

JUSTO QUIMING, PETITIONER, VS. MARIANO L. DE LA ROSA, JUDGE OF FIRST INSTANCE OF ILOCOS SUR, TEODORA QUIMING, AND LAUREANO JAVAN, RESPONDENTS.

G.R. No. 46317. April 18, 1939

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AVANCEÑA, C.J.: On May 16, 1931 Justo Quiming was sentenced by the Court of First Instance of Ilocos Sur, for the crime of homicide, to fourteen years, eight months and one day of reclusion temporal

On May 16, 1931 Justo Quiming was sentenced by the Court of First Instance of Ilocos Sur, for the crime of homicide, to fourteen years, eight months and one day of reclusion temporal and to indemnify the heirs of the deceased in the amount of P1,000. On July 19, 1938, in the case in which this judgment was rendered, the heirs of the deceased asked that a writ of execution be issued as to the indemnity of P1,000. The court favorably acted upon the petition and on August 24, 1938, issued a writ of execution against Justo Quiming for the sum of P1,000 in favor of the heirs of the deceased. Against this resolution, the present petition for certiorari was filed, alleging as ground thereof that the court lacked jurisdiction to issue the writ.

From the rendition of the judgment against Justo Quiming on May 16, 1931 until the application, on July 19, 1938, of the heirs of the deceased for the execution of said judgment as to the indemnity, more than five years have elapsed. It is alleged that, after the expiration of this period of time, that judgment as to the indemnity cannot be executed as it has not been revived by the filing of the corresponding complaint under section 447 of the Code of Civil Procedure. We find merit in this allegation. This court has held in *United States vs. Heery* (25 Phil., 600), that the indemnity for damages in a judgment in a criminal case is purely civil in nature and is independent of the penalty imposed. The indemnity granted in this case is on the authority of article 100 of the Revised Penal Code providing that every person criminally liable for a felony is also civilly liable. Hence, the indemnity imposed on Justo Quiming was by reason of his civil liability arising from his crime. According to article 112 of the same Revised Penal Code, the liability established by article 100 is extinguished in the same manner as other obligations, in accordance with the provisions of the Civil Law. Consequently, under section 447 of the Code of Civil Procedure, the judgment, as to this civil liability, cannot be enforced after the lapse of five years, unless it is revived by means of the corresponding action. From this it follows that the trial court lacked jurisdiction to issue the writ of execution, which it did in this case, of a judgment which had lost its force and effect.

In support of its judgment, the trial court states that if after five years the sentence to pay an indemnity has to be served by subsidiary imprisonment in case of insolvency, it would be anomalous if such judgment could be executed as to its criminal aspect but not as to its civil effects. But if, as we have stated, the sentence as to the indemnity lost its force after five years because it has not been revived, it is evident that after the lapse of said period, subsidiary imprisonment does not lie, because the civil liability in lieu of which it should be suffered, has already been extinguished. The reasoning of the trial court is, therefore, without basis.

The appealed judgment is reversed, and the writ of execution issued by the trial court to enforce the indemnity of P1,000 imposed upon the petitioner Justo Quiming is hereby declared null and void, without special pronouncement as to the costs. So ordered.

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

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