Recent Cases

DIGEST *

RAPE PARTICIPATED IN BY FOUR PERSONS—NUMBER OF CRIMES; CRIMINAL LIABILITY IN CONSPIRACY TO RAPE.

Armed with bolos and a revolver, the four accused dragged the offended party to a nearby granary. "Thereafter, in spite of her resistance, each and every one of the accused, while the others were holding Consolacion by the hands, succeeded one after the other in having sexual intercourse with her."

HELD: "As to the crime or number of crimes committed by the appellant, we agree with the prosecution that each and everyone of them committed and are guilty of four crimes of rape. Each defendant is responsible, not only for the act of rape committed personally by him, but also for the rape committed by the others, because each one of them cooperated in the consummation of the rape committed by the others, by acts without which it could not have been accomplished. The Supreme Court of Spain in a sentence dated March 10, 1897, and published in the Spanish Official Gazette of April 10th of the same year, held that a person who throws the offended party to the ground and holds her while another is having a sexual intercourse with her, is a co-principal of the crime of rape.

"Besides, from the acts performed by the defendants from the time they arrived at Consolacion's house to the consummation of the offenses of rape on her person by each and everyone of them, it clearly appears that they conspired together to rape their victim, and therefore each one is responsible not only for the rape committed personally by him, but also for that committed by the others, because each sexual intercourse had, through force, by each one of the defendants with the offended party was consummated separately and independently from that had by the others, for which each and every one is also responsible because of the conspiracy. The Supreme Court of Spain, in a sentence of March 15, 1898 (Hidalgo, Vol. I, p. 107), held that a person who has executed acts of lasciviousness upon a young girl on three occasions; once in her house, another on the morning, and the last act in the afternoon of the next day, must be penalized as guilty of three crimes of lasciviousness, because each one of the said acts had been committed independently from the others." (People v. Villa et al., G. R. No. L-591, June 30, 1948.)

L. L. REYES

* We are publishing abstracts of these decisions in the Supreme Court's own words because of their importance.

QUO WARRANTO AND ELECTION CONTEST ACTIONS SEPARABLE EVEN IF INCLUDED IN ONE COMPLAINT.

Respondent Agaton N. Cosuco was proclaimed mayor-elect of Mamburao, Mindoro in the elections of November 11, 1947.

In a motion of protest, Pacal contested Cosuco's election on two sets of grounds: (1) That protestee is ineligible; and (2) That errors, irregularities, illegalities and frauds had been committed in precincts Nos. 3, 4, and 5, without which protestant would have won election.

Contestee filed a motion to dismiss the case upon the theory that the proceedings can be considered as a joint *quo warranto* and election contest, the court's jurisdiction cannot be exercised jointly in both proceedings.

Respondent judge ordered dismissal of the case finding that the protest was an action for election contest and at the same time an action for *quo warranto* and that under the rule laid down in Rama vs. Yonzon, 52 Phil. 446-447, the lower court cannot exercise its jurisdiction over the two remedies jointly and in the same proceedings, adding that "since the petition cannot now be amended in order either to separate the two remedies erroneously merged or eliminate one of them, because such amendment would be out of time, there remains no alternative but to dismiss the case."

HELD: Respondent judge erred in dismissing protest The grounds for *quo warranto* are separable from the grounds for election irregularities alleged in the protest. There is no provision of law, authority or principle of justice against their separation. When two independent actions are improperly joined in one proceeding, it is the duty of the court to order their separation, so that each one may proceed independently of the other. If one of them should be dismissed on jurisdictional or other legal ground, its dismissal should not affect the other action if there is no legal ground to dismiss it. Each action should be dealt with according to its own merits. (Hospicio A. Pacal vs. The Honorable F. Ramos, Judge of the Court of First Instance, Mindoro and Agaton N. Cosuco, G. R. No. L-2126, promulgated May 17, 1948).

—D. SISON

JUDGMENT—A CRIMINAL CASE AGAINST THE EMPLOYEE, BINDING UPON THE EMPLOYER IN A SUBSEQUENT CIVIL ACTION FOR SUBSIDIARY LIABILITY.

A taxicab owned by respondent and driven by Rosendo Dignan collided with a car driven by petitioner. In the criminal complaint for damage to property through reckless imprudence, Digna pleaded guilty and was sentenced to pay a fine and to indemnify petitioner, with subsidiary imprisonment in case of insolvency. Due to inability of Digna to pay the indemnity, the present action to hold respondent subsidiarily liable under Art. 102 and 103, Revised Penal Code, was instituted. At the trial, petitioner relied on the judgment of conviction against Dignan.

"The important question is whether a judgment of conviction sentencing the defendant to pay an indemnity is conclusive in an action against his employer for the enforcement of the latter's subsidiary liability under Articles 102 and 103 of the Revised Penal Code. x x x After very careful reflection, we have arrived at the opinion that the judgment of conviction, in the absence of any collusion between the defendant and the offended party, should bind the person subsidiarily liable. The stigma of a criminal conviction surpasses in effect and implications mere civil liability. Common sense dictates that a finding of guilt in a criminal case in which proof beyond reasonable doubt is necessary, should not be nullified in a subsequent civil action requiring only preponderance of evidence to support a judgment, unless those who support the contrary rule should also hold that an absolution in a civil case will operate automatically to set aside the verdict against the defendant in the criminal case." And the appealed decision having relied upon the prevailing view in the United States on said question, Justice Paras noted that "we need not also make any pronouncement to the effect that the prevailing American view is based upon substantive and procedural laws not similar to those obtaining in this jurisdiction."

Justice Feria, with whom Chief Justice Moran concurred, dissented relying on the rulings laid down in City of Manila vs. Manila Electric, 52 Phil. 586 and Arambulo vs. City of Manila, 55 Phil. 75. (Maria Luisa Martinez, petitioner vs. Manuel Barredo, et al, respondents, G.R. No. 49368, May 13, 1948.)

NOTE: This ruling overrules the rule laid down in City of Manila vs. Manila Electric, 52 Phil. 586 and reiterated in Arambulo vs. City of Manila, 55 Phil. 75. Five judges voted for the majority, two dissented, and two did not participate.

—GENEROSO V. JACINTO

DUTY OF COURT MINISTERIAL TO ORDER OPENING OF BALLOT BOXES UPON MERE PETITION OF INTERESTED PARTY.

Electoral Protest. Protestants moved through a written petition that ballot boxes of precincts in question be ordered opened and the ballots counted on ground of terrorism and fraud. Respondent Judge denied petition on the ground that allegations were not sufficient.

RULING: When there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of the ballots deposited therein.

Sec. 175 of the Election Code reads as follows:

"Sec. 175. JUDICIAL COUNTING OF VOTES IN CONTESTED ELECTIONS.—Upon the *petition of any interested party,* or *motu propio,* if the interest of justice so requires, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voters' affidavits and the documents used in the election be produced, before it and that the ballots be examined and then recounted, x x x."

The above provision contemplates two cases in which "the court shall immediately order—that the ballot boxes be produced before it and that the ballots be examined and the votes recounted"; First, "upon the petition of any interested party," and Second, "or *motu propio,* if the interests of justice so requires."

Under the first case, the mere "petition of any interested party" of course, in accordance with the pleadings, is by itself enough. The limitations implicit in the pronouncements of the Supreme Court as to the effect that the allegations of the protest must show the need of counting and examining the ballots have been eliminated by the drafters of the Election Code. Their evident purpose was to cut short all technicalities and controversies on legal niceties standing in the way of a prompt examination and counting of the ballots and early disposal of protests, and to avoid the recurring petitions filed with the Supreme Court.

The qualification of "if the interests of justice so requires" is attached to the "*motu propio* case", as grammatically is indicated by the first separating comma in the provision.

DISSENTING—the modifying phrase "if the interest of justice so require" must be interpreted to modify both phrases. The result is, that what the law here ordains is that whenever the opening of the ballot boxes and the examination of the ballots and recounting of the votes is sought "upon the petition by any interested party", or is contemplated to be ordered by the court *motu propio*, such opening and such examination can only be ordered *if the interest of justice so require.* It is plain that this legal provision confers discretion upon the court before which the contest is pending to determine whether the interests of justice require them. (Enrique Pareja et al, petitioners vs. Hon. Gregorio Narvasa et al, respondents, G.R. No. L-2008.)

—D. SISON

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1. PROBLEMS IN PROBATE LAW. Ann Arbor, The University of Michigan Press. Chicago, Calloghan & Company, 1946. $10.00. Pp. li, 782.
2. THE AMENDING OF THE FEDERAL CONSTITUTION by Lester Bernhardt Rofield. Ann Arbor, The University of Michigan Press. Chicago, Calloghan & Company, 1942. $5.00. Pp. xxvii, 242.
3. TORTS IN THE CONFLICT OF LAWS by Prof. Moffatt Hancock. Ann Arbor, The University of Michigan Press. Chicago, Calloghan & Company, 1942. $5.00 Pp. 346.
4. REVIEW OF ADMINISTRATIVE ACTS by Armin Uhler, The University of Michigan Press. Chicago, Calloghan & Company, 1942. $5.00. Pp. 238.
5. CONFLICT OF LAWS, A COMPARATIVE STUDY by Ernest Rabbel.
   Vol. I—801 pages. $8.00. 1945.
   Vol. II—746 pages. $8.00. 1947.