

C. N. HODGES, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 45446. May 25, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is a petition filed by the accused to review on certiorari the decision of the Court of Appeals modifying that rendered by the Court of First Instance of Iloilo by ordering the accused to return only the amount of P2,000 to the offended party Lopez P. Severino, instead of P11,624 fixed by the trial court, and affirming that part of the decision of said court which sentenced the accused to the penalty of one year of imprisonment, to the accessories of the law, and to pay the fine of P500, with the corresponding subsidiary imprisonment in case of insolvency, and the costs.

The accused-petitioner C. N. Hodges was charged in the Court of First Instance of Iloilo with a violation of the Usury Law upon the following allegations of the information:

"That in or about the period from July 7, 1927 to December 31, 1933, in the municipality of Iloilo, Province of Iloilo, P. I., and within the jurisdiction of this court, the aforesaid accused fraudulently demanded, agreed, collected, received and earned in cash a rate of interest of 18 per cent per annum upon the loan of P10,000 which he had executed and delivered to Lope P. Severino and which was guaranteed by a mortgage constituted upon a parcel of land, with its improvements, situated in the municipality of Silay, Province of Negros Occidental, P. I., belonging to the said Lope P. Severino and covered by transfer certificate of title No. 6687 of the office of the registrar of deeds of Negros Occidental; the accused being a recidivist because he was then and there convicted of usury by virtue of a judgment rendered on March 11, 1924 in criminal case No. 5899 entitled, 'The People of the Philippines vs. C. N. Hodges.'

"Contrary to law."

After trial, the petitioner was found guilty by the trial court of the said violation, and taking into account the presence of the aggravating circumstance of recidivism because of his conviction in another case of the same violation of law, it sentenced him to one year of imprisonment, to the accessories of the law, to pay a fine of P500, with the corresponding subsidiary imprisonment in case of insolvency, to return to the offended party Lope P. Severino the sum of P11,624.25, representing usurious interest earned from July 7, 1927 until December 14, 1933, and the costs. On appeal by the petitioner, the Court of Appeals modified the aforesaid judgment in the manner indicated.

After a review of all the evidence of record before it, the Court of Appeals reached the following conclusions:

"After a careful consideration of the oral and documentary evidence on record, we find fully established the following facts: On or before July 7, 1927, Lope P. Severino, then a resident of Manila, in dire need of cash with which to pay off an overdue mortgage debt binding valuable properties of his father, tried to obtain from C. N. Hodges in Iloilo a loan of P10,000, offering as security for the payment thereof, a first mortgage on his real estate with improvements thereon, located in the commercial district of Silay, Negros Occidental and

described in transfer certificate of title No. 6687. The property was assessed for purposes of taxation at P17,000, with a market value of from P25,000 to P30,000 and it was netting a monthly rental of P300. Hodges at first rejected the proposition of Severino, and instead advised him to talk over the terms with Adolfo Abaya, a real estate broker then doing business in Iloilo and who had had transactions in such capacity with said Hodges on many occasions prior thereto.

"Severino then went to see Abaya who told him that he might obtain the loan if he was willing to abide by the practice adopted by Hodges executing a deed of absolute sale of the property mortgaged and at the same time Hodges would resell to him the same property in addition to other properties of the same Hodges situated in Iloilo for the total consideration of P15,025, payable within ten years with interest at one per cent monthly. Severino could not accept the conditions imposed for the loan, for he did not want to sell his property, nor was he interested to purchase other properties, but only needed to secure a loan to be guaranteed by his improved real estate.

"With the assurances and representations made to him that all the documents to be executed for the loan were merely to cover certain legal requirements with respect to the interest that could be charged thereon and were not to be construed as their terms implied and being in urgent need of obtaining the loan of P10,000, Severino was compelled to accede to the above stated impositions of Hodges. Whereupon, deed Exhibit A was executed on July 7, 1927, by which Severino conveyed and transferred to C. N. Hodges his property in Silay, with improvements thereon, for the sum of P10,000 and on the same date, deed Exhibit B was executed whereby the property of Severino, purporting to have been sold by virtue of deed Exhibit A and lots owned by Hodges Nos. 152-B-9, 152-B-10, 152-B-11, 152-B-12, and 152-B-13 of the Iloilo Cadastral Survey, with a total area of 1,005 square meters, more or less, were to be resold by said Hodges to Severino, upon payment by the latter, within the period of ten years, of the sum of P15,025, with interest thereon at the rate of one per cent a month, payable monthly. In other words, for the P10,000 Severino received from Hodges, less ten per cent commission paid to the broker Abaya in the aggregate sum of P1,000, besides the expenses for stamps and notarial fees, Severino would have to pay one per cent interest on the fixed price of P15,025 for future resale to him of the properties at the end of ten years from the date of the execution of both deeds Exhibits A and B. Thus Hodges was able to charge and collect an interest of 18 per cent monthly on the P10,000 he loaned to Severino instead of 12 per cent as fixed by law.

"Lope P. Severino paid a monthly interest of P150.25 since the execution of contract, Exhibit B, until December, 1933, having remained in possession of his property sold under Exhibit A, and the five lots belonging to Hodges also continued under the administration of said Hodges, who had been collecting monthly rental from the occupants of small nipa houses thereon, from July 7, 1927, to December, 1933, amounting to P465. While it is true that this amount, together with the rents collected from the property of Severino purporting to have been sold under Exhibit A, was credited to him in payment of the interest on the amount of P15,025 under Exhibit B, it appears, however, that taxes paid on the property including necessary expenses to keep the buildings in good condition, premiums on insurance, and other expenses were charged against Severino, showing thereby that he continued to be the real owner in spite of the alleged sale thereof.

"Exhibits A and B, considered in relation to the testimony of the accused, disclose that the real transaction between the parties is a loan with usurious interest secured with a mortgage and not a sale. Clause 4 of the contract Exhibit B binds Severino to pay Hodges the sum of P15, 025 within the period of ten years from date, to expire on July 6, 1937. Clause 5 thereof provides that this sum of P15,025 shall bear interest at the rate of one per cent a month from July 7, 1927 until it is fully paid, with the specific understanding that the failure to pay the interest when it is due shall cause the entire amount of P15,025 to become forthwith due and payable. The accused admitted that he deliver only P10,000 to Severino as purchase price of the land sold to him by virtue of contract Exhibit A yet Severino had to pay interest of one per cent monthly on the sum of P15,025 under Exhibit B. Had Severino failed to pay the interest on the second month or any other month subsequent to the execution of contract Exhibit B, Hodges would have the full right to demand the payment of the total

amount of P15,025 and the interest of one per cent a month thereon.

"The allegation of Hodges that Severino asked him several times to sell the lots to him is incredible, considering the facts and circumstances surrounding the transaction. At that time, Severino was in a precarious financial condition and was badly in need of cash to pay all the overdue obligations of his father. We cannot see how Severino would choose to make investment in lots, situated in a non- important district in Iloilo, valued between P3,000 and P5,000 and sacrifice his more valuable property, located in a commercial district in Silay, Occidental Negros, which has a market value of about P10,000 and a monthly rental of P300. Undoubtedly, Severino, in order to obtain the loan of P10,000 had to execute a fictitious deed of purchase of the five lots upon the imposition of Hodges.

"In most of his previous business transactions, Hodges adopted the same procedure he used in the execution of Exhibits A and B. Thus, in the case of Teresa Velasco, a similar scheme was followed in the transaction which was admitted by him to be a loan. In the case of Marcela Juaneza Viuda de Marijana, wherein the same procedure was again adopted by said Hodges and for which he was prosecuted and convicted by the lower court and taken on appeal to the Supreme Court which affirmed the decision, it was held that the transaction therein was not a sale as the documents implied, but merely a loan secured by mortgage and that the alleged sale was an instrument to evade the provisions of the Usury Law. (G. R. No. 33390.)

"We, therefore, hold that the lower court committed no error in finding that the contracts A and B constitute a usurious contract of loan and in holding that the accused-appellant is guilty of violating the Usury Law beyond any reasonable doubt.

"The contention of the counsel for the appellant that the contract had been purged of usury when it was cancelled between the parties by virtue of "the document Exhibit 4 prior to the presentation of information herein, is untenable. The authorities cited in support of the contention refer only to civil cases and are not applicable to criminal cases like the one at bar. The violation of the Usury Law constitutes a public offense and its settlement cannot be compromised by a private offended party.

"It is further contended by the counsel for the defense that the lower court erred in not finding that the present action had prescribed. The contention is based on the erroneous theory that the criminal action under the Usury Law prescribes at the end of the period of two years from the date of the payment of usurious interest. According to the doctrine laid down by the Supreme Court and pursuant to the provisions of Act No. 3762, the criminal action for a violation of the Usury Law prescribes after four years from the date of the last payment of usurious interest. (People vs. Edesan, G. R. No. 38883.) The evidence shows that the last payment of usurious interest in the case at bar was made on August 16, 1933, and the information was filed on December 7, 1934. It is, therefore, clear that the trial court did not commit the alleged error.

"The appealed judgment ordered the appellant to restore to the offended party, Lope P. Severino, the sum of P11,624.25 for interest received by him from July 7, 1927 to December 14, 1933. In accordance with the doctrine laid down by the Supreme Court in the case of People vs. Edesan, supra, only so much of the interest as was paid within two years before the filing of the information should be restored. The usurious contract Exhibit B was cancelled on December 14, 1933 by virtue of contract Exhibit 4 and the information was filed on December 7, 1934. Within this period Severino only paid P2,000 to the appellant as interest according to Exhibit N. Therefore, the appellant should be required to restore to Lope P. Severino the said sum of P2,000, instead of P11,624.25."

It has been invariably held that the findings of fact made by the Court of Appeals in cases appealed to it, are conclusive and not subject to review, alteration, modification or reversal by the Supreme Court under Title IV, Chapter IX, Section II, of the Revised Administrative Code, as amended by section 3, section 145-F, of Commonwealth Act No. 3. Hence, for the purposes of this appeal, the said findings of fact have to be accepted by this court, and its only power will be to determine if the legal conclusions drawn from said findings of fact are

correct and if the law has been correctly applied.

From the findings of the Court of Appeals it appears: (a) that the contracts set out in Exhibits A and B, entered into by and between the petitioner and the offended party, are usurious and illegal for they permitted the petitioner to avail himself of an ingenious transaction in order to charge annual interest of 18 per cent upon the loan of P10,000 which he gave to the offended party, a rate of interest which exceeds the limit fixed by section 2 of Act No. 2655, as amended by Act No. 3291, in force on the date of the execution of the aforesaid contracts, and by Act No. 4070, also in force on the date of the collection of the subsequent interest which was paid on August 16, 1933 under Exhibit N; (b) that under the aforesaid contracts, the offended party was paying and the petitioner was receiving usurious interest from July 7, 1927 until December 14, 1933; (c) that Exhibit N evidences the payment of the usurious interest, although it states that the sum of P2,000 was paid by the offended party "on account"; (d) that the sum of P2,000, paid according to Exhibit N on August 16, 1933, represents the last usurious interest which the offended party paid to the petitioner and received by the latter on the said date, and corresponds to the period expiring on December 14, 1933, when the contract Exhibit B was cancelled; (e) that the usurious interest which the offended party is entitled to recover from the petitioner is that which he paid to and received by the petitioner within two years from the filing of the information (section 6 of Act No. 2655, as amended by Act Nos. 3291 and 3998; *People vs. Edesan*, G. R. No. 38883); and (f) that the said usurious interest which the petitioner should return to the offended party is not that of P2,000 set out in Exhibit N, but that which the petitioner received within the two years prior to December 7, 1934, the date when the information was filed, that is, the usurious interest collected corresponding to the period from December 7, 1932 to December 14, 1933, representing approximately P1,837.50.

The petitioner contends in his first assigned error that the Court of Appeals erred in holding that the receipt for P2,000, dated August 16, 1933, represents the collection of usurious interest; and in his second assigned error he alleges that the same court erred in ordering him to pay to the offended party the sum of P2,000 as usurious interest which he received from the latter. The first assigned error is not meritorious, but the second is well-founded. We have already said that the P2,000 referred to in Exhibit N, although this document states that the money was paid "on account", represent usurious interest which the petitioner received from the offended party, corresponding up to December 14, 1933, the date of the cancellation of Exhibit B. This finding of fact is one of those made by the Court of Appeals which, as above-stated, is not subject to review. As to the restitution to the offended party of the usurious interest received by the petitioner, we have likewise said that it should not be the P2,000 referred to in Exhibit N, but that corresponding to the two years preceding the filing of the information, that is, from December 7, 1932 until December 14, 1933, approximately amounting to P1,837.50 at the rate of 18 per cent per annum.

In the third assigned error the petitioner contends that the Court of Appeals erred in holding that the contracts set out in Exhibits A and B are usurious. The assignment of error is likewise untenable. The finding thus made by the Court of Appeals is supported by the aforesaid documents, by the collection of interest exceeding the authorized rate, and by the other circumstances indicative that the transaction was a mere ruse to conceal usury.

In the fourth assigned error the petitioner insists that the Court of First Instance of Iloilo had no jurisdiction to take cognizance of and decide the case because under section 2 of Act No. 2992, which amended section 10 of Act No. 2655, the violation imputed to him is punished with a penalty that falls within the jurisdiction of the justice of the peace. We hold that this assignment of error is unfounded. Resolving the same question, the Court of Appeals held that the applicable law is section 10 of Act No. 2655, as last amended by Act No. 3998 which took effect on December 5, 1932, in which we concur. It will be recalled that the last payment of usurious interest took place, according to Exhibit N, on August 16, 1933 and on this date Act No. 3998 was already in force. As to this

legal question, retroactive effect is not given to Act No. 3998 because it was during its effectiveness that the petitioner committed the last violation by charging usurious interest on August 16, 1933 according to Exhibit N.

In the fifth assigned error the petitioner alleges that the Court of Appeals erred in citing, in support of his conviction, the ruling in *Hodges vs. Juaneza Viuda de Marijana* (G. R. No. 33390). The assignment of error is without legal foundation. The error in the citation, if it has been committed, is no ground to review, modify or reverse the decision.

In the sixth assigned error the petitioner argues that the Court of Appeals erred in giving retroactive effect to Act No. 3998. The assignment of error is also without basis as we have already said that the said law is applicable and no retroactive effect was given thereto.

In the seventh assigned error the petitioner contends that the Court of Appeals improperly applied article 14, paragraph 9, of the Revised Penal Code by considering his former conviction as an aggravating circumstance. There is no such error because under the aforesaid legal provision of the Revised Penal Code, the latter should be deemed as supplementing special laws of a penal character. Moreover, under section 10 of Act No. 2655, as last amended by section 5 of Act No. 3998, the court had jurisdiction to impose the maximum of the penalty fixed, and that imposed does not exceed the penalty prescribed by said law.

The eighth and last assigned error is only a sequel of the preceding ones and need not be considered as it is without merit.

For the foregoing considerations, with the sole modification that the petitioner should return and pay to the offended party the sum of P1,837.50, instead of P2,000, we affirm the appealed judgment in all other respects, without special pronouncement as to the costs in this instance. So ordered.

Avanceña, C. J., Villa-Real, Diaz, and Laurel, JJ., concur.

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