

**KAREN E. SALVACION, MINOR, THRU FEDERICO N. SALVACION, JR.,
FATHER AND NATURAL GUARDIAN, AND SPOUSES FEDERICO N.
SALVACION, JR., AND EVELINA E. SALVACION, PETITIONERS, VS.
CENTR...**

G.R. No. 94723. August 21, 1997

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

In our predisposition to discover the “original intent” of a statute, courts become the unfeeling pillars of the status quo. Little do we realize that statutes or even constitutions are bundles of compromises thrown our way by their framers. Unless we exercise vigilance, the statute may already be out of tune and irrelevant to our day.

The petition is for declaratory relief. It prays for the following reliefs:

a.) Immediately upon the filing of this petition, an Order be issued restraining the respondents from applying and enforcing Section 113 of Central Bank Circular No. 960;

b.) After hearing, judgment be rendered:

1.) Declaring the respective rights and duties of petitioners and respondents;

2.) Adjudging Section 113 of Central Bank Circular No. 960 as contrary to the provision of the Constitution, hence void; because its provision that “Foreign currency deposits shall be exempt from attachment, garnishment, or any other order to process of any court, legislative body, government agency or any administrative body whatsoever”

i.) has taken away the right of petitioners to have the bank deposit of defendant Greg Bartelli y Northcott garnished to satisfy the judgment rendered in petitioners’ favor in violation of substantive due process guaranteed by the Constitution;

ii.) has given foreign currency depositors an undue favor or a class privilege in violation of the equal protection clause of the Constitution;

iii.) has provided a safe haven for criminals like the herein respondent Greg Bartelli y Northcott since criminals could escape civil liability for their wrongful acts by merely converting their money to a foreign currency and depositing it in a foreign currency deposit account with an authorized bank.

The antecedents facts:

On February 4, 1989, Greg Bartelli y Northcott, an American tourist, coaxed and lured petitioner Karen Salvacion, then 12 years old to go with him to his apartment. Therein, Greg Bartelli detained Karen Salvacion for four days, or up to February 7, 1989 and was able to rape the child once on February 4, and three times each day on February 5, 6, and 7, 1989. On February 7, 1989, after policemen and people living nearby, rescued Karen,

Greg Bartelli was arrested and detained at the Makati Municipal Jail. The policemen recovered from Bartelli the following items: 1.) Dollar Check No. 368, Control No. 021000678-1166111303, US 3,903.20; 2.) COCOBANK Bank Book No. 104-108758-8 (Peso Acct.); 3.) Dollar Account – China Banking Corp., US \$/A#54105028-2; 4.) ID-122-30-8877; 5.) Philippine Money (P234.00) cash; 6.) Door Keys 6 pieces; 7.) Stuffed Doll (Teddy Bear) used in seducing the complainant.

On February 16, 1989, Makati Investigating Fiscal Edwin G. Condaya filed against Greg Bartelli, Criminal Case No. 801 for Serious Illegal Detention and Criminal Cases Nos. 802, 803, 804, and 805 for four (4) counts of Rape. On the same day, petitioners filed with the Regional Trial Court of Makati Civil Case No. 89-3214 for damages with preliminary attachment against Greg Bartelli. On February 24, 1989, the day there was a scheduled hearing for Bartelli's petition for bail the latter escaped from jail.

On February 28, 1989, the court granted the fiscal's Urgent Ex-Parte Motion for the Issuance of Warrant of Arrest and Hold Departure Order. Pending the arrest of the accused Greg Bartelli y Northcott, the criminal cases were archived in an Order dated February 28, 1989.

Meanwhile, in Civil Case No. 89-3214, the Judge issued an Order dated February 22, 1989 granting the application of herein petitioners, for the issuance of the writ of preliminary attachment. After petitioners gave Bond No. JCL (4) 1981 by FGU Insurance Corporation in the amount P100,000.00, a Writ of Preliminary Attachment was issued by the trial court on February 28, 1989.

On March 1, 1989, the Deputy Sheriff of Makati served a Notice of Garnishment on China Banking Corporation. In a letter dated March 13, 1989 to the Deputy Sheriff of Makati, China Banking Corporation invoked Republic Act No. 1405 as its answer to the notice of garnishment served on it. On March 15, 1989, Deputy Sheriff of Makati Armando de Guzman sent his reply to China Banking Corporation saying that the garnishment did not violate the secrecy of bank deposits since the disclosure is merely incidental to a garnishment properly and legally made by virtue of a court order which has placed the subject deposits in custodia legis. In answer to this letter of the Deputy Sheriff of Makati, China Banking Corporation, in a letter dated March 20, 1989, invoked Section 113 of Central Bank Circular No. 960 to the effect that the dollar deposits of defendant Greg Bartelli are exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body, whatsoever.

This prompted the counsel for petitioners to make an inquiry with the Central Bank in a letter dated April 25, 1989 on whether Section 113 of CB Circular No. 960 has any exception or whether said section has been repealed or amended since said section has rendered nugatory the substantive right of the plaintiff to have the claim sought to be enforced by the civil action secured by way of the writ of preliminary attachment as granted to the plaintiff under Rule 57 of the Revised Rules of Court. The Central Bank responded as follows:

"May 26, 1989

"Ms. Erlinda S. Carolino

12 Pres. Osmeña Avenue

South Admiral Village

Paranaque, Metro Manila

"Dear Ms. Carolino:

"This is in reply to your letter dated April 25, 1989 regarding your inquiry on Section 113, CB Circular No. 960 (1983).

“The cited provision is absolute in application. It does not admit of any exception, nor has the same been repealed nor amended.

“The purpose of the law is to encourage dollar accounts within the country’s banking system which would help in the development of the economy. There is no intention to render futile the basic rights of a person as was suggested in your subject letter. The law may be harsh as some perceive it, but it is still the law. Compliance is, therefore, enjoined.

“Very truly yours,

(SGD) AGAPITO S. FAJARDO

Director”[1]

Meanwhile, on April 10, 1989, the trial court granted petitioners’ motion for leave to serve summons by publication in the Civil Case No. 89-3214 entitled “Karen Salvacion. et al. vs. Greg Bartelli y Northcott.” Summons with the complaint was published in the Manila Times once a week for three consecutive weeks. Greg Bartelli failed to file his answer to the complaint and was declared in default on August 7, 1989. After hearing the case ex-parte, the court rendered judgment in favor of petitioners on March 29, 1990, the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendant, ordering the latter:

- “1. To pay plaintiff Karen E. Salvacion the amount of P500,000.00 as moral damages;
- “2. To pay her parents, plaintiffs spouses Federico N. Salvacion, Jr., and Evelina E. Salvacion the amount of P150,000.00 each or a total of P300,000.00 for both of them;
- “3. To pay plaintiffs exemplary damages of P100,000.00; and
- “4. To pay attorney’s fees in an amount equivalent to 25% of the total amount of damages herein awarded;
- “5. To pay litigation expenses of P10,000.00; plus
- “6. Costs of the suit.

“SO ORDERED.”

The heinous acts of respondents Greg Bartelli which gave rise to the award were related in graphic detail by the trial court in its decision as follows:

“The defendant in this case was originally detained in the municipal jail of Makati but was able to escape therefrom on February 24, 1989 as per report of the Jail Warden of Makati to the Presiding Judge, Honorable Manuel M. Cosico of the Regional Trial Court of Makati, Branch 136, where he was charged with four counts of Rape and Serious Illegal Detention (Crim. Cases Nos. 802 to 805). Accordingly, upon motion of plaintiffs, through counsel, summons was served upon defendant by publication in the Manila Times, a newspaper of general circulation as attested by the Advertising Manager of the Metro Media Times, Inc., the publisher of the said newspaper. Defendant, however, failed to file his answer to the complaint despite the lapse of the period of sixty (60) days from the last publication; hence, upon motion of the plaintiffs through counsel, defendant was declared in default and plaintiffs were authorized to present their evidence ex parte.

“In support of the complaint, plaintiffs presented as witness the minor Karen E. Salvacion, her father, Federico N. Salacion, Jr., a certain Joseph Aguilar and a certain Liberato Mandulio, who gave the following testimony:

“Karen took her first year high school in St. Mary’s Academy in Pasay City but has recently transferred to Arellano University for her second year.

“In the afternoon of February 4, 1989, Karen was at the Plaza Fair Makati Cinema Square, with her friend Edna Tangile whiling away her free time. At about 3:30 p.m. while she was finishing her snack on a concrete bench in front of Plaza Fair, an American approached her. She was then alone because Edna Tangile had already left, and she was about to go home. (TSN, Aug. 15, 1989, pp. 2 to 5)

“The American asked her name and introduced himself as Greg Bartelli. He sat beside her when he talked to her. He said he was a Math teacher and told her that he has a sister who is a nurse in New York. His sister allegedly has a daughter who is about Karen’s age and who was with him in his house along Kalayaan Avenue. (TSN, Aug. 15, 1989, pp. 4-5).

“The American asked Karen what was her favorite subject and she told him it’s Pilipino. He then invited her to go with him to his house where she could teach Pilipino to his niece. He even gave her a stuffed toy to persuade her to teach his niece. (Id., pp.5-6)

“They walked from Plaza Fair along Pasong Tamo, turning right to reach the defendant’s house along Kalayaan Avenue. (Id., p.6)

“When they reached the apartment house, Karen notices that defendant’s alleged niece was not outside the house but defendant told her maybe his niece was inside. When Karen did not see the alleged niece inside the house, defendant told her maybe his niece was upstairs, and invited Karen to go upstairs. (Id., p. 7)

“Upon entering the bedroom defendant suddenly locked the door. Karen became nervous because his niece was not there. Defendant got a piece of cotton cord and tied Karen’s hands with it, and then he undressed her. Karen cried for help but defendant strangled her. He took a packing tape and he covered her mouth with it and he circled it around her head. (Id., p. 7)

“Then, defendant suddenly pushed Karen towards the bed which was just near the door. He tied her feet and hands spread apart to the bed posts. He knelt in front of her and inserted his finger in her sex organ. She felt severe pain. She tried to shout but no sound could come out because there were tapes on her mouth. When defendant withdrew his finger it was full of blood and Karen felt more pain after the withdrawal of the finger. (Id., p.8)

“He then got a Johnsons Baby Oil and he applied it to his sex organ as well as to her sex organ. After that he forced his sex organ into her but he was not able to do so. While he was doing it, Karen found it difficult to breathe and she perspired a lot while feeling severe pain. She merely presumed that he was able to insert his sex organ a little, because she could not see. Karen could not recall how long the defendant was in that position. (Id., pp. 8-9)

“After that, he stood up and went to the bathroom to wash. He also told Karen to take a shower and he untied her hands. Karen could only hear the sound of the water while the defendant, she presumed, was in the bathroom washing his sex organ. When she took a shower more blood came out from her. In the meantime, defendant changed the mattress because it was full of blood. After the shower, Karen was allowed by defendant to sleep. She fell asleep because she got tired crying. The incident happened at about 4:00 p.m. Karen had no way of determining the exact time because defendant removed her watch. Defendant did not care to give her food before she went to sleep. Karen woke up at about 8:00 o’clock the following morning. (Id., pp. 9-10)

“The following day, February 5, 1989, a Sunday, after breakfast of biscuit and coke at about 8:30 to 9:00 a.m.

defendant raped Karen while she was still bleeding. For lunch, they also took biscuit and coke. She was raped for the second time at about 12:00 to 2:00 p.m. In the evening, they had rice for dinner which defendant had stored downstairs; it was he who cooked the rice that is why it looks like “lugaw”. For the third time, Karen was raped again during the night. During those three times defendant succeeded in inserting his sex organ but she could not say whether the organ was inserted wholly.

“Karen did not see any firearm or any bladed weapon. The defendant did not tie her hands and feet nor put a tape on her mouth anymore but she did not cry for help for fear that she might be killed; besides, all those windows and doors were closed. And even if she shouted for help, nobody would hear her. She was so afraid that if somebody would hear her and would be able to call a police, it was still possible that as she was still inside the house, defendant might kill her. Besides, the defendant did not leave that Sunday, ruling out her chance to call for help. At nighttime he slept with her again. (TSN, Aug. 15, 1989, pp. 12-14)

“On February 6, 1989, Monday, Karen was raped three times, once in the morning for thirty minutes after breakfast of biscuits; again in the afternoon; and again in the evening. At first, Karen did not know that there was a window because everything was covered by a carpet, until defendant opened the window for around fifteen minutes or less to let some air in, and she found that the window was covered by styrofoam and plywood. After that, he again closed the window with a hammer and he put the styrofoam, plywood, and carpet back. (Id., pp. 14-15)

“That Monday evening, Karen had a chance to call for help, although defendant left but kept the door closed. She went to the bathroom and saw a small window covered by styrofoam and she also spotted a small hole. She stepped on the bowl and she cried for help through the hole. She cried: ‘Maawa na po kayo sa akin. Tulungan n’yo akong makalabas dito. Kinidnap ako!’ Somebody heard her. It was a woman, probably a neighbor, but she got angry and said she was ‘istorbo.’ Karen pleaded for help and the woman told her to sleep and she will call the police. She finally fell asleep but no policeman came. (TSN, Aug. 15, 1989, pp. 15-16)

“She woke up at 6:00 o’clock the following morning, and she saw defendant in bed, this time sleeping. She waited for him to wake up. When he woke up, he again got some food but he always kept the door locked. As usual, she was merely fed with biscuit and coke. On that day, February 7, 1989, she was again raped three times. The first at about 6:30 to 7:00 a.m., the second at about 8:30 – 9:00, and the third was after lunch at 12:00 noon. After he had raped her for the second time he left but only for a short while. Upon his return, he caught her shouting for help but he did not understand what she was shouting about. After she was raped the third time, he left the house. (TSN, Aug. 15, 1989, pp. 16-17) She again went to the bathroom and shouted for help. After shouting for about five minutes, she heard many voices. The voices were asking for her name and she gave her name as Karen Salvacion. After a while, she heard a voice of a woman saying they will just call the police. They were also telling her to change her clothes. She went from the bathroom to the room but she did not change her clothes being afraid that should the neighbors call the police and the defendant see her in different clothes, he might kill her. At that time she was wearing a T-shirt of the American because the latter washed her dress. (Id., p. 16)

“Afterwards, defendant arrived and opened the door. He asked her if she had asked for help because there were many policemen outside and she denied it. He told her to change her clothes, and she did change to the one she was wearing on Saturday. He instructed her to tell the police that she left home and willingly; then he went downstairs but he locked the door. She could hear people conversing but she could not understand what they were saying. (Id., p. 19)

“When she heard the voices of many people who were conversing downstairs, she knocked repeatedly at the door

as hard as she could. She heard somebody going upstairs and when the door was opened, she saw a policeman. The policeman asked her name and the reason why she was there. She told him she was kidnapped. Downstairs, he saw about five policemen in uniform and the defendant was talking to them. ‘Nakikipag-areglo po sa mga pulis,’ Karen added. “The policeman told him to just explain at the precinct. (Id., p. 20)

“They went out of the house and she saw some of her neighbors in front of the house. They rode the car of a certain person she called Kuya Boy together with defendant, the policeman, and two of her neighbors whom she called Kuya Bong Lacson and one Ate Nita. They were brought to Sub-Station I and there she was investigated by a policeman. At about 2:00 a.m., her father arrived, followed by her mother together with some of their neighbors. Then they were brought to the second floor of the police headquarters. (Id., p. 21)

“At the headquarters, she was asked several questions by the investigator. The written statement she gave to the police was marked Exhibit A. Then they proceeded to the National Bureau of Investigation together with the investigator and her parents. At the NBI, a doctor, a medico-legal officer, examined her private parts. It was already 3:00 in early morning, of the following day when they reached the NBI, (TSN, Aug. 15, 1989, p. 22) The findings of the medico-legal officer has been marked as Exhibit B.

“She was studying at the St. Mary’s Academy in Pasay City at the time of the Incident but she subsequently transferred to Apolinario Mabini, Arellano University, situated along Taft Avenue, because she was ashamed to be the subject of conversation in the school. She first applied for transfer to Jose Abad Santos, Arellano University along Taft Avenue near the Light Rail Transit Station but she was denied admission after she told the school the true reason for her transfer. The reason for their denial was that they might be implicated in the case. (TSN, Aug. 15, 1989, p. 46)

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“After the incident, Karen has changed a lot. She does not play with her brother and sister anymore, and she is always in a state of shock; she has been absent-minded and is ashamed even to go out of the house. (TSN, Sept. 12, 1989, p. 10) She appears to be restless or sad. (Id., p. 11) The father prays for P500,000.00 moral damages for Karen for this shocking experience which probably, she would always recall until she reaches old age, and he is not sure if she could ever recover from this experience.” (TSN, Sept. 24, 1989, pp. 10-11)

Pursuant to an Order granting leave to publish notice of decision, said notice was published in the Manila Bulletin once a week for three consecutive weeks. After the lapse of fifteen (15) days from the date of the last publication of the notice of judgment and the decision of the trial court had become final, petitioners tried to execute on Bartelli’s dollar deposit with China Banking Corporation. Likewise, the bank invoked Section 113 of Central Bank Circular No. 960.

Thus, petitioners decided to seek relief from this Court.

The issues raised and the arguments articulated by the parties boil down to two:

May this Court entertain the instant petition despite the fact that original jurisdiction in petitions for declaratory relief rests with the lower court? She Section 113 of Central Bank Circular No. 960 and Section 8 of R.A. 6426, as amended by P.D. 1246, otherwise known as the Foreign Currency Deposit Act be made applicable to a foreign transient?

Petitioners aver as heretofore stated that Section 113 of Central Bank Circular No. 960 providing that “Foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.” should be adjudged as

unconstitutional on the grounds that: 1.) it has taken away the right of petitioners to have the bank deposit of defendant Greg Bartelli y Northcott garnished to satisfy the judgment rendered in petitioners' favor in violation of substantive due process guaranteed by the Constitution; 2.) it has given foreign currency depositors an undue favor or a class privilege in violation of the equal protection clause of the Constitution; 3.) it has provided a safe haven for criminals like the herein respondent Greg Bartelli y Northcott since criminal could escape civil liability for their wrongful acts by merely converting their money to a foreign currency and depositing it in a foreign currency deposit account with an authorized bank; and 4.) The Monetary Board, in issuing Section 113 of Central Bank Circular No. 960 has exceeded its delegated quasi- legislative power when it took away: a.) the plaintiff's substantive right to have the claim sought to be enforced by the civil action secured by way of the writ of preliminary attachment as granted by Rule 57 of the Revised Rules of Court; b.) the plaintiff's substantive right to have the judgment credit satisfied by way of the writ of execution out of the bank deposit of the judgment debtor as granted to the judgment creditor by Rule 39 of the Revised Rules of Court, which is beyond its power to do so.

On the other hand, respondent Central Bank, in its Comment alleges that the Monetary Board in issuing Section 113 of CB Circular No. 960 did not exceed its power or authority because the subject Section is copied verbatim from a portion of R.A. No. 6426 as amended by P.D. 1246. Hence, it was not the Monetary Board that grants exemption from attachment or garnishment to foreign currency deposits, but the law (R.A. 6426 as amended) itself; that it does not violate the substantive due process guaranteed by the Constitution because a.) it was based on a law; b.) the law seems to be reasonable; c.) it is enforced according to regular methods of procedure; and d.) it applies to all members of a class.

Expanding, the Central Bank said; that one reason for exempting the foreign currency deposits from attachment, garnishment or any other order process of any court, is to assure the development and speedy growth of the Foreign Currency Deposit System and the Offshore Banking System in the Philippines; that another reason is to encourage the inflow of foreign currency deposits into the banking institutions thereby placing such institutions more in a position to properly channel the same to loans and investments in the Philippines, thus directly contributing to the economic development of the country; that the subject section is being enforced according to the regular methods of procedure; and that it applies to all currency deposits made by any person and therefore does not violate the equal protection clause of the Constitution.

Respondent Central Bank further avers that the questioned provision is needed to promote the public interest and the general welfare; that the State cannot just stand idly by while a considerable segment of the society suffers from economic distress; that the State had to take some measures to encourage economic development; and that in so doing persons and property may be subjected to some kinds of restraints or burdens to secure the general welfare or public interest. Respondent Central Bank also alleges that Rule 39 and Rule 57 of the Revised Rules of Court provide that some properties are exempted from execution/attachment especially provided by law and R.A. No. 6426 as amended is such a law, in that it specifically provides, among others, that foreign currency deposits shall be exempted from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.

For its part, respondent China Banking Corporation, aside from giving reasons similar to that of respondent Central Bank, also stated that respondent China Bank is not unmindful of the inhuman sufferings experienced by the minor Karen E. Salvacion from the beastly hands of Greg Bartelli; that it is not only too willing to release the dollar deposit of Bartelli which may perhaps partly mitigate the sufferings petitioner has undergone; but it is restrained from doing so in view of R.A. No. 6426 and Section 113 of Central Bank Circular No. 960; and that despite the harsh effect to these laws on petitioners, CBC has no other alternative but to follow the same.

This court finds the petition to be partly meritorious.

Petitioner deserves to receive the damages awarded to her by the court. But this petition for declaratory relief can only be entertained and treated as a petition for mandamus to require respondents to honor and comply with the writ of execution in Civil Case No. 89-3214.

The Court has no original and exclusive jurisdiction over a petition for declaratory relief.[2] However, exceptions to this rule have been recognized. Thus, where the petition has far-reaching implications and raises questions that should be resolved, it may be treated as one for mandamus.[3]

Here is a child, a 12-year old girl, who in her belief that all Americans are good and in her gesture of kindness by teaching his alleged niece the Filipino language as requested by the American, trustingly went with said stranger to his apartment, and there she was raped by said American tourist Greg Bartelli. Not once, but ten times. She was detained therein for four (4) days. This American tourist was able to escape from the jail and avoid punishment. On the other hand, the child, having received a favorable judgment in the Civil Case for damages in the amount of more than P1,000,000.00, which amount could alleviate the humiliation, anxiety, and besmirched reputation she had suffered and may continue to suffer for a long, long time; and knowing that this person who had wronged her has the money, could not, however get the award of damages because of this unreasonable law. This questioned law, therefore makes futile the favorable judgment and award of damages that she and her parents fully deserve. As stated by the trial court in its decision,

“Indeed, after hearing the testimony of Karen, the Court believes that it was indoubtedly a shocking and traumatic experience she had undergone which could haunt her mind for a long, long time, the mere recall of which could make her feel so humiliated, as in fact she had been actually humiliated once when she was refused admission at the Abad Santos High School, Arellano University, where she sought to transfer from another school, simply because the school authorities of the said High School learned about what happened to her and allegedly feared that they might be implicated in the case.

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The reason for imposing exemplary or corrective damages is due to the wanton and bestial manner defendant had committed the acts of rape during a period of serious illegal detention of his hapless victim, the minor Karen Salvacion whose only fault was in her being so naive and credulous to believe easily that defendant, an American national, could not have such a bestial desire on her nor capable of committing such heinous crime. Being only 12 years old when that unfortunate incident happened, she has never heard of an old Filipino adage that in every forest there is a snake, xxx.”[4]

If Karen’s sad fate had happened to anybody’s own kin, it would be difficult for him to fathom how the incentive for foreign currency deposit could be more important than his child’s right to said award of damages; in this case, the victim’s claim for damages from this alien who had the gall to wrong a child of tender years of a country where he is mere visitor. This further illustrates the flaw in the questioned provisions.

It is worth mentioning that R.A. No. 6426 was enacted in 1983 or at a time when the country’s economy was in a shambles; when foreign investments were minimal and presumably, this was the reason why said statute was enacted. But the realities of the present times show that the country has recovered economically; and even if not, the questioned law still denies those entitled to due process of law for being unreasonable and oppressive. The intention of the questioned law may be good when enacted. The law failed to anticipate the iniquitous effects producing outright injustice and inequality such as as the case before us.

It has thus been said that-

“But I also know,[5] that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths are disclosed and

manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times... We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors.”

In his comment, the Solicitor General correctly opined, thus:

“The present petition has far-reaching implications on the right of a national to obtain redress for a wrong committed by an alien who takes refuge under a law and regulation promulgated for a purpose which does not contemplate the application thereof envisaged by the alien. More specifically, the petition raises the question whether the protection against attachment, garnishment or other court process accorded to foreign currency deposits PD No. 1246 and CB Circular No. 960 applies when the deposit does not come from a lender or investor but from a mere transient who is not expected to maintain the deposit in the bank for long.

“The resolution of this question is important for the protection of nationals who are victimized in the forum by foreigners who are merely passing through.

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“xxx Respondents China Banking Corporation and Central Bank of the Philippines refused to honor the writ of execution issued in Civil Case No. 89-3214 on the strength of the following provision of Central Bank Circular No. 960:

‘Sec. 113 Exemption from attachment. – Foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.’

“Central Bank Circular No. 960 was issued pursuant to Section 7 of Republic Act No. 6426:

‘Sec. 7. Rules and Regulations. The Monetary Board of the Central Bank shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act which shall take effect after the publication of such rules and regulations in the Official Gazette and in a newspaper of national circulation for at least once a week for three consecutive weeks. In case the Central Bank promulgates new rules and regulations decreasing the rights of depositors, the rules and regulations at the time the deposit was made shall govern.’

“The aforecited Section 113 was copied from Section 8 of Republic Act No. 6426. As amended by P.D. 1246, thus:

‘Sec. 8. Secrecy of Foreign Currency Deposits. -- All foreign currency deposits authorized under this Act, as amended by Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositor, in no instance shall such foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office whether judicial or administrative or legislative or any other entity whether public or private: Provided, however, that said foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.’

“The purpose of PD 1246 in according protection against attachment, garnishment and other court process to foreign currency deposits is stated in its whereases, viz.:

‘WHEREAS, under Republic Act No. 6426, as amended by Presidential Decree No. 1035, certain Philippine banking institutions and branches of foreign banks are authorized to accept deposits in foreign currency;

‘WHEREAS, under provisions of Presidential Decree No. 1034 authorizing the establishment of an offshore

banking system in the Philippines, offshore banking units are also authorized to receive foreign currency deposits in certain cases;

‘WHEREAS, in order to assure the development and speedy growth of the Foreign Currency Deposit System and the Offshore Banking System in the Philippines, certain incentives were provided for under the two Systems such as confidentiality subject to certain exceptions and tax exemptions on the interest income of depositors who are nonresidents and are not engaged in trade or business in the Philippines;

‘WHEREAS, making absolute the protective cloak of confidentiality over such foreign currency deposits, exempting such deposits from tax, and guaranteeing the vested right of depositors would better encourage the inflow of foreign currency deposits into the banking institutions authorized to accept such deposits in the Philippines thereby placing such institutions more in a position to properly channel the same to loans and investments in the Philippines, thus directly contributing to the economic development of the country;’

“Thus, one of the principal purposes of the protection accorded to foreign currency deposits is to assure the development and speedy growth of the Foreign Currency Deposit system and the Offshore Banking in the Philippines’ (3rd Whereas).

“The Offshore Banking System was established by PD No. 1034. In turn, the purposes of PD No. 1034 are as follows:

‘WHEREAS, conditions conducive to the establishment of an offshore banking system, such as political stability, a growing economy and adequate communication facilities, among others, exist in the Philippines;

‘WHEREAS, it is in the interest of developing countries to have as wide access as possible to the sources of capital funds for economic development;

‘WHEREAS, an offshore banking system based in the Philippines will be advantageous and beneficial to the country by increasing our links with foreign lenders, facilitating the flow of desired investments into the Philippines, creating employment opportunities and expertise in international finance, and contributing to the national development effort.

‘WHEREAS, the geographical location, physical and human resources, and other positive factors provide the Philippines with the clear potential to develop as another financial center in Asia;’

“On the other hand, the Foreign Currency Deposit system was created by PD No. 1035. Its purpose are as follows:

‘WHEREAS, the establishment of an offshore banking system in the Philippines has been authorized under a separate decree;

‘WHEREAS, a number of local commercial banks, as depository bank under the Foreign Currency Deposit Act (RA No. 6426), have the resources and managerial competence to more actively engage in foreign exchange transactions and participate in the grant of foreign currency loans to resident corporations and firms;

‘WHEREAS, it is timely to expand the foreign currency lending authority of the said depository banks under RA 6426 and apply to their transactions the same taxes as would be applicable to transaction of the proposed offshore banking units;’

“It is evident from the above [Whereas clauses] that the Offshore Banking System and the Foreign Currency Deposit System were designed to draw deposits from foreign lenders and investors (Vide second Whereas of PD No. 1034; third Whereas of PD No. 1035). It is these depositors that are induced by the two laws and given protection and incentives by them.

“Obviously, the foreign currency deposit made by a transient or a tourist is not the kind of deposit encourage by PD Nos. 1034 and 1035 and given incentives and protection by said laws because such depositor stays only for a few days in the country and, therefore, will maintain his deposit in the bank only for a short time.

“Respondent Greg Bartelli, as stated, is just a tourist or a transient. He deposited his dollars with respondent China Banking Corporation only for safekeeping during his temporary stay in the Philippines.

“For the reasons stated above, the Solicitor General thus submits that the dollar deposit of respondent Greg Bartelli is not entitled to the protection of Section 113 of Central Bank Circular No. 960 and PD No. 1246 against attachment, garnishment or other court processes.”[6]

In fine, the application of the law depends on the extent of its justice. Eventually, if we rule that the questioned Section 113 of Central Bank Circular No. 960 which exempts from attachment, garnishment, or any other order or process of any court. Legislative body, government agency or any administrative body whatsoever, is applicable to a foreign transient, injustice would result especially to a citizen aggrieved by a foreign guest like accused Greg Bartelli. This would negate Article 10 of the New Civil Code which provides that “in case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail. “Ninguno non deve enriquecerse tortizermamente con damo de otro.” Simply stated, when the statute is silent or ambiguous, this is one of those fundamental solutions that would respond to the vehement urge of conscience. (Padilla vs. Padilla, 74 Phil. 377)

It would be unthinkable, that the questioned Section 113 of Central Bank No. 960 would be used as a device by accused Greg Bartelli for wrongdoing, and in so doing, acquitting the guilty at the expense of the innocent.

Call it what it may – but is there no conflict of legal policy here? Dollar against Peso? Upholding the final and executory judgment of the lower court against the Central Bank Circular protecting the foreign depositor? Shielding or protecting the dollar deposit of a transient alien depositor against injustice to a national and victim of a crime? This situation calls for fairness legal tyranny.

We definitely cannot have both ways and rest in the belief that we have served the ends of justice.

IN VIEW WHEREOF, the provisions of Section 113 of CB Circular No. 960 and PD No. 1246, insofar as it amends Section 8 of R.A. 6426 are hereby held to be INAPPLICABLE to this case because of its peculiar circumstances. Respondents are hereby REQUIRED to COMPLY with the writ of execution issued in Civil Case No. 89-3214, “Karen Salvacion, et al. vs. Greg Bartelli y Northcott, by Branch CXLIV, RTC Makati and to RELEASE to petitioners the dollar deposit of respondent Greg Bartelli y Northcott in such amount as would satisfy the judgment.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Francisco, and Panganiban, JJ., concur.

Padilla, J., no part.

Mendoza, and Hermosisima, Jr., JJ., on leave.

[1] Annex “R”, Petition.

[2] Alliance of Government Workers (AGW) v. Ministry of Labor and Employment, 124 SCRA 1.

[3] Nationalista Party vs. Angelo Bautista, 85 Phil. 101; Aquino vs. Comelec, 62 SCRA 275; and Alliance of Government Workers vs. Minister of Labor and Employment, supra.

[4] Decision, Regional Trial Court, Civil Case No. 89-3214, pp. 9 & 12; Rollo, pp. 66 & 69.

[5] Thomas Jefferson, *Democracy*, ed. Saul K. Padover. (New York, Penguin, 1946) p. 171.

[6] Comment of the Solicitor General, Rollo, pp. 128 – 129; 135-136.

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