

2 Phil. 616

[G.R. No. 1136. October 28, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LINO DE CASTRO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

The defendant, Lino de Castro, was convicted of the offense of bribery by the Court of First Instance of Tayabas, and was, on the 10th day of November, 1902, sentenced to the penalty of four months of *arresto mayor*, to the payment of an indemnification of 1,000 pesos, and the costs of the proceedings. From this judgment he appeals to this court.

The complaint upon which the defendant was tried and convicted reads as follows :

“IN THE COURT OF FIRST INSTANCE OF LUCENA, TAYABAS, OF THE SIXTH
JUDICIAL DISTRICT.

“United States vs. The Municipal President of Pagbilao, Lino de Castro.

“The provincial fiscal who signs accuses the defendant of the offense of bribery, committed as follows :

“That as municipal president of the town, in consideration of gifts of money, he permitted opium joints and gambling houses. This contrary to the law.

(Signed) “SOFIO ALANDY,

“Provincial Fiscal of Tayabas.

“LUCENA, TAYABAS, *September 8, 1902.*“

The defendant demurred to the complaint on the grounds (1) that the acts charged in the complaint did not constitute a public offense; (2) that the complaint did not state the date on which the offense was committed nor the name of the person or persons from whom the accused received the bribe; (3) that the complaint did not show that the offense charged was committed within the jurisdiction of the court; (4) that the complaint charged more than one offense.

The demurrer was overruled, and among errors assigned by counsel for defendant is the overruling of the demurrer.

By section 6 of General Orders, No. 58, certain facts are required to be stated in a complaint, among which are: (3) That the acts or omissions complained of as constituting the crime or public offense must be stated in ordinary and concise language, not necessarily in the words of the statute, but in such form as to enable a person of common understanding to know what is intended, and the court to pronounce judgment according to right; and (4) that the offense was committed within the jurisdiction of the court and is triable therein.

Section 7 of General Orders, No. 58, provides that, except when time is a material ingredient of the offense, the precise time of the commission of the offense need not be stated in the complaint, but the act may be alleged to have been committed at any time before the filing of the complaint.

Section 11 provides that a complaint or information must charge but one offense, except only in those cases where existing laws prescribe a single punishment for various allied offenses.

The complaint is based upon article 383, in connection with article 381, of the Penal Code. Under these articles the crime of bribery is defined as the act of a public official who shall receive directly or through an intermediary a gift or present, or who shall accept offers or promises, when the purpose of the gift received or promised is that the public official shall abstain from performing an act which he should perform in the exercise of the duties of his office.

It is not stated in the complaint what act the municipal president should have performed in the exercise of his office with reference to the keeping of houses for the smoking of opium and the keeping of houses for prohibited games.

Section 18 of the Municipal Code makes the president the chief executive of the

municipality, and among the duties prescribed in this section are: (a) That he shall cause the ordinances of the municipality to be executed, and shall supervise the discharge of official duties by all subordinates; and (g) that he shall hold court to hear and adjudge alleged violations of public ordinances upon complaint filed by his direction, or by a police officer or private citizen.

Section 39 of the same act, among other things, provides that the municipal council shall (u) provide against the evils of gambling, gambling houses, and disorderly houses of whatsoever sort; and (v) provide for the closing of opium joints and prohibit and punish the keeping and visiting of any place where opium is smoked or sold for the purpose of smoking.

1. In order that the charge contained in the complaint should sufficiently show that the defendant abstained from performing an act which he should have performed in the exercise of the duties of his office, it should have been alleged that the municipal council of the pueblo of Pagbilao had, under the provisions of section 39 of the Municipal Code above cited, enacted an ordinance against gambling and gambling houses and an ordinance against the keeping of opium joints, and it should have been charged that the defendant as a municipal president and chief executive of the municipality, in consideration of gifts of money or other things, had abstained from performing some act which he should have performed in the exercise of the duties of his office, such as either failing to cause these ordinances of the municipality to be executed, or that as such president and chief executive of the municipality he had failed to hear and adjudge alleged violations of these ordinances upon complaints filed by his direction, or by a police officer or a private citizen, or that, after trial, had wrongfully acquitted the accused persons in the municipal court over which he presided.

The complaint fails to make these necessary allegations. It is not even charged in the complaint in direct terms that the defendant was president of the municipality of Pagbilao; this only appears in the heading of the complaint, where, in giving the title of the cause, the complaint contains this heading: "United States vs. The Municipal President of Pagbilao, Lino de Castro."

2. The complaint is also defective in not showing that the offense was committed within the jurisdiction of the court. It should have been alleged that the money was received in Pagbilao, or at some place within the Province of Tayabas.
3. The complaint is also defective in not stating the time at which the offense occurred.

While it is not necessary, unless time is a material ingredient of the offense, that the precise time of the commission of the offense should be stated, still the act should be alleged to have been committed at some time before the filing of the complaint.

4. The complaint is also defective in not giving the names of the persons who made the gift as a bribe to the defendant, and in not stating the kind or amount of such gift. These facts are necessary to be stated, in order to identify the act for which the defendant is to be tried, and to enable him to understand what is intended to be charged against him.
5. Two distinct offenses have been charged in the complaint, i. e. j the keeping of a house for the smoking of opium and the keeping of a house for the playing of prohibited games.

The provisions of sections 6 and 7, and the form of complaint as provided in section 8 of General Orders, No. 58, should be sufficient, if properly observed, to enable provincial fiscals to draw complaints substantially in compliance with the law.

Section 21 of General Orders, No. 58, provides that the defendant may demur to the complaint or information, among other causes, (1) when it appears on the face of the complaint that the offense charged is not within the jurisdiction of the court; (2) that it does not conform substantially to prescribed form; (3) that more than one offense is charged, except only in such cases in which the existing laws prescribe a single punishment for various allied offenses; and (4) that the facts charged do not constitute a public offense.

The demurrer was well taken as to each of these causes, and should have been sustained by the Court of First Instance.

We do not mean to be understood as holding that advantage can be taken of all these defects in a complaint after the defendant has plead to the complaint or after the case has been removed to this court; but where the defendant has interposed a demurrer to the complaint in due time, and it appears that the complaint is subject to demurrer for any of the causes mentioned in section 21, it is the duty of the court to sustain the demurrer and either require the amendment of the complaint or direct a new complaint or information to be filed.

By the provisions of section 9 of General Orders, No. 58, the information or complaint may be amended in substance or form without leave of the court at any time before the defendant pleads, and, by the provisions of section 23, if the demurrer is sustained the court

may direct the accused to be remanded and that a new information be filed.

We wish to direct the attention of the trial courts to these provisions of law. When there is any doubt about the sufficiency of the complaint, the court should direct its amendment or that a new information be filed, and save the necessity of appealing the case to this court on technical grounds when the complaint might have been easily amended.

In this case, after sustaining the demurrer, if the objections made to the complaint could not have been avoided, by amendment or by the filing of a new complaint, e. g., if the municipal council had never enacted any ordinance prohibiting opium joints and gaming houses, in accordance with the provisions of section 39 of the Municipal Code, and there was no duty in this respect which the defendant abstained from performing as such presidente, the judgment sustaining the demurrer should have been made final, and the defendant discharged from further prosecution. But if the complaint was susceptible of amendment, *i. e.*, if there were such ordinances in the pueblo, and the defendant had received a gift of money in consideration of his abstaining, as the chief executive of the municipality, from enforcing such ordinances, or from hearing and adjudging alleged violations of the same, or in consideration for rendering a wrongful judgment of acquittal in a complaint filed against such persons, then the court should have directed that the information be amended or that a new information be filed, complying with the requisites of sections 6, 7, 8, and 11 of General Orders, No. 58.

In view of the fact that we have decided the case upon questions of law, it will not be necessary to review the evidence taken on the trial in the Court of First Instance.

The judgment of the Court of First Instance will be reversed and the case remanded, with directions that the court sustain the demurrer presented by the defendant against the complaint, and make such further order as to the amendment or the filing of a new complaint as will be proper in view of what has been stated in this opinion, with the costs of this instance *de officio*. So ordered.

Arellano, C J., Torres, Mapa, and McDouough, JJ., concur.

WILLARD, J., concurring:

I base my concurrence in the foregoing solely on the fourth clause of the decision.

Johnson, J., did not sit in this case.

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