

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. JOHN CANSON, JR., ET AL., DEFENDANTS AND APPELLEES.

G. R. Nos. L-8848-58. May 23, 1957

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

[. May 23, 1957] In eleven (11) separate informations of the same tenor, John Canson Jr., et al. were, on November 27, 1954, charged in the Justice of the Peace Courts, of Makati, San Juan del Monte, Mandaluyong and Paranaque, Rizal, with the violation of Article 195 of the Revised Penal Code, committed as follows:

"That, on or about the 28th day of July, 1954, and for sometime prior thereto, in the municipality of Makati, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring and confederating together and mutually helping and aiding one another, did, then, and there willfully, unlawfully and feloniously take part in the exploitation or use of slot machines (jackpots) as maintainer and operator; which are mechanical inventions or contrivances to determine by chance the loser or winner of money or any object representative of value and/or mechanical inventions or contrivances used as a game of scheme, the result of which depends wholly or chiefly upon chance, or hazard, and permit the operation of said slot machines in their place of business."

In each of said cases counsel for the accused filed a motion to quash on the ground of prescription. The Justice of the Peace Courts dismissed all said cases. The Provincial Fiscal appealed said orders of dismissal to the Court of First Instance of Rizal. Involving as they did a common question of law, by agreement of the parties, all the cases were heard jointly, after which, the lower court affirmed the appealed orders of dismissal. The prosecution is now appealing said order to us.

The lower court ruled that the offense charged in each case was a light felony under paragraph 3 of Article 9 of the Revised Penal Code, which reads:

"Light felonies are those infractions of law for the commission of which the penalty of arresto menor or a fine not exceeding 200 pesos or both, is provided.", and applied article 90 of the same Code, the fifth paragraph of which reads:

"Light offenses prescribe in two months." The Solicitor General cites Article 26 of the same Code which provides:

"Art. 26. Fine—When afflictive, correctional, or light penalty.— A fine, whether imposed as a single, or as an alternative penalty, shall be considered an afflictive penalty, if it exceeds 6,000 pesos; a correctional penalty, if it does not exceed 6,000 pesos but is not less than 200 pesos; and a light penalty, if it be less than 200 pesos."

and contends that inasmuch as the penalty imposable under Article 195 of the Revised Penal Code is arresto menor, or a fine not exceeding 200 pesos, then a fine of 200 pesos, imposable as a single or as an alternative penalty, may be considered as a correctional penalty and so under Article 90 of the same Code whose paragraph 2 reads: .

"Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years.",

the offense charged prescribes in ten years and not two months.

We deem it unnecessary to enter into an extended and elaborate discussion of the legal point raised in this appeal, for the reason that we have already passed upon and ruled on the same in at least two cases, as recently as last year. In the case of the People of the Philippines vs: Yu Hai alias "Haya", [1] G. R. No. L-9598, August 15, 1956, this Tribunal, through Mr. Justice J. B. L. Reyes, held that a violation of Article 195 of, the Revised Penal Code, punishable with arresto menor or a fine not exceeding P200.00, is a light felony under Article 9 of said Code and prescribes in two months, according to Article 90, paragraph 6, of the same Code. The reason behind our ruling is well explained in the decision. Said ruling was reiterated and applied in our decision through Mr. Justice Bautista Angelo, in the more recent case of The People of the Philippines vs. Pedro Aquino, et al. [2] G. R. Nos. L-9357-70, promulgated on August 21, 1956, which involved the same violation of Article 195 of the Revised Penal Code, particularly the exploitation or use of slot machines (jackpots).

We see no reason for abandoning the doctrine laid down in said two cases. At the same time, we realize the conflict or discrepancy between Articles 9 and 26 of the Revised Penal Code, as pointed out by the lower court and the prosecution. It would greatly be desirable if the Legislature resolved this conflict by suitable legislation, or amendment of the Revised Penal Code. The Executive Department, through the office of the Secretary, of Justice and the Office of the Solicitor General, might make representations with the Legislature as to the necessity or wisdom of making an exception in the case of a violation of the gambling law (Article 195 of the Revised Penal Code), classified as a light offense, for purposes of prescription. It has always been the policy of the Government to curb and minimize, even eliminate, the evils of gambling, specially in the form of slot machines, popularly known as "one-arm bandits", which are often patronized by that element of the community which could least afford to lose money on the same, not realizing the inexorable law of averages, namely, that despite occasional and rare hits of the jackpot, in the long run, they always lose. Or if the Legislature is not favorably inclined towards the amendment suggested, the Department of Justice might . brief and circularize prosecuting attorneys to be more alert in the prosecution of violations of the gambling law, so that the corresponding complaints or informations could be filed within the present prescriptive period of two months.

The present case involves no less than eleven separate violations of the gambling law (exploitation of slot machines), and the last cited case, of the The People of the Philippines vs. Pedro Aquino, et al., 99 Phil., 713, involved no less than fourteen separate cases, also for operating the same slot machines. The informations in all these cases had to be quashed, not because the persons accused were not guilty, but simply because the prosecuting attorneys filed the informations beyond the relatively short two month period.

In view of the foregoing, the order of dismissal appealed from is hereby affirmed. No costs.

Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[1] 99 Phil., 725.

[2] 99 Phil., 713. 540

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