

**ROSARIO ESLER, VDA. DE TAD-Y, PLAINTIFF AND APPELLANT, VS.
JOSE B. LEDESMA, PROVINCIAL SHERIFF OF ILOILO, NICOLAS
VALENCIA AND MATEO VILLAVERTE, CLERK OF COURT OF FIRST
INSTANCE ...**

G.R. No. 28638. September 21, 1928

Ponente: MALCOLM, J.

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MALCOLM, J.:

In its final analysis, this case calls for the application and interpretation in an authoritative manner of section 74 of the Code of Criminal Procedure, reading as follows:

"At any time after the amount of bail is fixed by order, the defendant, instead of giving bail, may deposit with the nearest Collector of Internal Revenue the sum mentioned in the order, and, upon delivering to the court a proper certificate of the deposit, must be discharged from custody. Money thus deposited shall be applied to the payment of the fine and costs for which judgment may be given, and the surplus, if any, shall be returned to the defendant."

On November 23, 1926, Mariano Gotera was charged in the Court of First Instance of Iloilo with the crime of serious physical injuries committed on the person of the parish priest of Molo, Iloilo, Father Nicolas Valencia. At the time Gotera was informed against in court, he was the chauffeur of Mrs. Rosario Esler, Vda. de Tad-Y. Gotera was found guilty as charged, and was sentenced to imprisonment, prision correccional, for two years and four months, to indemnify the offended party in the sum of P2,996, with subsidiary imprisonment, and to pay the costs. It is understood that Gotera is now serving his sentence in Bilibid Prison and that the costs have been satisfied. The appeal centers on the indemnity and the bail offered and accepted to secure the temporary release of Gotera.

To obtain Gotera's discharge from custody, two gentlemen by the names of Luis Davao and Eulogio Aguirre and accompanied by Attorney Tomas Villareal, counsel for Gotera, presented themselves in the office of the Clerk of the Court of First Instance and tendered two Liberty bonds of the value of \$1,000 as bail. Thereupon, a bail bond was executed. Also a receipt was made out by pen and ink by the clerk reading thus:

"COURT OF FIRST INSTANCE

PROVINCE OF ILOILO

ILOILO, P. I.

"He recibido del acusado Mariano Gotera 2 liberty bonds de quinientos dollars cada uno (\$500) como deposito de fianza para su libertad provisional en la causa crim. No. 7441 (P. I. F. vs. Mariano Gotera por lesiones graves).

"Iloilo, Nov. 24, 1926.

(Fdo.) "MATEO VILLAVERTE

"Escribano"

At the foot of the receipt, there was appended in typewriting the following:

"Por la presente declaro de que los dos liberty bonds, a que se refiere el recibo arriba transcrito, son de la propiedad exclusiva de Da. Rosario Esler, viuda de Tad-Y, y que no tengo ninguna participation en la cantidad que representan dichos liberty bonds.

"Iloilo, Iloilo, I. F., noviembre 24, 1926.

(Fdo.) "MARIANO GOTERA"

After the reading of the sentence to the accused, a petition was filed and granted directing the clerk to apply the Liberty bonds to the payment of the. indemnity. The provincial sheriff converted the Liberty bonds into cash through the offices of the Philippine National Bank. After deducting the legal fees, the court directed the balance amounting to P1,923.30 to be handed to Father Valencia. Mrs. Tad-Y tried unsuccessfully to get the court to set aside its order with the result that an independent action was eventually begun by her against the provincial sheriff, the clerk of court, and Father Valencia. The judgment in this case now on appeal dismissed the complaint.

The appeal can be decided without difficulty if the court keep to the straight and narrow path and refuses to be led by opposing counsel into treacherous by-ways. We are thus not impressed with the insinuation to be found in the memorandum presented by the appellees that this action will not lie on account of the alleged fact that the orders made in the criminal case are final. Waiving the point that this argument is not disclosed in any one of the seven propositions found in the brief for the appellees, it only need be said that the courts everywhere allow parties to contest the surplus left of the cash bail and determine who is entitled to the fund. On the other hand, as to the twentytwo errors assigned by counsel for the appellant, he is in no position to argue many of them. Thus when counsel says that the trial court was without authority to accept Liberty bonds in lieu of money; that at any rate the bonds should have been deposited with the nearest Collector of Internal Revenue instead of with the clerk of court; that the provisions of the Executive Order of the Governor-General of May 9, 1918, concerning acceptance of Liberty bonds as security have not been complied with; and that the provincial sheriff could not dispose of the Liberty bonds in any other way than that provided by law,—counsel forgets that all these difficulties came about because his client through her agents and the accused induced the officers of the court to accept the Liberty bonds and liberate the accused. If illegal action was taken, the plaintiff was a party to the wrong. It has been directly held in a recent decision that one who induces a court to take Liberty bonds as bail for one in custody of the law is estopped to deny that the court had jurisdiction so to do. (*Kirschbaum vs. Mayn* [1926], 76 Mont., 320; 48 A. L. R., 1425; *Dufek vs. Harrison County* [1926], Tex. Civ. App.; 289 S. W., 741; *Mundell vs. Wells* [1919], Cal., 7 A. L. R., 383; *Moss vs. Summit County* [1922], Utah, 26 A. L. R., 206; *Bryant vs. City of Bisbee* [1925], Ariz., 44 A. L. R., 1495.)

The first important question to decide is one of fact and relates to the ownership of the two Liberty bonds. The trial judge found that they were the property of the accused and not the property of Mrs. Tad-Y. This finding in our opinion does not conform to the weight of the proof as disclosed by the record. Mrs. Tad-Y testified clearly that the two Liberty bonds belonged to her. She was corroborated in her testimony to a certain extent by the testimony of the witnesses Luis Davao and Eulogio Aguirre. More important still is the fact that in the partition of the estate of the deceased Vicente Tad-Y, Liberty bonds of the fourth issue valued at P2,192, were set aside for the widow. The bail bond mentions bonds of the Fourth Liberty Loan, which corresponds exactly with the issue of the bonds accruing to the widow on the division of the estate of her deceased husband. Finally, effect must certainly be given to the statement on the receipt signed by the accused that the two Liberty bonds were of the exclusive ownership of Mrs. Tad-Y. Error was undoubtedly committed in not allowing the deposition of Mariano

Gotera to be taken in Bilibid Prison and the deposition of Udefonso Villareal to be taken in Manila, but probably these depositions would merely have corroborated the statement found on the receipt for the bonds. Accordingly, we must find as a fact that the two Liberty bonds presented as cash bail for the release of the prisoner Mariano Gotera were the property of Dona Rosario Esler, Vda. de Tad-Y.

With the preliminary question of fact out of the way, we then have presented a case where Liberty bonds were deposited with the clerk of court by a friendly third person, the object being to secure the release from custody of a defendant held to answer to an information. Similar cases have frequently gained the attention of the courts in the United States in jurisdictions where statutes permit a deposit of money to be made in lieu of bail in criminal cases. The decisions are unanimous in holding that a fine imposed on the accused may be satisfied from the cash deposit; and this is true although the money has been furnished by a third person. This is so because the law contemplates that the deposit shall be made by the defendant. The money, or in this instance the Liberty bonds, must accordingly be treated as the property of the accused. As a result, the money could be applied in payment of any fine imposed and of the costs. (People vs. Laidlaw [1886], Ct. of App. of New York, 7 N. E., 910, a case frequently cited approvingly in other jurisdictions; State of Iowa vs. Owens [1900], 112 Iowa, 403; Mundell vs. Wells, supra.) But while as between the state and the accused the money deposited by a third person for the release of the accused is regarded as the money of the accused, it is not so regarded for any other purpose. As between the accused and a third person, the residue of the cash bail is not subject to the claim of a creditor of the accused. In the latter case, the ordinary rules of property obtain. (Wright & Taylor vs. Dougherty [1908], 138 Iowa, 195; People vs. Gould [1902], 78 N. Y. Sup., 279; Mundell vs. Wells, supra.)

The precise question determining the appeal can fairly be said to be this: Where Liberty bonds are deposited in lieu of money with the clerk of court by a friendly third person to gain the discharge of a defendant, may the Liberty bonds be applied not only to the payment of the fine and costs but to the indemnity? In other words, restricting the field of inquiry even further, within the meaning of section 74 of the Code of Criminal Procedure, may indemnity be considered as coming within the meaning of the word "fine." It is a subject not entirely free from doubt, which merits our close attention.

The law says "fine and costs." It does not say "fine, costs, and indemnity." Nevertheless, counsel for the appellees would have us construe the word "fine" to include indemnity. He relies on the definition of "fine" found in Bouvier's Law Dictionary, volume 2, page 1225, where, after giving the customary definition of "fine," it is said that "It may include a forfeiture or penalty recoverable in a civil action." There is also brought to our attention on behalf of the appellees the decision of the United States Supreme Court in the case of Freeman vs. United States ([1910], 217 U. S., 539) where the high court, taking under view the provisions of the Penal Code in connection with the constitutional inhibition against imprisonment for debt, in one place in the decision observed: "An examination of the statutes of the Philippines and the judgment of the Supreme Court shows that the imposition of the money penalty was by way of punishment for the offense committed, and not a requirement, to satisfy a debt contractual in its nature or be imprisoned in default of payment." As against these authorities is the usual definition of fine as a pecuniary punishment imposed by a lawful tribunal upon a person convicted of crime or misdemeanor. Strictly speaking, it is said the term does not embrace those pecuniary penalties or forfeitures provided by statute that a civil action may be brought to recover (25 C. J., 1148; Southern Express Co. v. Walker [1895], 92 Va., 59). After all, no one of these authorities is exactly controlling, and a better method is to forget them for the moment, and independently thereof, to concentrate on the meaning of the law.

The Code of Criminal Procedure is a penal statute. As such, it should be construed strictly. Moreover, the Code of Criminal Procedure is a penal statute of American origin. No case can be found where in the United States cash bail has been applied to anything else than the payment of the fine and costs as these terms are there known. This

is so because criminal actions and civil actions are tried separate and apart. Damages are not assessed in a criminal action as they are in the Philippines where the Spanish Penal Code is in force. The Code of Criminal Procedure recognizes the distinction in section 107 by safeguarding the civil rights of the person injured by the offense. This is in line with the provisions of the Penal Code, which clearly recognizes as distinct one from the other, imprisonment, fine, and indemnity.

The civil liability for reparation of damages and for indemnification for the harm done is purely statutory (Albert, *The Law on Crimes*, p. 161). In special acts enacted by the Philippine Legislature analogous in nature to the Code of Criminal Procedure, it has invariably been found necessary to make particular mention of indemnity if it be recoverable. For instance, as Act No. 518 failed to provide for an indemnity, this court, speaking through Mr. Justice Mapa and Mr. Chief Justice Arellano, held it error to impose upon the defendants the obligation to pay indemnification (*U. S. vs. Patiño* [1905], 4 Phil., 160; *U. S. vs. De Ocampo* [1905], 5 Phil., 324). Subsidiary imprisonment, according to Act No. 1732, can only be imposed when a fine is meted out as any part of the punishment for a criminal offense made punishable by any act or acts of the Philippine Commission. Even in a conviction for a violation of an article of the Penal Code, when there is no provision in the law authorizing the payment of an indemnity, it cannot legally be imposed (*U. S. vs. Noriega and Tobias* [1916], 31 Phil., 310).

Sweeping the mind clear of cumulative authority pro and con, and of all extraneous considerations, and focusing attention directly on the law, the reason for the law presents itself clearly. It is this. When the cash bail is allowed, the two parties to the transaction are the state and the defendant. Unlike other bail bonds, the money may then be used in the payment of that in which the state is concerned the fine and costs. The right of the government is in the nature of a lien on the money deposited. But as regards the indemnity, this, while permitted to be fixed in a criminal action, is primarily of interest to the offended party and the accused. That the distinction exists seems to us evident, and existing, the court would not be justified in amending the law by judicial pronouncement so as to include indemnity.

Agreeable to the foregoing, the judgment appealed from shall be reversed, and in the trial court a new judgment shall issue in favor of the plaintiff and against the defendant Nicolas Valencia for the sum of P1,923.30, without costs in either instance. So ordered.

Johnson, Villamor, and Ostrand, JJ., concur.

CONCURRING

STREET, J.:

I am of the opinion that the plaintiff's bonds cannot be applied to the payment of the indemnity and wish to be understood as reserving my views upon the point whether they could be applied to the payment of a fine, if a fine had been assessed against the accused.

DISSENTING

ROMUALDEZ, J.:

On the one hand, I believe that since it appears that the plaintiff did not intend to deliver her bonds as bail for the then accused, Mariano Gotera, they could not be forfeited nor applied to satisfy the judgment against said accused. On the other hand, I am of the opinion that the word "fine" used in section 74 of General Orders No. 58

refers not only to the fine but also to the indemnity to the offended party imposed by the judgment in the criminal case.

Section 74 just cited refers to the deposit made in lieu of bail for the provisional release of the defendant. The deposit thus made takes the place of bail and answers for what the bail would answer; and, according to section 67 of said General Orders, the bail answers for the defendant's appearance for judgment, and that he will deliver himself for the execution thereof, without excluding the indemnity to the offended party. Furthermore, said word "fine" has, among others, the following definition:

"In Criminal Law. Pecuniary punishment imposed by a lawful Tribunal upon a person convicted of crime or misdemeanor, * * *. It may include a forfeiture or penalty recoverable in a civil action." (2 Bouvier's Law Dictionary, 1925.)

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