

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ANTONIO APAREJADO ET AL., DEFENDANTS. PERFECTO BRAVO,
APPELLANT.**

G.R. No. 45190. April 19, 1939

Ponente: AVANCENA, C.J.

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AVANCENA, C.J.:

Perfecto Bravo and six others were charged in the Court of First Instance of Masbate with the crime of illegal fishing by dynamite and each sentenced to three months of imprisonment, to pay a fine of two hundred pesos, with subsidiary imprisonment in case of insolvency, and to pay a proportionate part of the costs.

Perfecto Bravo served this sentence, having been confined in the provincial jail from July 27, 1931 to his release on November 12th of the same year, after serving the principal penalty and the subsidiary imprisonment due to his failure to pay the fine. In January, 1936, that is, five years thereafter, the provincial sheriff of Masbate attached the only property of Perfecto Bravo for the purpose of selling it at public auction and paying the fine and costs to which he was sentenced to pay in said case.

Perfecto Bravo asked for the suspension of this sale. The court, on March 14, 1936, denied this petition, and from this resolution an appeal was taken.

Having suffered subsidiary imprisonment for the fine imposed, the civil liability of Perfecto Bravo involved therein was completely extinguished under article 39, rule 5, of the Revised Penal Code. Consequently, the attachment levied to enforce this already extinguished civil liability was illegal.

It is said that, at any rate, the attachment lies in satisfaction of the costs to which Perfecto Bravo was likewise sentenced to pay. This consideration, however, does not cure the defect of the attachment. Bravo was required to pay the fine and the costs together, amounting to P203. The proportionate part of the costs which he was bound to pay amounts to only P3 more or less. It is possible that had he been required to pay only the P3 for costs, and not P203 with the fine, he would have paid it to avoid the sale of his property which, according to him, is worth about P1,300.

Wherefore, the appealed resolution is reversed, and the attachment of the property of the appellant is held null and void, without prejudice to his being required to pay the costs only, failing which, the said property should be attached.

No special pronouncement is made as to costs. So ordered.

Villa-Real, Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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