

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PONCIANO CARBALLO, DEFENDANT AND APPELLANT.

G.R. No. 43973. December 21, 1935

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Appellant was prosecuted for a violation of a conditional pardon under article 159 of the Revised Penal Code. Upon arraignment he pleaded not guilty, but he later withdrew that plea, with the permission of the court, and entered a plea of guilty. He was thereupon sentenced to suffer six months and one day of prison correccional, and to pay the costs. From this judgment he appealed, but his counsel de oficio has assigned no error in his brief. He recommends affirmance of the judgment, because he finds the penalty imposed upon the defendant correct. The Solicitor-General also recommends affirmance.

The information filed in this case alleges in substance that the appellant was on December 20, 1927, sentenced by the Court of First Instance of Manila in criminal case No. 35540 of said court, to six years and one day of prison mayor for the crime of bigamy; that he was granted a conditional pardon by the Governor-General, which was accepted by him on January 12, 1929; and that "the said accused, in or about and during the period from October 1, 1929 to December 1, 1929, in the City of Manila, Philippine Islands, did then and there willfully and unlawfully commit violations of section 874 of the Revised Ordinances of the City of Manila, for which violations he was again sentenced by the Court of First Instance of Manila in criminal cases Nos. 40037, 40038 and 40039 to pay a fine of P65 in each and every one of said cases, with the corresponding subsidiary imprisonment in case of insolvency, which sentence was affirmed by the Honorable Supreme Court of the Philippine Islands oh March 18, 1931, in G. R. Nos. 34065, 34067 and 34066, respectively, the said Ponciano Carballo thereby committing willfully, unlawfully and feloniously a violation of the conditions of the aforesaid pardon accepted by him as above set forth."

It will be noticed that the acts complained of, as constituting a violation of the conditional pardon granted by the Governor-General and accepted by the appellant, are alleged to have occurred "in or about and during the period from October 1, 1929 to December 1, 1929." Prior to January 1, 1932, the date when the Revised Penal Code took effect, there was no law punishing the violation of a conditional pardon as a crime. While such an act could be made a criminal offense by statute, neither the Philippine Commission nor its successor, the Philippine Legislature, saw fit to make it so until the enactment of the Revised Penal Code. Act No. 1524, as expressed in its title, merely provided "* * * for the enforcement of conditions made by the Governor-General in the exercise of his discretion in granting conditional pardons."

Granted that the violation of a conditional pardon was not a crime before the Revised Penal Code took effect, appellant can not be convicted under article 159 of said Code. Penal laws have no retroactive effect except in so far as they favor a person guilty of a felony. (Revised Penal Code, article 22.) An act which when committed was

not a crime, can not be made so by statute without violating the constitutional inhibition as to ex post facto laws. (6 R. C. L., pp. 290-293.)

The judgment appealed from must therefore be reversed and the appellant acquitted with costs de oficio. Final judgment will be entered forthwith, and an, order for the release of the appellant issued. So ordered.

Avanceña, C.J., Hull, Vickers, and Diaz, JJ., concur.

Judgment reversed and defendant acquitted.

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