

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PABLO DE LA CRUZ, DEFENDANT AND APPELLANT.***G. R. No. L-5790. April 17, 1953*

Ponente: BENGZON, J.

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Having retailed a can of milk at ten centavos more than the ceiling price, Pablo de la Cruz was sentenced, after trial, in the court of first instance of Manila, to imprisonment for five years, and to pay a fine of five thousand pesos plus costs. He was also barred from engaging in wholesale and retail business for five years.

In this appeal he argues that the trial judge erred (a) in not holding that the charge was fabricated; (b) in imposing a punishment wholly disproportionate to the offense and therefore unconstitutional and (c) in not invalidating Republic Act No. 509 in so far as it prescribed excessive penalties.

The evidence shows that in the morning of October 14, 1950, Eduardo Bernardo, Jr. went to the defendant's store in Sampaloc, Manila, and purchased from him a six- ounce tin of "Carnation" milk for thirty centavos. As the purchase had been made for Ruperto Austria, who was not in good terms with Pablo de la Cruz the matter reached the City Fiscal's office and resulted in this criminal prosecution, because Executive Order No. 331 (issued by authority of Republic Act No. 509) fixed 20 centavos as the maximum price for that kind of commodity.

The record is now before us, and from a reading thereof, we find it difficult to accept appellant's contention that the charge had no foundation in fact. The People's case has been established beyond reasonable doubt.

And his argument based on the principles of entrapment, may not be upheld, because he was selling to the public, i.e., to anybody who would come to his store to buy his commodities, and no special circumstances are shown to support the claim that he was led or induced to commit the offense.

However, appellant's extensive discussion of his two propositions about the penalty, deserves serious consideration.

Republic Act No. 509 provides in part as follows:

"Sec. 12. Imprisonment for a period of not less than two months nor more than twelve years or a fine of not less than two thousand pesos nor more than ten thousand pesos, or both, shall be imposed upon any person who sells any article, goods, or commodity in excess of the maximum selling price fixed by the President; . . .

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"In addition to the penalties prescribed above, the persons, corporations, partnerships, or associations found guilty of any violation of this Act or of any rules or regulations issued by the President pursuant to this Act shall be barred from the wholesale and retail business for a period of five years for a first offense, and shall be permanently barred for the second or succeeding offenses."

The Constitution directs that "Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted."

The prohibition of cruel and unusual punishments is generally aimed at the form or character of the punishment rather than its severity in respect of duration or amount, and apply to punishments which never existed in America or which public sentiment has regarded as cruel or obsolete (15 Am. Jur., p. 172), for instance those inflicted at the whipping post, or in the pillory, burning at the stake, breaking on the wheel, disemboweling, and the like (15 Am. Jur., supra, Note 35 L.R.A. p. 561). Fine and imprisonment would not thus be within the prohibition.

However, there are respectable authorities holding that the inhibition applies as well to punishments that although not cruel and unusual in nature, may be so severe as to fall within the fundamental restriction. (15 Am. Jur., p. 178.) These authorities explain, nevertheless, that to justify a court's declaration of conflict with the Constitution, the prison term must be so disproportionate to the offense committed as to shock the moral sense of all reasonable men as to what is right and proper under the circumstances (ib.). And seldom has a sentence been declared to be cruel and unusual solely on account of its duration (15 Am. Jur., p. 179).

Because it expressly enjoins the imposition of "excessive fines" the Constitution might have contemplated the latter school of thought assessing punishments not only by their character but also by their duration or extent. And yet, having applied "excessive" to fines, and "cruel and unusual" to punishments did not intend to distinguish "excessive" from "cruel" and "unusual"? And then, it has been hereto fore the practice that when a court finds the penalty to be "clearly excessive" it enforces the law but makes a recommendation to the Chief Executive for clemency (Art. 5 Revised Penal Code). Did the Constitutional Convention intend to stop that practice? Or is that article unconstitutional?

So far as the writer of this opinion has been able to ascertain, these questions have not been definitely passed upon by this court,[1] although in *U.S. vs. Borrromeo*, 23 Phil., 279 it was said that the prohibition of the Philippine Bill on punishments refer not only to the mode, but to the extent thereof.

For the purposes of this decision, we may assume, without actually holding, that too long a prison term might clash with the Philippine Constitution.

But that brings up again two opposing theories. On one side we are told the prohibition applies to legislation only, and not to the courts' decision imposing penalties within the limits of the statute (15 Am. Jur., "Criminal Law" sec. 526). On the other, authorities are not lacking to the effect that the fundamental prohibition likewise restricts the judge's power and authority (*State vs. Ross* 55 Or. 450, 104 Pac. 596; *State vs. Whitaker*, 48 La. Am. 527, 19 So. 457). (Sec also *U. S. vs. Borrromeo*, 23 Phil., 279.)

In other words, and referring to the penalty provided in Republic Act No. 509, under the first theory the section would violate the Constitution, if the penalty is excessive under any and all circumstances, the minimum being entirely out of proportion to the kind of offenses prescribed. If it is not, the imposition by the judge of a stiff penalty—but within the limits of the section—will not be deemed unconstitutional[2]. The second theory would contrast the penalty imposed by the court with the gravity of the particular crime or misdemeanor, and if notable disparity results, it would apply the constitutional brake, even if the statute would, under other circumstances, be not extreme or oppressive.

Now therefore, if we adopt the first doctrine the present issue would be: Is imprisonment for two months or fine of two thousand pesos too excessive for a merchant who sells goods at prices beyond the ceilings established in the Executive Order? Obviously a negative answer must be returned, because in overstepping the price barriers he might derive, in some instances, profits amounting to thousands of pesos. Therefore under that doctrine, the penalty imposed in this case would not be susceptible of valid attack, it being within the statutory limits.

Under the second theory the inquiry should be: Is five years and five thousand pesos, cruel and unusual for a

violation that merely netted a ten-centavo profit to the accused? Many of us do not regard such punishment unusual and cruel, remembering the national policy against profiteering in the matter of foodstuffs affecting the people's health, the need of stopping speculation in such essentials and of safeguarding public welfare in times of food scarcity or similar stress. In our opinion the damage caused to the State is not measured exclusively by the gains obtained by the accused, inasmuch as one violation would mean others, and the consequential breakdown of the beneficial system of price controls.

Some of us however are deeply moved by the plight of this modest store-owner with a family to support, who will serve in Muntinlupa a stretch of five years, for having attempted to earn a few extra centavos.

Fortunately there is an area of compromise, skirting the constitutional issue, yet executing substantial justice: We may decrease the penalty, exercising that discretion vested in the courts by the same statutory enactment.

Wherefore, reducing the imprisonment to six months and the fine to two thousand pesos, we hereby affirm the appealed decision in all other respects.

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

[1] Weems vs. U. S. 217 U. S 349 is distinguishable.

[2] Remedy is correction by appeal; or executive clemency.

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