave it to the civil remedies provided in the code, which are quite adequate and effective, particularly that by distraint.

Article 100 of the Revised Penal Code provides that every person criminally liable for a felony is also civilly liable. Article 10 of the same Code although providing that offenses punishable under special laws are not subject to the provisions of said code, equally says that the Revised Penal Code shall be supplementary to such laws, unless the latter should specially provide the contrary. Under said article 10, this court in some cases like homicide thru reckless negligence committed in violation of the Revised Motor Vehicle Law (Act No. 3932) which is a special law, has applied the provisions of the Penal Code particularly article 100 as regards the payment of indemnity and subsidiary imprisonment in case of non-payment of said indemnity.^[1] However, the principle and the philosophy underlying the civil liability of one violating a punishable act under the Penal Code are wholly different from one incurring criminal liability under the Internal Revenue Code. Under the Penal Code the offender incurs civil liability because of his criminal act. In other words, the civil obligation flows from and is created by the criminal liability. Under the Income Tax Law, however, it is the reverse. A person convicted incurs criminal obligation because of failure to fulfill his civil obligation. The civil obligation to pay tax precedes the criminal liability. This lack of similarity or analogy between criminal liability under the Revised Penal Code and the criminal liability under the Income Tax Law is another reason for not imposing the payment of civil indemnity in case of a violation of the Income Tax Law.

We therefore hold that unless expressly provided by law, conviction for failure or neglect to pay a tax does not include payment of indemnity to the State in the amount of the tax not paid. So, it was grave error on the part of

the trial court to sentence appellant to pay this indemnity; so was that part of the decision imposing subsidiary imprisonment in case of insolvency in the payment of the indemnity. In this connection, and to avoid any doubt, we may say that the Government is free to avail itself of the civil remedies provided by the Internal Revenue Code to collect the tax herein involved.

In his conclusion and recommendation, the Solicitor General holds that considering the large amount of the tax delinquency involved, appellant should have been sentenced to a higher penalty which should include both fine and imprisonment. We have given considerable thought to his recommendation. That the tax delinquency is enormous, there is no question. That the penalty should be proportionate is also reasonable. In our deliberations, someone suggested that in imposing only a fine, without imprisonment, the trial court exercised its discretion, which discretion should not be disturbed unless it be found that there had been abuse thereof. Others however believe that it is highly possible that the trial court may have thought that by sentencing appellant to pay the indemnity of P1,089,270 with subsidiary imprisonment in case of insolvency, the offense has been sufficiently punished, which indemnity and subsidiary imprisonment we are now excluding from the decision. After more or less extensive deliberations the great majority believe that because of the relatively large amount of the tax delinquency, the penalty should be increased as recommended by the Solicitor General. In addition to the fine of P1,000 with subsidiary imprisonment in case of insolvency, we hereby sentence appellant to three (3) months imprisonment, with the accessories of the law.

With the modification of the decision appealed from by suppressing that portion regarding the payment of indemnity in the amount of P1,089,270 and subsidiary imprisonment in case of insolvency in the payment thereof, and the imposition of three months imprisonment, said decision is hereby affirmed, with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Jugo, Bautista Angelo, and Labrador, JJ., concur.

[1] *People vs. Moreno*, 60 Phil., 713, decided by a divided court.

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