

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUIS MENESES, DEFENDANT-APPELLANT.*G.R. No. 48446. February 26, 1943*

Ponente: OZAETA, J.

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The question involved in this appeal is whether a competent court, while acquitting an accused, may permit itself nevertheless to criticize or reprehend his acts and conduct in connection with the transaction out of which the accusation arose. That question arises out of the following facts:

Appellant was charged with malversation of public funds, it being alleged in substance that as executive officer and secretary of the Pension and Investment Board he received from Mrs. Elaine Childs Elser thru the San Juan Heights Co., Inc., the total sum of P1,693.94 in payment of certain obligation of Mrs. Elser and her son Fred J. Elser to the Pension and Investment Board, and that he feloniously malversed, misappropriated, and converted the said amount for his own personal use and benefit. After due trial in the Court of First Instance of Manila, His Honor, Judge Sixto de la Costa, found in substance that according to the report of the auditor Mrs. Elser was indebted to the Pension and Investment Board in the amount of P60,000, which was secured by a real estate mortgage, and that aside from the principal obligation she had some back account with the Board amounting to P1,626.44 for taxes and other advances; that during the period from March 15, 1934, to February 15, 1935, appellant received from Mrs. Elser thru the San Juan Heights Co., Inc., the total sum of P1,693.94, which included the interest of P67.50 on the principal of P1,626.44 at 8% per annum, but that he did not apply said amount to the payment of Mrs. Elser's back account.

The trial court also found that appellant admitted the receipt by him of the amount in question but alleged that it was in payment of a promissory note which on December 18, 1933, Mrs. Elser and her son made and delivered to him and which was in the words and figures following:

"For value received, we promise to pay Mr. Luis Meneses, through the San Juan Heights Company, Inc., the amount of P1,626.44 with interest at the rate of 8% per annum by installment of P150 a month, beginning with the month of March, 1934. This note shall be delivered to the San Juan Heights Company, Inc. upon full settlement of our indebtedness, in accordance with the terms of this note."

How Mrs. Elser and her son came to issue such promissory note was explained by appellant during the trial in this manner, according to the trial court: Mrs. Elser came to see him and told him that she had to continue with the repair of the Belvedere Apartment (presumably the mortgaged property), but that she could not do so because she and her son were leaving for America; hence she requested appellant to advance a certain sum of money for the expenses of such repair and to make the payments for her. Appellant acceded to that request, and that is why Mrs. Elser and her son made and delivered said promissory note to him.

The trial court believed that the monthly payments received by appellant on account of said promissory note were applied by him to the payment of Mrs. Elser's bills for the repair of the Belvedere Apartment, as shown by the

documents exhibits 19 to 26, which the prosecution had not impeached, neither Mrs. Elser nor her son having testified in this case to deny the payments made by appellant for her account.

The issue before the trial court hinged on whether or not the promissory note above mentioned was given by Mrs. Elser to appellant to cover her back account with the Pension and Investment Board. The trial court held that said promissory note was susceptible of two interpretations: (1) that the amount thereof was to be paid to appellant as executive officer of the Pension and Investment Board on account of Mrs. Elser's indebtedness to the latter, or (2) that said promissory note was delivered to appellant so that he might do Mrs. Elser and her son the favor of paying for their personal bills related to the repair of the Belvedere Apartment because they had to leave for America. The trial court adopted the latter interpretation and gave the accused the benefit of the doubt, altho it criticized his conduct in the following words:

"No debe, sin embargo, ocultarse el hecho de que la conducta del procesado en esta transaccion, como funcionario ejecutivo de la Junta de Pensiones, es altamente reprehensible; que como tal funcionario publico no debio aceptar, ni consentir, a que se le otorgara seme jante pagare como el Exhibit C, que bien pudieran haberlo hecho la Sra. Elser y su hijo a San Juan Heights Co., o directamente a la Junta de Pensiones, si bien es completamente inexplicable, porque no lo demuestran log autos, como es que ese pagare Exhibit C solamente se otorgo a favor de Mr. Luis Meneses y no al funcionario ejecutivo de la Junta de Pensiones, si la intension hubiera sido hacer el pago a la Junta de Pensiones por las cuentas atrasadas relacionadas con el prestamo."

The decision of the trial court concluded as follows:

"Resultando por consiguiente que le Exhibit C puede interpretarse en una u otra forma y no apareciendo de su contexto literal que la cantidad que en el consta debe corresponder a la Junta de Pensiones o debe pagarse a las cuentas personales de Mrs. Elser y su hijo, cuya solution debe determinarse mediante una accion civil apropiada;

"Por tanto, el Juzgado ordena el sobreseimiento de esta causa, absolviendo de la querella al acusado, y reservando al Gobierno la accion civil correspondiente de conformidad con la ley, con las costas de oficio."

On the 14th day after the sentence was read to the accused, the latter filed a motion praying for the elimination from the decision of the paragraph first above quoted referring to his conduct, on the ground that it "is a reprehension of the accused and constitutes a penalty which is contrary to his acquittal." The trial court denied the motion, whereupon the accused filed a notice of appeal from the order of denial.

In this connection we note that on the 6th day after the sentence was read to him, the accused filed a separate motion asking that the reservation to the Government to file a civil action be stricken out from the decision. That first motion was denied by the court in a separate order, from which the accused did not appeal. The reservation is also attacked by appellant in his brief, but inasmuch as the order denying its elimination had become final and the notice of appeal was expressly limited to the order denying the motion for the elimination of the reprehension, we cannot consider and pass upon that phase of the trial court's decision. In his notice of appeal, appellant took care to state: "This appeal is based purely on questions of law affecting the power and authority of, this Honorable Court to reprimand or punish the accused, who, in this case, has been acquitted from the criminal charge of malversation of public funds." Therefore we can consider in this appeal only the question stated at the outset.

Appellant does not dispute the factual basis of the reprehension. What he questions is the authority of the trial court to make such pronouncement in a sentence of acquittal. Hence his direct appeal to this Court "based purely on questions of law." The burden of appellant's argument is that he neither having pleaded guilty nor having been found guilty of the crime charged, the trial court is not empowered by law to impose a penalty by proclaiming publicly and condemning in no uncertain terms that his conduct was highly reprehensible; and that "conduct or

even negligence is not a crime." In his memorandum in lieu of oral argument he asserts:

"In a criminal prosecution, it is our sincere belief that an accused is either guilty or not guilty. We have never heard of an accused having been found part free and even an infinitesimal part guilty. Such a situation is impossible and intolerable, for, if sanctioned, society and social institutions would lose their equilibrium and the honesty, character and honor of an innocent individual thus affected, would be impaired. It would then be equivalent to making that individual an outcast among his fellowmen. If public confidence is the object of our institutions, it is the duty of our peers that when a person is not guilty, he should be considered and treated as clean and honest as a virgin, and not a man tainted with the idea that he is partly good and partly bad. * * *"

First. The pronouncement in question whereby the trial court criticizes or reprehends the acts and conduct of the accused is not intended as a penalty, nor may it be considered as such, because it is not embodied in the judgment or dispositive part of the decision. But since it reflects upon and affects the accused, he has the right to question it and to move for its elimination from the court's opinion if he thinks it is unwarranted and uncalled for, and to appeal to a higher tribunal if his motion is denied.

Second. The pivotal question to determine in such a case is whether or not the pronouncement or remarks objected to are relevant to the issues in the case which the court is called upon to decide. If irrelevant or impertinent, they should be stricken out or expunged from the record like any other extraneous matters. If the remarks are relevant, pertinent, or material to the issue, altho they may be unnecessary to or even dissonant with the verdict of acquittal, they should not and cannot be ordered stricken out because the court has the right and the privilege to make them. The court is not a mere jury enjoined only to say "guilty" or "not guilty." It has to reason out its decision and express its opinion. In doing so its freedom of expression is bounded only by the common sense of propriety and decorum. There is no law prescribing what a judge may say and what he may not say in his decision. Such a law or rule would make the judge a mere phonograph, whereas common sense dictates that he be given complete liberty to express his opinion—unrestrained by any fear that a higher court might call him down. The judge may find, for instance, that the acts proven to have been committed by the accused—altho unethical, immoral, or otherwise reprehensible—do not constitute a crime within the purview of our penal law, and hence the court is constrained to acquit him. In such a case we think the court may with unquestionable propriety express its disapproval or reprehension of those acts to avoid the impression that by acquitting the accused it approves or admires his conduct. That such an erroneous impression may obtain can be gathered from the present appellant's own statement above quoted that "when a person is not guilty he should be considered and treated as clean and honest as a virgin." We think that is an erroneous impression because from the fact that an accused has not been proven guilty beyond a reasonable doubt, it does not necessarily follow that he is "as clean and honest as a virgin" or a saint. By that we do not insinuate that the herein appellant cannot be considered as honest as a saint. We are called upon to review not the facts but only the law involved—not the factual basis of the remarks complained of but the authority of the court to make them.

Third. We think the remarks complained of are not irrelevant or impertinent. The court found as a fact that Mrs. Elser was indebted to the Pension and Investment Board for taxes and other advances and that she made payments to appellant, who was then the executive officer of the Board, of various amounts which the auditor believed corresponded or should correspond to Mrs. Elser's account with the Board but which were not turned over or accounted for to the latter. Appellant's acts and conduct which the trial court criticized or reprehended relate to the circumstances under which he claimed to have received the payments from Mrs. Elser, to wit, that in those transactions he acted not as an officer of the Board but as an agent of Mrs. Elser. The burden of the court's criticism is that appellant should not have consented to serve two masters—Mrs. Elser, and the Board of which he was an officer or agent. The ethical standard that the trial court undoubtedly had in mind is enjoined by the Gospel itself, even tho it is not embodied in our Penal Code. The criticism cannot be considered unwarranted and

uncalled for because, as an agent both of the Board and of Mrs. Elser, appellant, in the opinion of the trial court, placed himself in an equivocal position in receiving the payments in question, so much so that the Auditor General himself thought Mrs. Elser's payments to appellant were intended for, or should have been applied to, her back accounts with the Board.

Appellant in his brief as well as in his memorandum bitterly criticizes the conduct of the Fiscal, the Auditor, and the trial court. For instance, he uses these expressions: "the highhanded manner displayed by the Prosecution"; "the pendulum of justice should swing against his (appellant's) accusers"; the lower court "committed a grave abuse of discretion"; "if there should be any reprimand at all to be meted out, that reprimand should be directed to the Auditor for his carelessness, inefficiency or incapacity, or ignorance of his duties." If an attorney or a litigant may thus permit himself to criticize the conduct of his opponent and of the Court itself, it does not seem unreasonable if the Court should, in a temperate and dignified manner, permit itself to pass judgment or express an opinion, whether adverse or favorable, upon the conduct of an accused relating to the accusation.

The case of *People vs. Abellera*, 40 Off. Gaz., (7th Sup.) 17, is distinguishable from the case at bar. There, Clerk of Court Abellera, who was charged with infidelity in the custody of public documents, was found not guilty of the charge but was reprimanded by the court in his capacity as clerk of court for various acts not material to the issue, such, for example, as the misreading of a ballot and his acceptance of free meals and transportation from litigants.

The order appealed from is affirmed, with costs. So ordered.

Yulo, C.J., Moran, Paras, and Bocobo, JJ., concur.

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