

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MOISES CUBELO, DEFENDANT AND APPELLANT.

G.R. No. 13678. November 20, 1959

Ponente: MONTEMAYOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-13678/>

MONTEMAYOR, J.:

In the Court of First Instance of Surigao, appellant Moises Cubelo was charged with the crime of illegal fishing with explosives, allegedly committed as follows:

"That on or about the 7th day of May, 1955, within the jurisdictional waters of the municipality and province of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously explode one stick of dynamite without permit to do so as a result of which a certain kind of fish locally called tamban valued at P10.00 was disabled, killed and/or stupefied in violation of Act 4003, as amended by Commonwealth Act No. 471 and further amended by Republic Act No. 462."

He was arraigned on March 25, 1957, the information being read and translated to him in the local dialect. To the charged, he pleaded guilty, whereupon, the trial court declared him guilty of illegal fishing with the use of explosives as defined in Act No. 4003, as amended, and considering his plea of guilty as a mitigating circumstance, sentenced him—

"** * to undergo the indeterminate penalty of one (1) year and six (6) months, as minimum, to two (2) years, as maximum, and to pay a fine in the amount of P1,500, or to serve subsidiary imprisonment which shall not be more than one-third (1/3) of the principal penalty or in any case to not more than one year; and to pay the costs."

However, in spite of his spontaneous plea of guilty, Cubelo appealed the decision to the Court of Appeals which certified the case to us on the ground that it involved only questions of law.

Appellant contends that he may not be convicted of illegal fishing with dynamite because the information fails to allege the intention to fish with explosives.

Act No. 4003, as amended by Commonwealth Act No. 471 and further amended by Republic Act No. 462, under which appellant was accused and convicted, reads as follows:

"Rep. Act 462, par. 2—Any person who shall use explosives in fishing in violation of the provisions of section twelve of this Act shall be punished by a fine of not less than one thousand five hundred pesos nor more than five thousand, and by imprisonment for not less than one year and six months nor more than five years, aside from the confiscation and forfeiture of all explosives, boats, tackle, apparel, furniture, and other apparatus used in fishing in violation of said section twelve of this Act." (Approved June 9, 1950)

Defendant in support of his contention, relies upon the phrase "use explosives in fishing", claiming that in order to hold him criminally liable, the information should make it clear that the explosives or dynamite was used in

fishing and not for any other purpose. Republic Act No. 462 is but an amendment of Section 76 of Act No. 4003, providing the penalty for violation of Section 12 of said Act. The said Section 12 reads thus:

"Section 12, Act 4003—The use of dynamite or other explosives for the stupefying, disabling, killing or taking of fish or other aquatic animals, or under water for any purpose except in the execution of bona fide engineering work and the destruction of wrecks or obstacles to navigation, or the gathering by any means of the fishes or other aquatic animals stupefied, disabled or killed by the action of dynamite or other explosives shall be unlawful, provided, that the use of mechanical bombs for killing whales, crocodiles/sharks, or other large dangerous fishes, may be allowed, subject to the approval of the Sec. of Agriculture and Natural Resources and the Sec. of Interior, and provided further, that the Sec. of Agriculture and Natural Resources with the concurrence of Sec. of Interior, may issue permits for the use of explosive in taking fish or other aquatic animals in limited numbers for scientific purposes only. Permittees must be ready at all times to exhibit permits on demand by any peace officer or deputy authorized in Sec. 5 hereof to enforce the provisions of this Act."

The act charged in the information against Cubelo that he willfully, unlawfully and feloniously exploded one stick of dynamite, which explosion resulted in disabling, stupefying and killing a certain kind of fish, known as tamban valued at ten pesos, comes under the provisions of Section 12 and par. 2 of Republic Act 462, above-quoted. Of course, the Fiscal filing the complaint, to dissipate all doubt, should or could have inserted the phrase "for the purpose of fishing", thereby avoiding any need of interpretation, including the reading of the information, in connection with Section 12 of Act 4003. But that Cubelo exploded the dynamite in order to fish, there can be no doubt. To assume that he exploded the dynamite in the water just for fun, and that said supposedly innocent pastime unexpectedly resulted in the killing of a large fish valued at ten pesos, would involve an unreasonable presumption, as well as an extraordinary coincidence. People do not usually assume the risk of handling explosives such as dynamite with its consequent dangers to human life, and waste the value of said explosives which could otherwise be utilized for legitimate purposes, just for fun. And fishes, like those called tamban, are not so abundant and always near the surface of the sea that any explosion of a stick of dynamite thrown at random, without any purpose other than for fun, and without aim or deliberation, could not but hit them as a target with fatal results. The theory of appellant does not appeal to the credulity of this Tribunal.

Moreover, the information in the present case is entitled "Illegal Fishing with Explosives", so that there could have been no doubt in the mind of appellant who was then assisted by counsel, that he was being charged with exploding dynamite for purposes of fishing illegally, this apart from the fact that among the exhibits which the prosecution was going to present in evidence to support the charge, evidently confiscated from the accused at the time he was caught in the act of fishing with explosives, and which were listed in the information, were the following:

- One (1) bag of dried fish
- One (1) Goggles
- One (1) fish nets
- One (1) paddle, and
- One (1) baroto

The last four articles clearly show that the accused was fishing. And, as already stated, he pleaded guilty to the charge. In addition, the intent may be rightly presumed from the result of the act. Cubelo exploded a stick of dynamite in the water and killed a large fish valued at ten pesos. The logical presumption is that the explosion was for the purpose of fishing, that is to say, to catch that big fish which at the time he knew was near him or within the area where he threw the stick of dynamite.

Appellant also claims that the trial court committed error in ordering him to serve subsidiary imprisonment in case

of insolvency in the payment of the fine, contending that Act No. 4003 fails to provide for such subsidiary imprisonment, and being a special law, it is not subject to the provisions of the Revised Penal Code. The second paragraph of Article 10 of said code provides that "this Code shall be supplementary to such laws, unless the latter should specially provide the contrary." In the cases of *People vs. Dizon* (G. R. No. L-8002, November 23, 1955), it has been held that Articles 100 (civil liability) and 39 (subsidiary penalty) are applicable to offenses under special laws, citing the cases of *People vs. Moreno* (60 Phil., 178) and *Copiaco vs. Luzon Brokerage* (66 Phil., 184).

In view of the foregoing, the decision appealed from is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Bautista, Angelo, Labrador, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.