

GREGORIO MIGUEL, PLAINTIFF AND APPELLEE, VS. VICENTE TOSE, BASILIO NAVARRO, AND MARCIANO HERNANDEZ, DEFENDANTS AND APPELLANTS.

G.R. No. L-416. April 30, 1948

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from a decision of the Court of First Instance of Zamboanga reversing a verdict of the referee in a cockfight.

The combined bets on both cocks were P860.00, which amount is on deposit awaiting the outcome of the suit. Complaint was first filed with the municipal court but it was dismissed on the ground of lack of jurisdiction by reason of the amount involved. Thereafter action was instituted in the Court of First Instance.

In the latter court a motion to dismiss was presented, alleging lack of jurisdiction but on different grounds. It is because a question of jurisdiction is raised that the case has been certified to this court by a division of the Court of Appeals.

First, it is said that the referee's decisions in cockfights such as that here in question are appealable only to the justice of the peace, whose decision, it is contended, is final, according to articles 76 and 77 of the Spanish Royal Decree known as "Reglamentos Sobre Galleras".

The foregoing Royal Decree, in our opinion, has been repealed in so far as it is in conflict with existing laws. Section 57 of Act No. 136 provides that "Courts of first instance shall have appellate jurisdiction over all cases arising in justices' and inferior courts in their respective provinces". This is the law applicable to the case at bar. It makes all justices of the peace's decisions appealable, clearly indicating an intention of the legislature to abrogate previous laws relative to the periods within which appeal from inferior courts should be perfected.

The provision of the same Royal Decree which confers jurisdiction on the justice of the peace regardless, it seems, of the amount litigated, must be considered repealed also. The present jurisdiction of the courts is fixed by Act No. 136, section 56 of which, as amended by Act No. 400, provides that "In all cases in which the demand, exclusive of interest, or the value of the property in controversy, amounts to P600 or more shall be under the exclusive jurisdiction of the court of first instance." And in cases where the value of the subject matter or the amount of the demand is P200 or more but is less than P600, the court of first instance has jurisdiction concurrent with the justice of the peace. (Section 68, Act No. 136, as amended by Act No. 3881.) Covering as it does the entire subject of jurisdiction, this Act must be held to have replaced the old laws on the matter. It follows that, whether we take the bet on each cock or the combined bets as the measure of the demand, the court of first instance had jurisdiction of the present litigation, concurrent with the municipal court in the first case, exclusive in the second.

Article 80 of the "Reglamentos Sobre Galleras" which stipulates that action contesting the decision of the referee

shall be brought within three days from the date the decision was made, must be considered superseded also under the same principle. The subject of prescription⁴ of actions is now governed by sections 38 et seq. of Act No. 190 which outline the limitations of actions in all cases. Under this statute of limitations the present suit prescribes in six years.

On the merits of the controversy the parties agree that after several clashes the defendants rooster was mortally wounded and the plaintiff's was unscathed. In all other particulars they sustain conflicting theories. The trial judge made no definite finding of what, in his opinion, happened. His statement of the evidence and conclusion are thus stated in this paragraph:

"It was admitted by the witnesses for the defendants that there had been several encounters between the two roosters, and as a consequence thereof 'Malatuba' (defendants' cock) was seriously wounded and on the contrary* 'Mayahin,' (plaintiff's cock) was never wounded. The mere fact that 'Mayahin' walked away when the referee raised 'Malatuba' and proclaimed it the winner did not mean that the former was defeated. There are instances in cockfighting when the rooster which is seriously wounded than the other Jiad been proclaimed the winner by the referee. But in this particular fight, the preponderance of evidence shows that the rooster, 'Mayahin', should have been proclaimed by the referee as the winner."

Articles 57 and 59 of the above mentioned Royal Decree read:

"ART. 57.—Siempre que uno de los gallos sin embestir al otro, huya, aunque no vicee, se dará por terminada la soltada.

"ART. 59.—Estando los dos gallos frente a frente despues de alguna lid, si el uno abandone su ademán hostil y deja al contrario dándole la cola, aunque marche a paso lento, se declarará haber perdido la pelea."

We believe these provisions are still in force, not being inconsistent with present enactments. Even if it were otherwise, they still are the criterion by which, by custom and convention, the result of a contest is judged and participants in the game abide. The referee said he was guided by them in refereeing cockfights. In fact the plaintiff-appellee does not seem to impugn the force of these provisions as a law, or as rules observed and applied by common consent. He raises an issue of fact only.

The substance of the plaintiff's evidence is that the defendants' cock was dead when it landed after one of the clashes in the air and that his cock was about three feet from its dead adversary when the latter was picked up by the referee as a token of victory. He and his witnesses denied that the plaintiff's cock was running or walking away.

On the other hand, the defendants and their witnesses declared that the "malatuba", although fatally wounded, was still on its feet when it was raised by the referee, and that it was raised when the "mayahin" moved away with its crest standing.

The evidence for the plaintiff is incoherent and vague in some respects and corroborative of the defendants' evidence in others. For example, the plaintiff stated in his examination in chief that when the referee picked up the defendants' cock, his (plaintiff's) own was retroceding. On cross-examination he stated that his cock stepped back about two or three feet. To the next question, whether his cock moved back with its tail to the other cock, he gave this unresponsive and incongruous answer: "Si, señor, per-siguió a su contrario." To other questions his answers were no less evasive and ambiguous.

"P. Quiere Vd. decir de que con aquel dos pies de distancia su gallo aun persiguió a su enemigo o adversario el Malatuba?—R. Ya no tuvo tiempo mi gallo de perseguir a bu contrario porque el sentenciador ya habia alzado al gallo Malatuba.

* * * * *

P. Vd. dijo en las preguntas directas de que su gallo retrocedió, que quiere Vd. dar de entender con esa frase de "retrocedió"?— R. Antes de soltar yo a mi gallo yo llame la atencion del sentenciador de que mi gallo es on poco arisco y de tener un poco de cuidado, y cuando mi gallo pego al gallo Malatuba dejándole casi muerto, entonces vi al sentenciador aproximar para coger el gallo Malatuba, y mi gallo se echó a correr."

Still later on he testified:

"R. La acción de Marciano Hernández no se si con el objeto de alzar al gallo de pelo Malatuba o al gallo mio Mayahin, pero mi gallo se retiro y al retirar mi gallo el saco al pelo de gallo Malatuba y declaró por ganador."

But obscure as it is, the foregoing testimony does not hide the plaintiff's explicit admission that his cock fled from the fight. And his insinuation that his cock was wild, an insinuation calculated to make the court believe that the "mayahin" was wont to avoid people, only confirms the admission that it ran off, although the implication is that it did, not for fear of the other rooster but because it saw the referee approach, when the latter walked towards the cocks to give his verdict.

The plaintiff said in other parts of his testimony that the defendants' rooster was dead when it was awarded the fight. Other witnesses for the plaintiff said the same thing. Yet when asked how he knew the defendants' cock was dead when the referee picked it up, the plaintiff stated, "Torque estaba reclinado el cuello." This answer carries its own refutation. A dead cock does not merely bend or slouch its head; its body is sprawled either on its side or back.

Again the plaintiff and his witnesses declared that the former shouted "careo", which was a request, customary in cockfighting, that the two birds be put face to face. This statement seems inconsistent with the statement that the defendants' cock was dead. If one of the cocks were dead, no fair test of the relative fighting attitude of the two rooster could be had. All that remained in such case for the loser to do would have been to protest the verdict. For this reason we are reluctant to accept the testimony that the plaintiff or any other spectator demanded that the two roosters be confronted with each other.

The evidence for the defendants is, we believe, more worthy of credence. It is free from serious, if any, contradictions or ambiguities and is more coherent, logical and straightforward. Besides, two witnesses, at least, are more disinterested, although it is charged that they had a wager on the defendants' cock, a charge which was vehemently denied by the persons concerned.

Mariano Hernandez, the referee, testified to the effect that after the last of their several grapples the two cocks found themselves facing each other and the "mayahin" lied away with fright. It was at that moment, he said, that he raised the defendants' cock as the winner. The plaintiff's cock, he added, was then about five or six meters from the other. He admitted that the "malatuba" was very seriously wounded but said that it was on its feet, still maintaining a hostile posture, when the "mayahin" turned tail.

This witness' statements carry the presumption of accuracy that goes with an official decision. It is entitled, as a matter of policy, to the benefit of any doubt. The referee's decision must be accorded a large degree of respect, if cockfights are to be kept on a high plain as a sport or legalized evil. Such respect is essential to the orderly conduct of the game.

Suki Singhoe, a municipal policeman, said that he was at the cockpit to maintain order; that after the two cocks had come to grips the referee raised the "malatuba", and he saw the "mayahin" run away for cowardice, or "as we say, con el copete en alto." The "malatuba" was gravely wounded when the "mayahin" quit, he added.

Our opinion is that the judgment of the lower court should be reversed and one should be entered in favor of the defendants-appellants, with costs against the plaintiff-appellee. It is so ordered.

Feria, Pablo, and Bengzon, JJ., concur.

CONCURRING

PERFECTO, J.:

The concept and feeling of justice are so deeprooted in human nature that even in the lowest and most shameful forms and manifestations of social activity, such as gambling and vice, men recur to tribunals to settle their conflicts. This case offers a striking example. Although it may appear undignified, in the opinion of many respectable persons, that the highest tribunal of this Republic should accord all the legal formalities and solemnities in the consideration and decision of gamblers' disagreement on a bet in a cockfight, official duty does not offer us another alternative, no matter how distasteful the task may be.

We cannot choose the nature of the litigations which we have to take cognizance of. It is the nature, character, quality, cultural stage, of our social body which determine the kind of legal conflicts we are called upon to settle. No matter how it may hurt our national pride, there is no way of evading the bitter truth: in our midst there are unmistakable manifestations of cultural and moral backwardness. One of them, the official toleration and even express legalization of some generalized vice and forms of gambling, such as cockfighting, horse racing, prizefighting, Jai-Alai, hypocritically called sports by their votaries.

Such forms of vice and gambling are regulated by express provisions of law, such as the Spanish Royal Decree about cockfighting which, as stated in the decision penned by Mr. Justice Tuason, continues to be in effect.

Evidently, all the preachings of Rizal against cock-fighting, due to its evil and demoralizing effects, have been in vain. More than half a century has elapsed since his death. We have enshrined his hallowed memory as our number one hero and as one of the greatest moral figures of humanity. We have been making vociferous avowals of adherence to the lofty ideals and doctrines he bequeathed us through his immortal writings and the noble example of his life. But the sanguinary gambling continues unabated and the sordid greed of the gamblers is shamefacedly brought to the temples of justice, in a litigation about money besmirched with rooster's blood.

While applying the law in this case, placed as we are in one of the highest forums of our nation and in a position of national leadership, we feel it our duty to state that it is about time to marshal all the moral forces in all sectors of the country so as to emancipate our people from the degrading shackles of legalized gambling. As it will be a long way for our country to reach the acme of material progress, let us find compensation in striving to be always in the forefront on all matters of permanent cultural value, on all things that would develop, enhance and elevate the noblest qualities and the dignity of a human being.

We concur in the decision.

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