

1 Phil. 500

[G.R. No. 493. November 25, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ANTONIO ACUNA ET ALV DEFENDANTS AND APPELLANTS.

D E C I S I O N

LADD, J.:

The appellants were convicted in the Court of First Instance of Iloilo, under article 343 of the Penal Code, which punishes the bankers and proprietors of gaming houses (*casas de juego de suerte, envite o azar*) and the players in such houses.

Upon complaint of the provincial fiscal to the Court of First Instance, setting forth that he had received information to the effect that unlawful gaming was being carried on in the house in question, the judge, accompanied by the fiscal, the clerk, and other officers of the court, visited the house on the evening of April 30, 1901, and found a number of persons there engaged in playing the game known as "monte," among others the six appellants convicted as players, and Jacinto Ramos who was acting as banker. The usual apparatus of the game was found in use, and, together with some 89 pesos in money, was seized by direction of the judge, and has been declared forfeited in the judgment under article 345 of the Penal Code, providing that "the money or other articles and the instruments and tools used in gambling or raffles shall be confiscated."

Antonio Acuna is admitted to have been the lessee of the premises during the period covered by the evidence, and may be held responsible as proprietor. (Judgment of the supreme court of Spain of January 10, 1882.)

It is claimed by counsel for the appellant Teaiio that his client was not a participant in the game but was present as a mere spectator. The act, drawn up under the authority of the judge reciting what was discovered and done at the time the premises were visited, states that Teano was one of the players, and we find nothing in the evidence to justify the

conclusion that that fact was incorrectly stated. The only substantial question to be determined is whether the house was a gaming house (*casa do juego de suerte, envite o azar*), that is, "a house specially devoted to the encouragement or promotion" (*dedicada al fomento o mantenimiento*) of gaming. (Judgment of the supreme court of Spain of December 28, 1887.)

Mariano Nara testified that he had been in the house and had seen gambling going on there on an occasion distinct from that when the house was raided. The evidence of Ceferino M. Fontbuena is to the same effect. And Perfecto Izar, whose evidence we regard as substantially unimpeached, testified that he had been employed by Antonio Acuna to bring players to the house, receiving as compensation for his services a percentage of the profits.

To rebut this positive evidence, as to the character of the house, we have only the statements of a number of witnesses who, in substance, merely say that they had never heard of gambling being carried on in the house except on the evening of the raid.

The evidence furnished by the nature of the things found in the house by the judge also tends strongly to establish the character of the house, and on the whole we are unable to see any room for doubt that unlawful gaming was carried on there as a business by the lessee. It is true that the lessee had only occupied the house a short time when the raid occurred, but we apprehend that the length of time during which the unlawful business had continued can have no materiality when once it is shown that such business had been established on the premises.

The judgment of the court below is affirmed, with costs, and the case is remanded to that court for the execution of the judgment. So ordered.

Arellano, C. J., Torres, Cooper, Smith, and Willard, JJ., concur.

Mapa, J., disqualified.