



CERTIFIED TRUE COPY  
*Wynne L. Lapid*  
 WYNNE L. LAPID  
 Division Clerk of Court  
 Third Division  
 FEB 02 2018

Republic of the Philippines  
 Supreme Court  
 Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
 thru Private Complainant BRIAN  
 VICTOR BRITCHFORD,  
 Petitioner,

G.R. No. 199527

Present:

VELASCO, JR., J.,  
 Chairperson,

BERSAMIN,  
 LEONEN,  
 MARTIRES, and  
 GESMUNDO, JJ.

- versus -

SALVADOR ALAPAN,  
 Respondent.

Promulgated:

January 10, 2018  
*Wynne L. Lapid*

X ----- X

DECISION

MARTIRES, J.:

This is a petition for review on certiorari assailing the Resolution, dated 22 November 2011, of the Court of Appeals (CA) in CA-G.R. SP No. 118333, which dismissed the petition seeking the imposition of subsidiary imprisonment for nonpayment of fine in eight (8) cases of violation of Batas Pambansa Bilang 22 (B.P. Blg. 22).

THE FACTS

In an Information, dated 26 May 2006, respondent Salvador Alapan (*respondent*) and his wife Myrna Alapan (*Myrna*) were charged with eight (8) counts of violation of B.P. Blg. 22. Upon arraignment on 1 September 2006, they pleaded not guilty to the charges.

In August 2005, the Spouses Alapan borrowed ₱400,000.00 from petitioner Brian Victor Britchford (*petitioner*) with a promise that they

*Prado*

would pay the said amount within three (3) months. To secure the indebtedness, respondent issued eight (8) postdated checks.

When the checks matured, petitioner deposited them at the Philippine National Bank (*PNB*), Olongapo City branch. One week thereafter, *PNB* informed petitioner that the checks were dishonored for the reason that the account against which the checks were drawn was closed. Petitioner immediately informed respondent of the dishonor of the checks.

On their part, the Spouses Alapan averred that their account was closed only on the last week of October 2005 because they suffered business reverses. They nonetheless stated that they were willing to settle their monetary obligation.

### ***The MTC Ruling***

In a decision,<sup>1</sup> dated 4 February 2009, the Municipal Trial Court, San Felipe, Zambales (*MTC*), convicted respondent of eight (8) counts of violation of B.P. Blg. 22. It imposed a penalty of fine instead of imprisonment considering that respondent's act of issuing the bounced checks was not tainted with bad faith and that he was a first-time offender. On the other hand, the *MTC* acquitted Myrna because she did not participate in the issuance of the dishonored checks. The *fallo* reads:

WHEREFORE, the Court finds the evidence of the prosecution to have established the guilt of Accused Salvador Alapan of the eight (8) counts of Violation of B.P. Blg. 22 and imposes upon the aforementioned accused to pay a fine of ₱30,000.00 for each case or total of ₱240,000.00 and to indemnify the offended party, Mr. Brian Victor Britchford the sum of FOUR HUNDRED ELEVEN THOUSAND (₱411,000.00) Philippine Currency, representing the face value of the dishonored checks, with legal interest per annum commencing from March 8, 2006, when demand was made, until fully paid, and to pay attorney's fees of ₱15,000.00 and to pay the costs.<sup>2</sup>

After the *MTC* judgment became final and executory, a writ of execution was issued. The writ, however, was returned unsatisfied. Petitioner thus filed a Motion to Impose Subsidiary Penalty<sup>3</sup> for respondent's failure to pay the fine imposed by the *MTC*.

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<sup>1</sup> CA rollo, pp. 22-27.

<sup>2</sup> CA rollo, p. 27.

<sup>3</sup> CA rollo, pp. 28-29.

In its Order,<sup>4</sup> dated 24 September 2010, the MTC denied the motion on the ground that subsidiary imprisonment in case of insolvency was not imposed in the judgment of conviction.

Aggrieved, petitioner filed an appeal before the Regional Trial Court, Branch 69, Iba, Zambales (*RTC*).

### ***The RTC Ruling***

In a decision,<sup>5</sup> dated 25 January 2011, the RTC dismissed the appeal for lack of jurisdiction. It held that respondent could not be made to undergo subsidiary imprisonment because the judgment of conviction did not provide for such penalty in case of non-payment of fine. The RTC further opined that the MTC decision which already attained finality could no longer be altered or modified. It disposed the case in this wise:

IN VIEW THEREOF, the appeal is DISMISSED for lack of jurisdiction.<sup>6</sup>

Undeterred, petitioner filed a petition for review before the CA.

### ***The CA Ruling***

In a Resolution, dated 22 November 2011, the CA dismissed the petition. It ruled that the petition was filed without the intervention of the Office of the Solicitor General (*OSG*) which was contrary to Section 35, Chapter 12, Title III, Book IV of the Administrative Code. The dispositive portion reads:

In view of the foregoing and finding the Manifestation (in lieu of Comment) filed by the OSG to be well-founded, the petition is hereby DISMISSED pursuant to Section 3, Rule 43 of the 1997 Rules of Court.<sup>7</sup>

Hence, this petition.



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<sup>4</sup> CA rollo, p. 31.

<sup>5</sup> CA rollo, pp. 41-42.

<sup>6</sup> CA rollo, p. 42.

<sup>7</sup> Rollo, p. 21.

## ISSUES

- I. WHETHER PETITIONER MAY ASSAIL THE PENALTY IMPOSED IN THE JUDGMENT OF CONVICTION;
- II. WHETHER RESPONDENT MAY UNDERGO SUBSIDIARY IMPRISONMENT FOR FAILURE TO PAY THE FINE.

Petitioner argues that Section 35, Chapter 12, Title III, Book IV of the Administrative Code is applicable only in cases wherein the government or any of its branches or instrumentalities is directly involved; that the said law does not cover matters wherein it is the interest of the private complainant that is directly affected; and that Administrative Circular No. 13-2001 expressly states that there is no legal obstacle to the application of the Revised Penal Code (*RPC*) provisions on subsidiary imprisonment should only a fine be imposed and the accused be unable to pay the fine.<sup>8</sup>

In his comment, respondent counters, citing *Gonzales v. Chavez*,<sup>9</sup> that it is mandatory upon the OSG to represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer; that it is only the State, through its appellate counsel, the OSG, which has the sole right and authority to institute criminal proceedings before the Court of Appeals or the Supreme Court;<sup>10</sup> that the imposition or the non-imposition of subsidiary penalty is a matter that involves the interest of the State, thus, the private offended party is without legal personality to bring an appeal on the criminal aspect of the case; and that the imposition of subsidiary imprisonment must be clearly stated in the judgment.<sup>11</sup>

In his reply, petitioner avers that Administrative Circular No. 13-2001 categorically implies that subsidiary imprisonment could be resorted to even if the penalty provided by the trial court is limited only to fine; and that the imposition of subsidiary imprisonment would emphasize the gravity of the offense committed by respondent and would serve as a deterrent to others not to emulate this malicious act.<sup>12</sup>



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<sup>8</sup> *Rollo*, pp. 11-16.

<sup>9</sup> 282 Phil. 858 (1992).

<sup>10</sup> 612 Phil. 817, 841 (2009).

<sup>11</sup> *Rollo*, pp. 33-36.

<sup>12</sup> *Rollo*, pp. 55-58.

## OUR RULING

***Petitioner lacks legal standing to question the trial court's order.***

In the appeal of criminal cases before the Court of Appeals or the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. This power is expressly provided in Section 35, Book IV, Title III, Chapter 12 of the Revised Administrative Code.<sup>13</sup> Without doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases.<sup>14</sup>

Jurisprudence has already settled that the interest of the private complainant is limited only to the civil liability arising from the crime. Thus, in *Bautista v. Cuneta-Pangilinan*,<sup>15</sup> the Court ruled:

Thus, the Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the solicitor general. As a rule, only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal.<sup>16</sup>

In this case, respondent was convicted of eight (8) counts of violation of B.P. Blg. 22 for which he was imposed the penalty of fine instead of imprisonment pursuant to Administrative Circulars No. 12-2000 and 13-2001. Thus, the penalty of fine and the imposition of subsidiary imprisonment in case of nonpayment thereof pertain to the criminal aspect of the case. On the other hand, the indemnification for the face value of the dishonored checks refers to the civil aspect of the case. Consequently,

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<sup>13</sup> **SECTION 35.** Powers and Functions.—The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; x x x

<sup>14</sup> *Macasaet v. People*, 492 Phil. 355, 375 (2005).

<sup>15</sup> 698 Phil. 111 (2012).

<sup>16</sup> *Id.* at 124

petitioner could not appeal the imposition of fine as penalty which was not even questioned by the People through the OSG. “While a private prosecutor may be allowed to intervene in criminal proceedings on appeal in the Court of Appeals or the Supreme Court, his participation is subordinate to the interest of the People, hence, he cannot be permitted to adopt a position contrary to that of the Solicitor General. To do so would be tantamount to giving the private prosecutor the direction and control of the criminal proceeding, contrary to the provisions of law.”<sup>17</sup> Hence, the CA properly dismissed the petition for review.

***Subsidiary imprisonment in case of insolvency must be expressly stated in the judgment of conviction.***

Another reason which militates against petitioner’s position is the lack of provision pertaining to subsidiary imprisonment in the judgment of conviction. *People v. Fajardo*,<sup>18</sup> in relation to Republic Act. No. 5465 which amended Article 39 of the RPC, discusses the rationale behind the necessity for expressly imposing subsidiary imprisonment in the judgment of conviction, viz:

The first paragraph of article 39 of the Revised Penal Code reads as follows:

ART. 39. *Subsidiary penalty.* — If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each eight pesos, subject to the following rules: . . .

Article 78 of Chapter V of the same Code, in its pertinent part, which deals with the execution and service of penalties, provides:

ART. 78. *When and how a penalty is to be executed.* — No penalty shall executed except by virtue of a final judgment.

A penalty shall not be executed in any other form than that prescribed by law, nor with any other circumstances or incidents than those expressly authorized thereby.

It is a fundamental principle consecration in section 3 of the Jones Law, the Act of Congress of the United States of America approved on



<sup>17</sup> *Cariño v. De Castro*, 576 Phil. 634, 640 (2008).

<sup>18</sup> 65 Phil. 539 (1938).

August 29, 1916, which was still in force when the order appealed from was made, that **no person may be deprived of liberty without due process of law. This constitutional provision was in a sense incorporated in article 78 of the Revised Penal Code prescribing that no penalty shall be executed except by virtue of a final judgment.** As the fact show that there is no judgment sentencing the accused to suffer subsidiary imprisonment in case of insolvent to pay the fine imposed upon him, **because the said subsidiary imprisonment is not stated in the judgment finding him guilty, it is clear that the court could not legally compel him to serve said subsidiary imprisonment. A contrary holding would be a violation of the laws aforementioned.** That subsidiary imprisonment is a penalty, there can be no doubt, for, according to article 39 of the Revised Penal Code, it is imposed upon the accused and served by him in lieu of the fine which he fails to pay on account of insolvency. There is not a single provision in the Code from which it may be logically inferred that an accused may automatically be made to serve subsidiary imprisonment in a case where he has been sentenced merely to pay a fine and has been found to be insolvent. Such would be contrary to the legal provisions above-cited and to the doctrine laid down in *United States vs. Miranda* (2 Phil., 606, 610), in which it was said: "That judgment of the lower court fails to impose subsidiary imprisonment in case of insolvency for indemnification to the owner of the banca, but only imposes subsidiary punishment as to the costs. In this respect the judgment is erroneous and should be modified."

**We, therefore, conclude that an accused who has been sentenced by final judgment to pay a fine only and is found to be insolvent and could not pay the fine for this reason, cannot be compelled to serve the subsidiary imprisonment provided for in article 39 of the Revised Penal Code.** [emphasis supplied]<sup>19</sup>

Indeed, Administrative Circular No. 13-2001 provides that "should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the Revised Penal Code provisions on subsidiary imprisonment." However, the Circular does not sanction indiscriminate imposition of subsidiary imprisonment for the same must still comply with the law.

Here, the judgment of conviction did not provide subsidiary imprisonment in case of failure to pay the penalty of fine. Thus, subsidiary imprisonment may not be imposed without violating the RPC and the constitutional provision on due process.



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<sup>19</sup> Id. at 541-542.

*The final and executory decision of the MTC can no longer be modified.*

Finally, the time-honored doctrine of immutability of judgment precludes modification of a final and executory judgment:

A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.

The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments.<sup>20</sup>

There is no doubt that the MTC decision has long attained finality and that none of the aforementioned exceptions finds application in this case. Hence, the MTC decision stands and any other question involving the said decision must now be put to rest.

**WHEREFORE**, the petition is **DENIED**. The 22 November 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 118333 is **AFFIRMED**.

**SO ORDERED.**


  
SAMUEL R. MARTIRES  
Associate Justice

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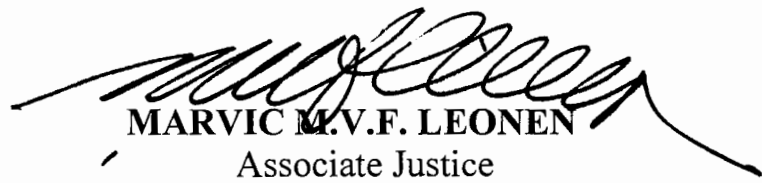
<sup>20</sup> 751 Phil. 204, 211 (2015).

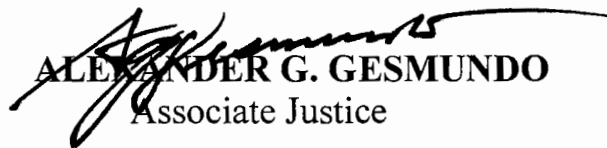


**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson


  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

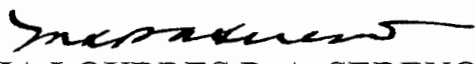
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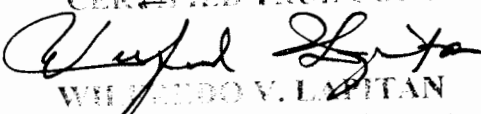
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

CERTIFIED TRUE COPY  
  
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THIRD DIVISION  
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