

**TEODORO SANCHEZ, PETITIONER, VS. HON. CARLOS R. BUENVIAJE,
PRESIDING JUDGE, BRANCH VII, COURT OF FIRST INSTANCE OF
CAMA-RINES SUR, IRIGA CITY, AND ALEJO SANCHEZ,
RESPONDENTS.**

G.R. No. 57314. November 29, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review a decision rendered by the defunct Court of First Instance of Camarines Sur, Branch VII, with following factual background.

On August 25, 1976, Alejo Sanchez sued Teodoro Sanchez and Leonor Santilles in the Municipal Court of Bato, Camarines Sur, for the recovery of P2,000.00 which the latter had promised to pay in two notes. Said notes also contained stipulations for interest at the rate of 10% per month. The Municipal Court rendered judgment ordering Teodoro Sanchez only to pay to Alejo Sanchez P2,000.00 plus interest thereon at the legal rate from the filing of the complaint.

Teodoro appealed to the Court of First Instance of Camarines Sur which rendered the following judgment:

"WHEREFORE, the judgment rendered by the lower court is hereby AFFIRMED with modification as to costs. Judgment is hereby rendered, ordering the defendant to pay his indebtedness to plaintiff in the total sum of P2,000.00, plus interest thereon at the legal rate from the filing of the complaint in this case to actual payment. Defendant to pay double the costs of this suit." (Rollo, p. 30.)

In his petition for review, Teodoro claims that in a loan with usurious interest both the loan and the usurious interest are void.

Alejo was required to comment on the petition but it appears that he died sometime in the latter part of 1980 and the early part of 1981. (Rollo, p. 42.) Accordingly, his children were impleaded as respondents and required to file comment which they failed to do despite notice to them.

The absence of comment on the part of the private respondents notwithstanding, We resolve the petition without any difficulty.

It is now well-settled that: "the Usury Law (Act No. 2655), by its letter and spirit, does not deprive the lender of his right to recover of the borrower the money actually loaned - this only in the case that the interest collected is usurious. The law, as it is now, does not provide for the forfeiture of the capital in favor of the debtor in usurious contract x x x." (Lopez and Javelona vs. El Hogar Filipino, 47 Phil. 249, 275 [1925].)

True it is that in Briones vs. Cammayo, L-23559, Oct. 4, 1971; 41 SCRA 404, Chief Justice Concepcion and now Chief Justice Fernando concurred with Justice Castro who opined that both loan and usurious interest are void. However, it must be emphasized that eight other justices maintained that only the usurious interest is void but not

the principal obligation.

WHEREFORE, finding the judgment sought to be reviewed to be in accordance with law, the petition is hereby dismissed for lack of merit with costs against the petitioner.

SO ORDERED.

Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

Makasiar, J., (Chairman), I dissent. Judgment of the trial court should be reversed. Private respondent committed a crime in violation of the Usury Law and should be penalized by denying him recovery sum of his capital, to stamp out usurers exploiting the needy.

Aquino, J., see concurring opinion.

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CONCURRING OPINION

AQUINO, J.:

The original rule was that while the usurious loan is void this does not mean that the debtor may keep the principal received by him as loan, thus unjustly enriching himself to the damage of the creditor. The creditor has no right of action for the recovery of the stipulated interest although he may sue for the recovery of the principal loaned. (Syllabus, Go Chioco vs. Martinez, 45 Phil. 256).

This was the opinion of five Justices. Justices Street and Malcolm opined that the creditor should not be allowed to recover the principal of the loan.

Said rule was reiterated in Sajo vs. Gustilo, 48 Phil. 451 where it was held that the Usury Law permits the creditor to recover the principal but not the stipulated usurious interest. This could well be taken to mean a forfeiture of the right to any interest so as not to arrive at a contradiction in terms.

But in that same Sajo case, Justice Malcolm noted that the court has fallen into the habit in usury cases of allowing the creditor the legal rate of interest on the judgment for the principal from the date of the filing of the complaint.

The same rule, that the principal is not forfeited in a usurious loan was followed in Briones vs. Cammayo, L-23559, October 31, 1971, 41 SCRA 404. The rule was not modified by articles 1411, 1413, 1957 and 1961 of the Civil Code.

Parenthetically, it may be stated that Presidential Decree No. 116, as amended by Presidential Decrees Nos. 858 and 1684, has transferred to the Monetary Board the power to fix the maximum rate of interest. Section 7 of the Law was amended by Presidential Decree No. 116. It does not provide for the forfeiture of the principal of a usurious loan.

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