

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GO PIN, DEFENDANT AND APPELLANT.

G.R. No. L-7491. August 08, 1955

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Go Pin, an alien and a Chinese citizen, was charged with a violation of Article 201 of the Revised Penal Code for having exhibited in the City of Manila at the Globe Arcade, a recreation center, a large number of one-real 16-millimeter films about 100 feet in length each, which are allegedly indecent and/or immoral. At first, he pleaded not guilty of the information but later as allowed by the court to change his plea to that of guilty which he did. Not content with the plea of guilty the trial court had the films in question projected and were viewed by it in order to evaluate the same from the standpoint of decency and morality. Thereafter, and considering the plea of guilty entered by the accused, and the fact that after viewing the films the trial court noted only a slight degree of obscenity, indecency and immorality in them, it sentenced the appellant to 6 months and 1 day of prison correccional and to pay a fine of P300, with subsidiary imprisonment in case of insolvency, and to pay the costs. He is now appealing from the decision.

Go Pin does not deny his guilt but he claims that under the circumstances surrounding the case, particularly the slight degree of obscenity, indecency and immorality noted by the court in the films, the prison sentence should be eliminated from the penalty imposed. His counsel brings to our attention some authorities to the effect that paintings and pictures of women in the nude, including sculptures of that kind are not offensive because they are made and presented for the sake of art. We agree with counsel for appellant in part. If such pictures, sculptures and paintings are shown in art exhibits and art galleries for the cause of art, to be viewed and appreciated by people interested in art, there would be no offense committed. However, the pictures here in question were used not exactly for art's sake but rather for commercial purposes. In other words, the supposed artistic qualities of said pictures were being commercialized so that the cause of art was of secondary or minor importance. Gain and profit would appear to have been the main, if not the exclusive consideration in their exhibition; and it would not be, surprising if the persons who went to see those pictures and paid entrance fees for the privilege of doing so, were not exactly artists and persons interested in art and who generally go to art exhibitions and galleries to satisfy and improve their artistic tastes, but rather people desirous of satisfying their morbid curiosity and taste, and lust, and for love for excitement, including the youth who because of their immaturity are not in a position to resist and shield themselves from the ill and perverting effects of these pictures.

Before rendering sentence the trial court asked the prosecuting attorney for this recommendation and said official recommended that "considering that the accused Go Pin is an alien who is supposed to maintain a high degree of morality while he is in the Philippines", and "considering that he engaged in a very nefarious trade, which degenerates the moral character of our youth, who are usually the regular customers of his trade", he recommended that appellant be sentenced to 2 years imprisonment and a fine of P300. Notwithstanding this recommendation, the trial court as already said, probably considering its opinion that the pictures were not so

obsceance, indecent and immoral but only slightly so, gave appellant only 6 months and 1 day of prison correccional in addition to P300 fine.

The penalty imposed by the trial court is within the range provided by Article 201 of the Revised Code. We are satisfied that in imposing the penalty the trial court made use of its sound discretion, and we find no reason for modifying the said sentence. The Solicitor General in his brief even urges that we recommend to the proper authorities that deportation proceedings be instituted against appellant as an undesirable alien. The trial court could have done this but did not do so, believing perhaps that it was warranted. We repeat that we do not feel justified in interfering with the discretion of the trial court in the imposition of the sentence in this case.

In view of the foregoing, the decision appealed from is affirmed, with costs.

Bengzon, Acting C. J., Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

Judgment affirmed.

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