

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIANO AYOSO, TEODORICO VALENZUELA, ALFONSO DESOYO
AND FELIPE DE LA CRUZ, ACCUSED-APPELLANTS.**

G.R. No. L-18762. April 27, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from a decision of the Court of First Instance of Cebu setting aside the order of dismissal of the criminal complaint for illegal cockfighting originally filed before the Municipal Court of Bogu.

The facts of the case are substantially as follows:

On July 21, 1960, accused-appellants MARIANO AYOSO, ET AL., were charged with the crime of ILLEGAL COCKFIGHTING before the Municipal Court of Bogu (docketed as Criminal Case No. 915), the details of which are set out in a complaint which reads as follows:

"The undersigned, Chief of Police of Bogu, Cebu, Philippines after having been duly sworn to in accordance with law, accuses MARIANO AYOSO, TEODORICO VALENZUELA, ALFONSO DESOYO and FELIPE DE LA CRUZ of the crime of ILLEGAL COCKFIGHTING, committed as follows:

"That on or about 2:45 o'clock in the afternoon, more or less of July 21, 1960 at the cockpit of Tan Sim, Poblacion, Bogu, Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, feloniously, unlawfully and knowingly with unlawful purpose, indulge themselves in illegal cockfighting commonly known as "Tara-Tari", wherein money P25 is used as bet on a day, Thursday, which is not permitted by law though the place is a licensed cockpit. This act is a gross violation of Article 199 of the Revised Penal Code, Section 1.

"CONTRARY TO LAW.

"Bogu, Cebu, Philippines, July 21, 1960

(Sgd.) ALFREDO L. ARNOCO Chief of Police Bogu, Cebu"

Against the said complaint the accused filed a motion to quash, claiming that the facts alleged in the complaint do not constitute an offense because cockfighting is authorized in Bogu on Thursdays under the provisions of Ordinance No. 18, Series of 1960, enacted and approved by the Municipal Council of Bogu.

The Municipal Court of Bogu sustained the motion to quash and dismissed the complaint in its order dated September 9, 1960. The prosecution seasonably interposed an appeal to the Court of First Instance of Cebu which rendered judgment, the dispositive portion of which is hereunder quoted:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered (1) declaring Ordinance No. 18, Series of 1960, of the Municipality of Bogu, Cebu ultra vires, and therefore null and void, (2) declaring further the order issued by the Justice of the Peace Court of Bogu, dated September 9, 1960,

dismissing the complaint in Criminal Case No. 915, to be improper and without legal basis, (3) ordering the remand to the Justice of the Peace Court of Bogu of the records of Criminal Case No. 915, and (4) directing that said court proceed to try the case on the merits. No pronouncement as to costs."

From the above decision, accused-appellants interposed the present appeal.

They assign two principal errors allegedly committed by the lower court, to wit:

"The lower court erred in ruling that it (Court of First Instance of Cebu) has appellate jurisdiction on the subject matter and on the persons of defendants.

"The lower court erred in declaring Ordinance No. 18, series of 1960 of the Muni-cipality of Bogu, Cebu, ultra vires and there-fore null and void."

With respect to the first assignment of error, accused-appellants contend that "since the law (Rule 123, Sec. 5) is specific x x x that from a judgment of the Justice of the Peace or Municipal Courts only the convicted party may appeal, therefore, the law does not allow any other party to make such an appeal." Thus, accused-appellants point out, "while in the Justice of the Peace Courts only the convicted party (emphasis theirs) can appeal, in the Court of First Instance or courts of similar jurisdiction, any party can appeal. The only restriction is that the defendant would not be placed thereby in double jeopardy. x x x" (Rule 122, Sec. 1)

It should be noted that what was appealed to the Court of First Instance was the order of the municipal court dismissing the complaint upon appellants' motion to quash before arraignment. The guilt or innocence of the accused was never in issue in that appeal. There could not possibly be any question of "conviction" at that stage of the case so as to call for the application of Section 5 of Rule 123. Appropriately, the Court of First Instance, as gleaned from the dispositive portion of the judgment, limited itself to the determination of the validity of the questioned dismissal, without in any way passing upon the guilt or innocence of the accused of the offense charged.

Furthermore, Rule 122, Sec. 2 of the New Rules of Court provides:

"Who may appeal. - The People of the Philip-pines cannot appeal if the defendant would be placed thereby in double jeopardy. In all other cases, either party may appeal from a final judgment or ruling or from an order made after judgment affecting the substantial rights of the appellant."

And as the Court Of First Instance or Cebu correctly observed:

["]x x x We believe that the provisions of Rule 118, Section 2 (now Rule 122, Sec. 2) are applicable in all criminal cases irrespective of the courts where they maybe pending. That legal provision constitutes no more than a mere enunciation of the principle of law that no appeal may be interposed by the prosecution in a criminal case if such an appeal shall thereby subject the accused to double jeopardy. If we adopt the view espoused by the accused, then there shall be no uniformity in the applicability of that legal principle and we will be confronted with the absurd and curious situation that errors committed by the Justice of the Peace Courts in their rulings and judgments in criminal cases, which are not final in character, adverse to the state shall be without remedy, while on the other hand errors of the same nature committed by the Courts of First Instance are reviewable on appeal to the appellate courts because they are not in violation of the constitutional right of the accused against double jeopardy. Surely that could not be the intendment of the law. There is a greater possibility of errors of that nature in Justice of the Peace Courts, considering the very nature of the composition of such courts, aside from the fact that there are a great many more of such courts in the country than there are Courts of First Instance. x x x"

With respect to the second assignment of error, suffice it to say that this Court, in deciding a similar case, (Quim-sing v. Lachica, et al. G. R. No. L-14683, May 30, 1961) through Justice Concepcion (now Chief Justice),

held:

x x x Thus, the issue boils down to whether Republic Act No. 938, as amended, gives local governments a blanket authority to permit cockfighting at any time and for as long as said governments may wish it.

"Upon mature deliberation, we hold that the answer must be in the negative. To begin with, repeals and even amendments by implication are not favored, whereas an affirmative answer would entail a vital amendment, amounting far all practical purposes, to a repeal, of sections 2285 and 2286 of the Revised Administrative Code. Secondly, grants of power to local governments are to be construed strictly, and doubts in the interpretation thereof should be resolved in favor of the national government and against the political subdivisions concerned. Thirdly, it is a matter of common knowledge that cockfighting is one of the most wide-spread vices of our population, and that the government has always shown a grave concern over the need of effectively curbing its evil effects. The theory of petitioner herein presupposes that the Republic of the Philippines has completely reversed its position and chosen instead, to place the matter entirely at the discretion of local governments. We should not, and cannot adopt, such premise except upon a clear and unequivocal expression of the will of Congress, which insofar as said premise is concerned is not manifest from the language used in Republic Act No. 938, as amended.

"Lastly, 'cockpits' and 'cockfighting' are regulated separately by our laws. Thus, Section 2243 (i) of the Revised Administrative Code empowers municipal councils 'to regulate cockpits'. Yet, the authority of said councils over 'cockfighting' is found in sections 2285 and 2286 of said Code, not in said section 2243 (i). Similarly, Article 199 of the Revised Penal Code punishes, not illegal 'cockpits', but 'illegal cockfighting'. What is more, participation in cockfights 'on a day other than those permitted by law', is dealt with in said article separately from participation in cockfights 'at a place other than a licensed cockpit'.

"So too, the authority of local governments, under Republic Act No. 938, as amended, to 'regulate x x x the establishment, maintenance, and operation of x x x cockpits' does not necessarily connote the power to regulate 'cockfighting', except insofar as the same must take place in a duly licensed 'cockpit'. Again, the first and second proviso in Section 1 of said Act, regulating the distance of cockpits and places of amusements therein mentioned from 'any public building, schools, hospitals and churches' and the third proviso of the same section, prohibiting the admission of minors to some of those places of amusement, suggest that the authority conferred in said provision may include the power to determine the location of cockpits, conditions to be observed for the protection of persons therein, the number of cockpits that may be established in each municipality and/or by each operator, the minimum age of the individuals who may be admitted therein, and other matters of similar nature - as distinguished from the days on which cockfighting shall be held and the frequency thereof."

"In short, we are of the opinion that the city ordinances relied upon by petitioner herein authorizing cockfighting on Thursdays, are invalid."

The above pronouncement of this Court was reiterated in the case of *P.C. Chief v. Sabungan Bagong Silang, Inc. et al.*, (G. R. No. L-22609, February 28, 1966) and echoed lately in the cases *P.C. Chief v. Judge of CFI of Rizal, et al.*, (G. R. No. L-22308, March 31, 1966) and *Peralta, et al. v. Hon. Pedro Bautista, et al.*, (G. R. Nos. L-22343-4, March 31, 1966).

At this point, it is worthwhile to note that in 1963, there was presented in Congress a bill (H.B. No. 7504, introduced by Congressman Albano) granting municipal councils the power to authorize cockfighting on any day of the week. The bill, however, failed of enactment. Inferentially, this attempt to expressly grant municipal councils the power to authorize cockfighting on any day of the week militates against accused-appellants' contention that under the present provisions of law, such authority is already granted to municipal councils.

In view of the foregoing, the decision appealed from is affirmed. Costs against appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.
Castro, J., took no part.

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