

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSAURO DIONISIO Y CRUZ, DEFENDANT-APPELLANT.

G.R. No. L-25513. March 27, 1968

Ponente: REYES, J. B. L., Acting C.J.

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REYES, J. B. L., Acting C.J.:

Appeal from a judgment of the Court of First Instance of Manila, in its Criminal Case No. 65715, convicting appellant Rosauro Dionisio y Cruz of violating Republic Act No. 3063, and sentencing him to imprisonment for one month.

The case and facts are stated in the appellant's brief (pages 1-2) and agreed to by the Solicitor General, in this wise:

"ROSAURO DIONISIO, appellant herein, was charged with having violated Republic Act No. 3063 before the Court of First Instance of Manila in an information filed by the Assistant City Fiscal in this wise:

'That on or about the 19th day of August, 1962, in the City of Manila, Philippines, the said accused, a person who is not duly authorized in any capa-city by the Games and Amusements Board to conduct a horse race, did then and there wilfully and unlawfully offer, arrange and collect bets for the Special Daily Double Race being then conducted at the Sta. Ana Racing Club at Makati, Rizal, and for that pur-pose has in possession the following, to wit: cash money in the amount of P8.50, one Nueva Era Racing Program, dated Aug. 19, 1962, one list of bets, one ballpen and one booklet of Daily Double receipt.' (Original Record, p. 1).

On being arraigned, accused waived his right to be assisted by counsel, and pleaded not guilty to the charge. (Id., p. 5).

However, when the case was finally called for trial, accused voluntarily waived his right to be assisted by counsel, withdrew his former plea of not guilty and pleaded guilty to the information charging him with violation of Rep. Act No. 3063. The Court a quo found him guilty beyond reasonable doubt and, accordingly, sentenced him "to suffer one month imprisonment." (Id., p. 18).

Having filed an appeal bond duly approved by the Court a quo, his appeal from the decision of said Court was given due course. (Id., p. 19)."

Section 1 of Republic Act No. 3063 amends section 2 of R. A. 954 to read as follows:

"SEC. 2. No person shall offer, take or arrange bets on any horse race, or maintain or use a totalizator or other device, method or system to bet or gamble or any horse race outside the place, enclosure, or track where the race is held. This prohibition shall not apply to a race-track or racing club licensed by the Games and Amusements Board to conduct horse race nor to the duly autho-rized agents of such race-track or racing club and its duly authorized agents are hereby autho-rized on the days when races are being held in its premises to offer, take or arrange bets outside the place, enclosure or track where the races are held, provided such bets are offered, taken or arranged only in Rizal Province and chartered cities. The sale of such tickets shall be made only from offices or booths and shall be recorded in the race track before the start of the races."

Violation of the Act is sanctioned by "a fine of not less than one thousand pesos nor more than two thousand pesos or by imprisonment for not less than one month or more than six months, or both, in the discretion of the Court." (R. A. 954, Sec. 1, as amended by R. A. 3063, sec. 2).

Sole issue posed by appellant is that the penalty as applied to his offense infringes the constitutional provision that ?

"Excessive fines shall not be imposed nor cruel and unusual punishment inflicted." (Art. III, Sec. 1, clause 19, of the Constitution of the Philippines).

To bolster his position, appellant argues that the provided penalty is harsh, the true measure of the gravity of any offense being its effects, if unchecked, upon the well-being of the people and the body politic. The premise can be granted, without the conclusion being true or correct.

Neither fines nor imprisonment constitute in themselves cruel and unusual punishment, for the constitutional stricture has been interpreted as referring to penalties that are inhuman and barbarous, or shocking to the conscience (Weems vs. U. S., 217 U. S. 349) and fines or imprisonment are definitely not in this category.

Nor does mere severity constitute cruel and unusual punishment. In *People vs. Estoista*, 93 Phil. 655, this Court ruled:

"It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. 'The fact that the punishment authorized by the statute is severe does not make it cruel and unusual.' (24 C. J. S., 1187-1188.) Expressed in other terms, it has been held that to come under the ban, the punishment must be 'flagrantly and plainly oppressive, "wholly disproportionate to the nature of the offense as to shock the moral sense of the community.'" (Idem.) Having in mind the necessity for a radical measure and the public interest at stake, we do not believe that five years' confinement for possessing firearms, even as applied to appellant's and similar cases, can be said to be cruel and unusual, barbarous, or excessive to the extent of being shocking to public conscience. It is of interest to note that the validity on constitutional grounds of the Act in question was contested neither at the trial nor in the elaborate printed brief for the appellant; it was raised for the first time in the course of the oral argument in the Court of Appeals. It is also noteworthy, as possible gauge of popular and judicial reaction the duration of the imprisonment stipulated in the statute, that some members of the court at first expressed opposition to any recommendation for executive clemency for the appellant, believing that he deserved imprisonment within the prescribed range."

What evils should be corrected as pernicious to the body politic, and how correction should be done, is a matter primarily addressed to the discretion of the legislative department, not of the courts; and the view that unsupervised gambling is definitely detrimental to the national and its citizens counts with respectable support. "The hope of large or easy gain, obtained without special effort, turns the head of the workman, and habitual gambling is a cause of laziness and ruin." (Planiol, *Droit Civil*, Vol. 2, No. 2110). "The social scourge of gambling must be stamped out. The laws against gambling must be enforced to the limit." (*Peo. vs. Gorostiza*, 77 Phil. 88).

WHEREFORE, the decision appealed from is affirmed. Costs against appellant.

SO ORDERED.

Reyes, Acting C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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