

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABELARDO SUBIDO, DEFENDANT-APPELLANT.

*G.R. No. L-21734. September 05, 1975*

Ponente: MARTIN, J.

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### MARTIN, J.:

Appeal on questions of law from the Orders of the Court of First Instance of Manila in Criminal Case No. 23041. entitled People of the Philippines versus Abelardo Subido, denying defendant-appellant's motion for the cancellation of his appeal bond and declaring him to suffer subsidiary imprisonment in case of failure to pay the fine and indemnity.

From an adverse decision in said case, the dispositive portion of which reads:

"From the facts above stated the Court finds the accused guilty of libel and he is hereby sentenced to three (3) months of arresto mayor with the accessory penalties of the law. to pay a fine of five hundred (P500.00) pesos, to indemnify the offended party, Mayor Arsenio Lacson, in the sum of ten thousand (P10,000.00) pesos, with subsidiary imprisonment in case of insolvency, and to pay the costs."

defendant-appellant Abelardo Subido has taken an appeal to the Court of Appeals, which modified the said judgment in the following tenor:

"However, in the application of the penalty provided for the violation of the libel law, the courts are given discretion of whether or not both fine and imprisonment are to be imposed upon the offender. In the instant case, we believe, considering the attendant circumstances of the case, that the imposition of the corresponding penalty should be tempered with judicial discretion. For this reason we impose upon accused-appellant a fine of P500.00.

Similarly, the amount of the indemnity to be paid by appellant to the offended party is reduced to P5,000.00.

WHEREFORE, with the modifications above indicated, the appealed judgment is hereby affirmed at appellant's costs."

In due time the case was remanded to the trial court for execution of the judgment.

On September 27, 1958, the accused-appellant filed a motion with the trial court praying that (1) the court enter of record that the judgment of the Court of Appeals has been promulgated and (2) that his appeal bond be cancelled. Accused-appellant argued that although he could not pay the fine and the indemnity prescribed in the judgment of the Court of Appeals, he could not be required to serve the amount of fine and indemnity in the form of subsidiary imprisonment because said Judgment did not expressly and specifically provide that he should serve the fine and indemnity in form of subsidiary imprisonment in case of insolvency.

On December 20, 1958, upon motion of the offended party the lower court issued a writ of execution of its judgment. However the writ was returned unsatisfied.

On February 25, 1959, the Sheriff of the City of Manila armed with an alias writ of execution, attached "whatever rights, interests, or participation, if any, defendant Abelardo Subido may have" in a two-storey building situated at No. 2313 Suter, Sta. Ana, Manila, covered by Transfer Certificate of Title No. 54170 of the Register of Deeds of Manila. However, it turned out that the property levied upon by the sheriff was registered in the name of Agapito Subido who, upon learning of the levy, immediately filed a Third party claim with the sheriffs office and instituted an action in the lower court (Civil Case No. 41 73 I) to enjoin the Sheriff of Manila from proceeding with the sale of his property. In the meantime the lower court issued a writ of preliminary injunction enjoining the sale of property levied upon by the sheriff.

On December 10, 1959, the offended party registered its opposition to accused-appellant's motion for cancellation of appeal bond and asked the lower court to require accused-appellant to pay the fine of P500.00 and the indemnity of P5,000 00 with subsidiary imprisonment in case of insolvency.

On December 19, 1959, the lower court issued an order denying the accused-appellant's motion and declared that in accordance with the terms of the judgment of the Court of Appeals the accused-appellant has to suffer subsidiary imprisonment in case he could not pay the fine and indemnity prescribed in the decision. Accused-appellant moved for reconsideration, but the same was denied on December 26, 1959.

Hence this appeal from the lower court's orders of December 19 and 26.

In his appeal, accused-appellant presses that the lower court erred.

## I

"IN HOLDING THAT UNDER THE TERMS OF THE DECISION OF THE COURT OF APPEALS ACCUSED-APPELLANT IS LIABLE TO SUBSIDIARY IMPRISONMENT IN CASE OF INSOLVENCY."

## II

"IN NOT HOLDING THAT THE CIVIL LIABILITY OF ACCUSED-APPELLANT HAS BEEN SATISFIED WITH THE ATTACHMENT SECURED BY THE OFFENDED PARTY."[1]

The threshold issue in this appeal is whether or not the accused-appellant can be required to serve the fine and indemnity prescribed in the judgment of the Court of Appeals in form of subsidiary imprisonment in case of insolvency. Under Article 355 of the Revised Penal Code "a libel committed by means, of writing, printing, lithography, engraving, radio, phonograph, paintings, theatrical exhibition, cinematographic exhibition or any similar means, shall be punished by prision correctional in its minimum and medium period or a fine ranging from 200 to 600 pesos or both in addition to the civil action which may be brought by the offended party." It is evident from the foregoing provision that the court is given the discretion to impose the penalty of imprisonment or fine or both for the crime of libel. It will be noted that the lower court chose to impose upon the accused: three months of arresto mayor; a fine of P500.00; indemnification of the offended party in the sum of P10,000.00; subsidiary imprisonment in case of insolvency; and the payment of the costs. On the other hand the Court of Appeals in the exercise of its discretion decided to eliminate the penalty of three (3) months arresto mayor and to reduce the indemnity of P10,000.00 to P5,000.00.

Thus the Court of Appeals resolved:

"However in the application of the penalty provided for in the violation of the libel law, the courts are given discretion of whether or not both fine and imprisonment are to be imposed upon the offender. In the instant case we believe considering the attendant circumstances of the same, that the imposition of the corresponding penalty should be tempered with judicial discretion. For this reason imposed the accused a fine of P500.00.

Similarly, the amount of the indemnify to be paid by appellant to the offended party is reduced to P500.00.

WHEREUPON with the modifications above indicated, the appealed judgment is hereby affirmed at appellant's costs."

To Us it is clear that when the Court of Appeals provided in the concluding portion of its decision:

"WHEREUPON with the modifications above indicated, the appealed judgment is hereby affirmed at appellant's costs."

the alluded modifications could mean no less than the elimination of the three months of *arresto mayor* and the reduction of the indemnity to the offended party, Mayor Arsenio Lacson from P10,000.00 to P5,000.00. All the rest of the punishment remains including the subsidiary imprisonment in case of insolvency. Had the Court wanted to do away with the subsidiary imprisonment in case of insolvency of accused-appellant to pay the fine and the indemnity it would have so expressly provided.

A careful scrutiny of the decision of the trial Court reveals that the clause "with subsidiary imprisonment in case of insolvency" is separated by a comma (,) from the preceding clause" is hereby sentenced to three months of *arresto mayor* with the accessory penalties of the law, to pay a fine of five hundred (P500.00) pesos, to indemnify the offended party, Mayor Arsenio Lacson, in the sum of Ten Thousand Pesos (P10,000.00) pesos." The use of a comma (,) in the part of the sentence is to make "the subsidiary imprisonment in case of insolvency" refer not only to non-payment of the indemnity, but also to non-payment of the fine.

If the lower court intended to make the phrase "with subsidiary imprisonment in case of insolvency" refer to non-payment of indemnity only and not to the non-payment of the fine, it would have omitted the comma (,), after the phrase "to indemnify the offended party, Mayor Arsenio Lacson in the amount of P10,000.00 pesos," so that the decision of the lower court would read:

"From the facts above stated the Court finds the accused guilty of libel and he is hereby sentenced to three (3) months of *arresto mayor*, to pay a fine of five hundred (P500.00) pesos, to indemnify offended party, Mayor Arsenio Lacson, in the sum of ten thousand (P10,000.00) pesos with subsidiary imprisonment in case of insolvency, and to pay the costs."

As thus worded and punctuated there would be no doubt that the lower court would want to make accused-appellant serve the subsidiary imprisonment in case of non-payment of the indemnity only.

Besides, We see no plausible reason why the lower court would want accused-appellant to suffer subsidiary imprisonment in case of insolvency to pay the indemnity only and not to suffer subsidiary imprisonment in case of non-payment of the fine. Accordingly if according to the lower court's decision, the accused-appellant should suffer subsidiary imprisonment in case of insolvency to pay the fine and the indemnity and the only modifications made by the Court of Appeals are to eliminate the three (3) months of *arresto mayor* and to reduce the indemnity to the offended party, Mayor Arsenio Lacson, from P10,000.00 to P5,000.00, then by force of logic and reason, the fine of P500.00, the reduced indemnity of P5,000.00 and the subsidiary imprisonment in case of insolvency should stand.

Fortunately, however, accused-appellant is favored by the retroactive force of Article 39 of the Revised Penal Code, as amended by Republic Act No. 5465 which exempts an accused person from subsidiary imprisonment in case of insolvency to pay his civil liability.[2]

It is a well known rule of legal hermeneutics that penal statutes are to be strictly construed against the government and liberally in favor of the accused.[3] In the interpretation of a penal statute, the tendency is to give it careful scrutiny, and to construe it with such strictness as to safeguard the rights of the defendant.<sup>4</sup> Considering that

Article 39 of the Revised Penal Code, as amended, is favorable to the accused-appellant, the same should be made applicable to him. It is so provided in Article 22 of the Revised Penal Code that:

"Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving sentence."

Thus applying Article 39 of the Revised Penal Code, as amended, to the accused-appellant, he cannot also be required to serve his civil liability to the offended party in form of subsidiary imprisonment in case of insolvency because this is no longer required by the aforesaid article.

Accused-appellant contends that he cannot be made to suffer subsidiary imprisonment because his civil liability has been satisfied with the attachment secured by the offended party on the property of Agapito Subido, wherein he is supposed to have an interest. He therefore argues that until the final determinations of Civil Case No. 7173 1 which Agapito Subido filed to enjoin the Sheriff of Manila from proceeding with the sale of his property, accused-appellant's liability for subsidiary imprisonment cannot attach as the determination of whether the accused is solvent or not is a prejudicial question which must first be determined before subsidiary imprisonment may be imposed.

We cannot agree. Attachment does not operate as a satisfaction of the judgment on civil liability and the accused must suffer subsidiary imprisonment in case of non-payment thereof. Subsidiary imprisonment applies when the offender is insolvent as shown in the present case. There is nothing in the law that before subsidiary imprisonment may attach, there must be prior determination of the question of solvency of the accused. The moment he cannot pay the fine, that means he is insolvent and he must serve the same in form of subsidiary imprisonment. So accused-appellant has to choose to pay the fine or serve in jail.

IN VIEW OF THE FOREGOING except with the modification that accused-appellant may no longer be required to suffer subsidiary imprisonment in case of insolvency to pay the indemnity provided for in the judgment below, the Orders of the lower court dated December 19 and 26, 1959 denying defendant-appellant's motion for cancellation of appeal bond and sentencing him to suffer the subsidiary imprisonment in case of insolvency to pay the fine imposed by said judgment, are hereby affirmed.

### **SO ORDERED.**

Castro, (Chairman), Teehankee, Makasiar, Esguerra, and Mñoz Palma, JJ., concur.

[1] As the errors assigned involved purely questions of law. the Honorable Court of Appeals certified the case to Us. pursuant to Section 17. par. 16. in relation lo Section 31 of the Judiciary Act of 1948.

[2] Art. 39. Subsidiary penalty. — If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each eight pesos, subject to the following rules:

1. If the principal penalty imposed be prison correccional or arresto and fine, he shall remain under confinement until his fine referred in the preceding paragraph is satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the sentence, and in no case shall it continue for more than one year. and no fraction or part of a day shall be counted against the prisoner.
2. When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been prosecuted for a grave or less grave felony, and shall not exceed fifteen

days, if for a light felony.

3. When the principal penalty imposed is higher than prison correccional no subsidiary imprisonment shall be imposed upon the culprit.

4. If the principal penalty imposed is not to be executed by confinement in a penal institution, but such penalty is of fixed duration, the convict, during the period of time established in the preceding rules, shall continue to suffer the same deprivations as those of which the principal penalty consists.

5. The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him from the fine in case his financial circumstances should improve."

[3] U.S. vs. Abad Santos. 36 Phil. 243; People vs. Yu Hai. 99 Phil. 728.

[4] People vs. Ahearn. 196 N.Y. 221. 89 NK 930. 26 LRA (NS) 1153.

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