Considering the doctrines and rulings in several cases,[1] the conclusion is that when the period of payment of an obligation is left to the exclusive will of the debtor, the same should be annulled. However, said annulment does not convert the condition into an obligation simple and pure. The recourse left for the creditor is to resort to the courts asking for the fixing of the period of payment.

As the plaintiff asks for the payment of the obligation without first asking the court to fix the period of payment, the filing of the action is premature.

Decision appealed from is reversed. (*Salud Patente vs. Roman Omega, G. R. No. L-4433*, Promulgated May 29, 1953.)

CRIMINAL LAW

JUSTIFYING CIRCUMSTANCE OF DEFENSE OF RELATIVES CANNOT BE INVOKED WHEN ACCUSED KILLED THE VICTIM IN ACTUAL ADULTERY WITH HIS (ACCUSED'S) WIFE; CONDITIONAL PLEA OF GUILTY IS EQUIVALENT TO PLEA OF NOT GUILTY.

FACTS: On November 11, 1949, the City Fiscal of Basilan City filed an information for murder qualified by treachery and evident premeditation in the Court of First Instance of Zamboanga, against the accused Moro Sabilul. Before the hearing of the case on November 24, 1949, counsel for the accused manifested to the court that his client would plead guilty to the charge and prayed that the defendant be sentenced to *destierro* because the alleged murder was committed while the deceased Lario was in the act of committing sexual intercourse with accused's wife. The Fiscal argued that the deceased was murdered in cold blood while taking a bath in the creek and that there was evidence that previous to the killing, appellant's wife, who was divorced from the former according to Moro customs, had illicit relations with the deceased. On the basis of these manifestations and without any evidence, the judge found

[1] Osmeña *vs.* Rama (14 Phil. 99), Eleizegui *vs.* Manila Lawn Tennis Club (2 Phil. 325), Levy Hmos. *vs.* Paterno (18 Phil. 357), Seoane *vs.* Franco (24 Phil. 320), Yu Chin Piao *vs.* Lim Tuaco (33 Phil. 98) and Gonzales *vs.* De Jose (66 Phil. 369).

the appellant guilty of murder and in open court sentenced him accordingly.

On appeal, the Supreme Court rendered decision on June 21, 1951, reversing the judgment appealed from on the ground that as contended by the Solicitor General there must have been misunderstanding as to the entry of plea of guilty by the accused which was conditioned on the penalty provided for in Art. 247, and ordering at the same time that the case be returned to the trial court for new trial. Pursuant to said decision, the lower court set the case for hearing on November 7, 1951, for the reception of evidence. The lower court, having in mind appellant's admission of the killing, his conditional plea of guilty, and the manifestation of his counsel that the accused need not be arraigned, asked the defense to present its evidence, reserving to the prosecution the right to introduce rebuttal evidence. On the evidence thus presented and applying the provisions of section 106 of the Administrative Code for Mindanao and Sulu, the court sentenced him to an indeterminate penalty of 6 years and 1 day to 8 years of *prisión mayor*, with the accessories prescribed by law, to indemnify the heirs of the deceased Moro Lario in the sum of ₱2,000.00, and the costs. Hence the appeal.

HELD: The original decision was set aside and new trial ordered in accordance with the observation of the Solicitor General that there must have been misunderstanding as to the entry of the plea of guilty made by the accused. As an accused may not enter a conditional plea of guilty in the sense that he admits his guilt provided that a certain penalty be imposed upon him, the appellant must be considered as having entered a plea of not guilty.

The insinuation that the appellant and his wife had admitted before the fiscal that they were divorced simply because, after the deceased Moro Lario was once caught in appellant's house near Mora Mislayan, both the latter and Moro Lario were fined in the sum of fifty pesos by Moro Iman Ilul, an indication of divorce, cannot prevail over the positive admission of the spouses in open court that they had not been divorced,—not to mention the fact that there is evidence indicating that the fines were not paid and the spouses never lived apart.

The writer (Chief Justice Paras) is of the opinion that from the facts the appellant is entitled to an acquittal on account of the justifying circumstance of having killed the victim in defense of the person and rights of his wife.[1] There was unlawful aggression on

[1] Art. 11, par. 2, Revised Penal Code.

the part of the victim, without provocation from the appellant. The means employed by the appellant is considered reasonable as, on the spur of the moment, he could not have utilized any other weapon than the *pira*[2] lying nearby. It would be unnatural for a man found in appellant's situation to have stood by and merely used his bare hands (U. S. *vs.* Padilla, 34 Phil., 641).

However, the majority are of the opinion and so hold that appellant killed the victim in actual adultery with appellant's wife for if she was forced, she would not have run away upon appellant's arrival. Hence appellant is guilty under article 247 of the Revised Penal Code and sentenced to *destierro* for 2 years, 4 months and 1 day, and shall not enter the City of Basilan within a radius of twenty-five kilometers during said period. (*People vs. Sabilul, G. R. No. L*-5520, Promulgated July 31, 1953.)

WHEN A PERSON IS CHARGED WITH FALSIFICATION DEFINED AND PENALIZED UNDER THE FIRST PART OF ART. 171 OF THE REV. PENAL CODE, HE CANNOT PLEAD GUILTY TO THE LESSER OFFENSE UNDER THE LAST PARAGRAPH OF SAID ARTICLE FOR THE LATTER OFFENSE IS NOT NECESSARILY INCLUDED IN THE OFFENSE CHARGED.

FACTS: Sergio Mendoza was charged with falsification of a public or official document committed while employed as inspector of the Division of Sanitary Engineering of the Office of the City Health Officer, Manila. Upon arraignment he entered a plea of not guilty. On February 18, 1952, day of the trial, with the consent of the court and prosecuting attorney, defendant, assisted by counsel, entered a plea of guilty for the crime of falsification described and punished in the last paragraph of Art. 172 of the Revised Penal Code. Thereupon he was sentenced to suffer 4 months and 1 day of *arresto mayor*, to pay a fine of ₱50.00 or suffer subsidiary imprisonment in case of insolvency, and costs. He appealed.

On June 14, 1952, Vicente T. Velasco Jr., attorney *de oficio* appointed by the Court, filed a motion stating that he could not find a way to question the legality of the penalty imposed, the only question raised by the appeal. The court by resolution directed that said motion be considered as the appellant's brief. On June

[2] A yakan bladed weapon.

17, 1952, Attorney Carlos Perfecto appeared and gave notice of the withdrawal of the appeal stating that the appellant was ready and willing to serve the sentence imposed upon him. On July 16, 1952, copies of the notice of the withdrawal of appeal and of the resolution of the Court requiring the appellant to comment within ten days from notice were served him, but he failed to do so. On August 4, 1952, the Solicitor, who recommends that the penalty be not less than 1 month and 1 day nor more than 4 months of *arresto mayor* as minimum, and not less than 1 year and 1 day nor more than 1 year and 8 months of *prisión correccional*, as maximum, filed his brief. Although the case was set for hearing on October 1, 1952, no one appeared.

The trial court allowed the defendant to enter a plea of guilty to a lesser offense in place of that of not guilty to a more serious crime previously entered, under and pursuant to section 4, Rule 114.[1]

HELD: The substitution of plea could not lawfully be made as the crime charged in the information is falsification of a public document which, if committed by a public officer or employee or by a private person is a very serious crime punished with *prisión mayor* to its full extent and with *prisión correccional* in its medium and maximum periods, respectively, and in both with a fine not to exceed ₱5,000. The accused is an employee or public officer and not a private person, although he could be considered as such if he did not take advantage of the position in committing the falsification. The last paragraph of Art. 172 punishes a private person who introduces in evidence in any judicial proceeding and uses any of the false documents embraced in the next preceding article or in any of the subdivisions of the article. Hence the falsification defined and punished in the last paragraph of Art. 172 is not necessarily included in the offense charged in the information. Sec. 4 of Rule 114 was therefore misapplied. The penalty imposed by the trial court as well as that recommended by the Solicitor General is not in accordance with law as the proper penalty should be not less than 4 months and 1 day of *arresto mayor*, as minimum, and not less than 3 years, 6 months and 21 days and not more than 4 years, 9 months and 10 days of *prisión correccional*, as maximum, the accessories of the law and a fine of ₱50, or subsidiary imprisonment in case of insolvency, and costs.

[1] The defendant with the consent of the court and of the fiscal, may plead guilty of any lesser offense than that charged which is necessarily included in the offense charged in the complaint or information. (Rule 114 Sec. 4 Rules of Court.)

As a general rule, the withdrawal of an appeal before the filing of the appellee's brief is allowed and granted. The presumption is that attorney Carlos Perfecto had the authority to appear for the appellant. The latter was given an opportunity to disown what his attorney had done but has failed to do so. His silence leans more towards confirmation than towards disavowal. Consequently, the motion for dismissal of the appeal is granted.

Appeal dismissed. (*People vs. Sergio Mendoza, G. R. No. L*-5563, Promulgated July 31, 1953.)

POLITICAL LAW

EXECUTIVE ORDER NO. 401-A IS NULL AND VOID IN SO FAR AS IT INTERFERES WITH THE JURISDICTION OF THE C. F. I. IN CASES ARISING UNDER THE INTERNAL REVENUE LAW, CUSTOMS LAW AND ASSESSMENT LAW.

FACTS: The University of Sto. Tomas was assessed the net sum of P574,811.41 as income tax for its income as an educational institution for the years 1946 to 1950. When the University of Sto. Tomas filed its memorandum on the correct interpretation of Sec. 27(c) of the National Internal Revenue Code in connection with its request for reconsideration after payment of the first installment as per agreement, the Secretary of Finance advised that it file a petition for review with the Board of Tax Appeals in accordance with the rules promulgated by said Board under Executive Order No. 401-A. When the University of Sto. Tomas filed its petition, which was docketed as B. T. A. No. 35, among others, it questioned the jurisdiction of the said Board to take cognizance of the petition for review arguing that Executive Order No. 401-A under which it assumes to act is of doubtful validity in that it deprives the courts of first instance of their jurisdiction to act on cases involving the recovery of taxes illegally collected under Sec. 306 of the National Internal Revenue Code.

HELD: From the provisions of Sections 8(1) and 20 of said

Executive Order No. 401-A, it is evident that said Order in effect deprives the courts of first instance of their jurisdiction in actions for recovery of taxes granted to them by Section 306 of the National Internal Revenue Code. Under Sec. 306, an aggrieved party could file an action in court for the recovery of tax paid within the period therein provided, and yet in view of the provisions of Executive Order No. 401-A, it cannot do so unless it first brings the matter before the Board of Tax Appeals whose decision is appealable to the Supreme Court, and if no appeal is taken, the decision becomes final and conclusive. Executive Order No. 401-A has the effect of depriving the courts of first instance of their jurisdiction to act on internal revenue cases, as well as those arising under customs law and assessment law.

Republic Act No. 422 was enacted to effect a reorganization of the different bureaus, offices, agencies and instrumentalities of the executive branch so as to promote simplicity, economy and efficiency and to improve the service in the transaction of the public business, hence is limited in scope. But as said Executive Order No. 401-A does not merely create the Board of Tax Appeals which, as an instrumentality of the Department of Finance, may come within the purview of Republic Act No. 422, but goes as far as depriving the courts of first instance of their jurisdiction to act on internal revenue cases, a matter which is foreign to it and which comes within the exclusive province of Congress, said Executive Order is null and void in so far as it interferes with the jurisdiction of the courts of first instance in cases arising not only under the internal revenue law but also under customs law and assessment law, but is valid with regard to the rest of its provisions in so far as they affect the organization and administrative functions of the Board of Tax Appeals.

Petition granted. (*University of Santo Tomas, Petitioner, vs. The Board of Tax Appeals, Respondent, G. R. No. L*-6512, Promulgated June 19, 1953.)

THE POWER OF SUSPENSION EXPRESSLY GRANTED BY SEC. 2188 OF THE REVISED ADMINISTRATIVE CODE TO THE PROVINCIAL GOVERNOR IS NOT EXCLUSIVE.

FACTS: Mayor Jose D. Villena of Makati, Rizal, was charged