

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
CLAUDIA SAN JUAN AND SEVERO SAN JUAN,
DEFENDANTS-APPELEES.**

G.R. No. L-22944. February 10, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

Before us for review, on appeal by the People of the Philippines, is an order, dated April 17, 1964, of the Court of First Instance of Leyte (Ormoc City) quashing, motion of the defense, an indictment for violation of section 133 of the Revised Election Code.

The information charges

"That on or about the 12th day of November, 1963 (election day), at around 10:00 o'clock in the morning at the polling place at the City Central School, Ormoc City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused CLAUDIA SAN JUAN and SEVERO SAN JUAN, conspiring, cooperating, confabulating and helping with one another, did then and there willfully, unlawfully, and feloniously with the use of force, prevent the complaining witness GENEROSA PILAPIL from exercising her right to freely enter the polling place of Precinct No. 1 in order to vote."

Succinct to the point of curtness, the one-sentence order appealed from decreed that "As the facts charged do not constitute an offense, pursuant to the ruling of our Supreme Court in the case of U.S. vs. Pompeya, 31 Phil. 245, this case is hereby dismissed".

The case having been allowed to go off summarily on a motion to quash predicated upon the insufficiency of the information, it is to be assumed that the defense - conformably to basic procedural tenants and for purposes of its motion -- admits all the material averments of the information. Accordingly, the inquiry in this appeal is limited to whether the indictment sufficiently avers all the essential elements of the proscribed act.[1]

Section 133 of the Revised Election Codes a violation of which is denominated as a serious election offense by section 138 of the same Code, provides:

"Order of Voting.- The voters shall have the right to vote in order of their entrance into the polling place. The voters shall have the right to freely enter the polling place as soon as they arrive unless there are more than forty voters waiting inside, in which case they have the right to enter in the order of their arrival as those who are inside go out, which the latter shall immediately do after having cast their votes."

Implicit in the averment that the complainant was at the "polling place of Precinct No. 1 in order to vote" is the fact that she was, at the time, a duly registered voter intent on exercising the right of suffrage. For that purpose and vis-a-vis other voters, the aforequoted legal precept guaranteed her the rights (1) to vote in the order of her entrance into the polling place; (2) to freely enter the polling place as soon as she arrived unless there were then more than forty voters waiting inside; and (3) in the latter eventuality, to enter in the order of her arrival as those

inside went out.

We are here concerned more particularly the success of these rights. For the gravamen of the information is that the accused Claudia San Juan and Severo San Juan "willfully, unlawfully, and feloniously with the use of force prevention the complaining witness Generosa Pilapil from exercising the right to freely enter the polling place of Precinct No. 1 in order to vote". However, the right thus allegedly in find upon is qualified by the clause: "unless there are more than forty voters waiting inside". This, in effect, defines an exception by virtue of which the right is not tended to be immediately operative. As formulated, the in formation does not negative this exception. So that the key to the problem at hand lies in the determination of whether, to sufficiently charge a violation of that right, the indictment, should explicitly negate the exception.

Well delineated in our jurisprudence are the pertinent guiding principles. U.S. vs. Chan Toco, 12 Phil. 268, teaches that -

“ * * * As a rule, an exception in a sta-tute by which certain particulars are withdrawn from or excepted out of the operation of the enacting clause thereof defining a crime concerning a class or species, constitutes no part of the definition of such crime, whether placed close to or remote from such enacting clause. And, whenever a person accused of the commis-sion of such a crime claims to be within such exception, it is more logical and convenient that he should aver and prove the fact than that the prosecutor should anticipate such defense, and deny it".

Adherence to this rule has been unswerving, for instance, in prosecutions under the Opium Law[2] which punishes the use of prohibited drugs "save upon the prescription of a duly licensed and practicing physician".

The rule -- that for an information to be sufficient, it need not allege that the accused is outside the periphe-ry of the saving clause -- was echoed in People vs. Cadabis, 97 Phil., 829, a prosecution for violation of section 53 of the Revised Election Code, which statutory provision prohibited the carrying of deadly weapons in a polling place but exempts from the prohibition public officers enforcing the law or preserving peace in the premises. On the contention therein that the faces charged in the information do not constitute an offense because "there is no statement denying that the accused had been authorized to supervise the elections and/or car-ried the firearm on the occasion of tumultuous affray or disorder", this Court held that

“* * * It was not incumbent on the prosecu-tion to make the allegation, because the matter was something for the accused to assert and es-tablish in his defense. The law prohibits the carrying of deadly weapons in the polling place. An exception made for peace or public officers enforcing the law or preserving peace in the pre-mises. * * * The exception is for the defendant to prove -- not for the prosecution to disprove.”

To our mind, the case at bar stands on the same footing. The limitation -- when there are more than forty voters waiting inside -- on the right of a voter to freely enter the polling place does not constitute an essential part of the definition of the crime contemplated in section 133 of the Revised Election Code. Instead, it is but a matter which the accused must assert and establish as a defense, and not for the prosecution to anticipate, allege, and disprove.

True it is that U.S. v. Pompeya, 31 Phil. 245, 255, 256, 257, is authority for the rule that where a statute exempts, certain persons or classes of persons from liability, the indictment, to be sufficient, must show that the person charge does not fall within the exemptions his is so because in that case, the ordinance alleged to have been violated applied only to specific classes of persons and to special conditions. Thus --

“With reference to the first question presented by the appeal, relating to the sufficiency of the complaint, it will be noted that Act No. 1309 authorized the municipal governments to establish ordinances requiring (a) all able-bodied male residents, between the ages of 18 and 55 [50], and (b) all householders, under certain conditions, to do certain things.

"It will also be noted that the law authorizing the president of the municipality to call upon persons, imposes certain conditions as pre-requisites: (1) The person called upon to render such services must be an able-bodied male resident of the municipality; (2) he must be between the ages of 18 and 55 [50], and (3) certain conditions must exist requiring the services of such persons.

"It will not be contended that a nonresident of the municipality would be liable for his refusal to obey the call of the president; neither can it be logically contended that one under this age of 18 or over the age of 55 [50] would incur the penalty of the law by his refusal to obey the command of the president. Moreover, the persons liable for the service mentioned in the law cannot be called upon at the mere whim or caprice of the president. The conditions mentioned in the law must exist. There must be some just and reasonable ground, at least sufficient in the mind of a reasonable man, before the president can call upon the persons for the service mentioned in the law. The law does not apply to all persons. The law does not apply to every condition. The law applies to special persons and special conditions.

"A complaint based upon such a law, in order to be free from objection under a demurrer, must show that the person charged belongs to the class of persons to which the law is, applicable.

* * * *

"The complaint must show, on its face that, if the facts alleged are true, an offense has been committed. It must state explicitly and directly every fact and circumstance necessary to constitute an offense. If the statute exempts certain persons, or classes of persons, from liability then the complaint should show that the person charged does not belong to that class.

"Even admitting all of the facts stated in the complaint in the present case, the court would be unable to impose the punishment provided for by law, because it does not show (a) that the defendant was a male citizen of the municipality; (b) that he was an able-bodied citizen; (c) that he was not under 18 years of age nor over 55 [50]; nor (d) that conditions existed which justified the president of the municipality in calling upon him for the services mentioned in the law."

In the case at bar, however, like in *Chan Toco and Cabadis*, the legal provisions involved prohibit and penalize generally the acts therein defined, and are intended to apply to all persons indiscriminately. Besides, in *Pampeya*, the exemptions are so incorporated in the language defining the crime that the ingredients of the offense cannot be accurately and clearly set forth if the exemption are omitted. This is not so in the present case where the complete definition of the offense is entirely separable exception and can be made without any reference to the latter.

This view, which thus far is purely from the perspective of legal technology, finds affirmation in the realization that we are here dealing with the exercise of the right of suffrage which, in the consensus of political philosophers of consequence, is the bedrock of all republican institutions. The unadorned statement in Article V of the Constitution is a simple but sacred avowal of faith in the efficacy and durability of the democratic process. It is a recognition that the people in their sovereign character are the fountainhead of governmental authority and that their right to participate in the power process is indispensable for democratic government to constitute an effective instrument of social control. In the phrase of Mr. Justice Jose Laurel -

"As long as popular government is an end to be achieved and safeguarded, suffrage, whatever be the modality and form devised, must continue to be the means which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common weal. Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a part of popular sovereignty and as the ultimate source of the established authority."^[3]

Indeed, each time the enfranchised citizen goes to the polls to assert this sovereign will, that abiding credo of

republicanism is translated into living reality. If that will must remain undefiled at the starting level of its expression and application, every assumption must be indulged in and every guarantee adopted to assure the unmolested exercise of the citizen's free choice. For to impede, without authority valid in law, the free and orderly exercise of the right of suffrage, is to inflict the ultimate indignity or the democratic process. As numerous as they are insidious are long-standing techniques of terror and intimidation that have been conceived by man in derogation of the right of suffrage—which we have repeatedly and unqualifiedly condemned. When the legislature provided in section 133 of the Revised Election Code an explicit and unequivocal guarantee of a voter's free access to the polling place, it could have intended no purpose other than to maintain inviolate the right to vote by safeguarding the voter against all manner of unauthorized interference and travesty that survey's of fear can devise. Every unlawful obstacle, by whatever means or method, interposed to the free entry of a voter into the polling place to cast his vote, strikes at the very heart of the right of suffrage.

That the transgressor is outside the compass of the excepted situation cannot be regarded as an essential ingredient of the offense. Let him prove his disclaimer who pleads that he comes within the ambit of the exception.

Upon the foregoing disquisition, we hold that the information here satisfies the requirements for the legal sufficiency of an indictment lodged under section 133 of the Revised Election Code.

ACCORDINGLY, the order appealed from is set aside. This court of case is hereby ordered remanded to the court of origin for further proceedings in accordance with law. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

[1] People vs. Segovia, L-11748 May 28, 1958.

[2] U.S. vs. Gonzales, 10 Phil. 66; U.S. vs. Co-Pinco, 10 Phil. 69; U.S. vs. Chan Toco, supra; U.S. vs. Yao Sim, 31 Phil. 301.

[3] Moya v. Del Fierro, 69 Phil. 204.

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