

[G.R. No. 3023. January 16, 1907]

**THE UNITED STATES, COMPLAINANT AND APPELLEE VS. PABLO TRINIDAD,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

Pablo Trinidad, the defendant in this case, was convicted in the municipal court of the city of Manila with another of a violation of a municipal ordinance under a charge of sodomy, and was sentenced to one month of imprisonment and to pay a fine of P100, Philippine currency. He appealed to the Court of First Instance, where his conviction by the municipal court was sustained and the penalty increased to six months' imprisonment at hard labor and a fine in the sum \$100, United States currency, with the costs of the proceedings, from which judgment counsel for the defendant appealed, which appeal was allowed by the court on the ground that the validity of Ordinance No. 28 of the city of Manila was involved.

This court, in deciding the demurrer of the Attorney-General to the complaint in behalf of John C. Sweeney, judge of the Court of First Instance of the city of Manila, in an action for mandamus originally brought in this court by defendant's counsel, rendered a decision on the 1st of May, 1905, wherein it was said that "as a general rule the judgments of the Courts of First Instance are final in criminal cases on appeal from the justice court, which rule is applicable to the judgments of the municipal court, unless the appeal involves the constitutionality or legality of a statute, when an appeal can be had to the Supreme Court, according to section 43 of General Orders, No. 58, and prior decisions of this court."

In another part of the decision of this court upon the said demurrer, it was said that "according to the allegations of the complaint, the plaintiff is entitled to appeal to this court; but the only question to be decided on that appeal is whether the ordinance in question is valid or not. We will not review the evidence nor decide any question of law arising therefrom." This court decided that the appeal should be allowed. A motion for a new trial

was thereafter presented to this court on the ground that the court below had decided the case without first consulting with the two assessors who sat with the judge at the trial of the case, and who filed an opinion contrary to the decision of the presiding judge, and that the accused was therefore convicted without due process of law. This court overruled the said motion without prejudice to the reconsideration of the same on the hearing of the appeal upon its merits. As has been seen only in cases where the constitutionality or validity of a statute is involved can this court consider a second appeal in a case originally tried in a justice or municipal court. In all other cases the judgment of the Court of First Instance is final and conclusive and no appeal can be taken therefrom as to other questions decided therein.

In extending to criminal cases the right to invoke the aid of assessors, as provided in Act No. 267, no change was made in the provisions of section 43 of General Orders, No. 58.

In criminal cases tried and decided by the Court of First Instance of the city of Manila with the aid of assessors, the Supreme Court, passing upon them on appeal, has the power to review all the evidence in the case, whether the assessors agreed or not with the judgment of the court below.

If the case was originally tried in the justice or municipal court, and was thereafter tried and decided on appeal in the Court of First Instance with the aid of assessors, the judgment of the Court of First Instance on such appeal is final and conclusive, and can not be appealed from, as a general rule, except in cases where the appeal involves the constitutionality or validity of an act or statute.

The disagreement of the assessors who sat with the judge of the Court of First Instance at the trial of the case on appeal is not a ground for a second appeal to this court.

In cases where the appeal involves the constitutionality or validity of a statute the disagreement of the assessors with the judgment of the Court of First Instance on appeal does not authorize this court to review the evidence, but its decision shall be confined only to the question of the validity of the act or statute in question, as occurs in the present case. (Sec. 43, General Orders, No. 58.)

Therefore as to the legality or validity of Ordinance No. 28 of the city of Manila, it is sufficient for us to say for the purpose of this decision that the Municipal Board of the said city in passing the said ordinance acted within its jurisdiction and by virtue of the express authority conferred upon it by the legislative branch of the Government, by the Philippine

Commission, in Act No. 183, sections 16 and 17, which relate to the general and special powers of the municipality of Manila.

Ordinance No. 28, the validity of which is challenged by the accused, is a municipal statute, is a rule of conduct or of action, laid down by the municipal authorities, which must be obeyed by the citizens of Manila. It was drafted, prepared, and promulgated by such authorities for the information of all concerned under and by virtue of the powers conferred upon them by the Charter of the said city.

It has not been shown that the said ordinance was not of a general character, that it is not based upon sound principles, or that it does not affect all citizens in the same manner. Further, it has not been shown that the said ordinance is in conflict with any law or statute now in force. The ordinance in question took effect on the 2d of April, 1902, and since then its provisions have been regularly enforced in thousands of cases where such provisions have been violated.

For the reasons hereinbefore set out, we are of opinion, and so hold, that the said Ordinance No. 28, passed March 19, 1902, mentioned in the complaint and relied upon by the court below, is valid. The appellant shall pay the costs. After the expiration of ten days let judgment be entered in accordance herewith, and ten days thereafter the case be remanded to the court below for execution. So ordered.

Arellano, C. J., Carson, Willard, and Tracey, JJ., concur.
