

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GREGORIO DE GOROSTIZA AND ARSENIO TICZON, DEFENDANTS AND APPELLANTS.

CA-No. 562. August 23, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

The prosecution presented evidence to the effect that at about 6 o'clock in the afternoon of October 21, 1942, three policemen of the vice squad of the City of San Pablo, named Quirico Azucena, Domingo Lacatan and Teofilo Cruz went to barrio Concepcion upon tip that jueteng was to be played there. On reaching near the precise place, they made a semicircle around a shed, which had no walls, and saw persons going inside one after another and handling Gregoz-io de Gorostiza small bundles of paper. Arsenio Ticzon was the last to come. The policemen, who were watching what was going on inside the shed where the accused and other persons were gathered, upon noticing that they were about to play jueteng, raided the place. The group of persons scampered away. Leaving on the table the bag Exhibit F, Gorostiza ran to an adjoining house. Cruz picked up the bag and followed Gorostiza who, when called upon to surrender, gave himself up. As Ticzon was intending to run away, he was grabbed by Azucena. Lacatan seized from the grip of Ticzon's left hand two pieces of paper Exhibits A-I and A-2. Lacatan found and on the ground four envelopes containing six rolled white paper Exhibit A and small bundles of paper contained in envelopes and identified as Exhibits B, B-1, B-2, C, C-1, C-2, D, D-1, D-2, D-3, E, E-1, E-2, and E-3. Gorostiza and Ticzon were taken to the police headquarters, where they were investigated by Assistant Chief of Police Vicente Carikitan. During the investigation, Cruz opened, in the presence of Gorostiza, the bag Exhibit F and took therefrom the pieces of paper Exhibit F-1, envelopes Exhibits F-2 to F-9, containing white sheets of rolled pad paper, and bills of different denominations amounting to P4.43 marked as Exhibit G.

The pieces of paper Exhibits A-1 and A-2, found in Ticzon's possession, and F-1 found in the bag left by Gorostiza when he ran away, contained, written thereon, jueteng numbers bet on and the amounts of bets in cen-tavos, as explained by policemen Lacatan and Cruz, who testified as having expert knowledge of the game of jue-tenrj. The defense did not attempt to contradict the testimony of the two policemen., as to the nature of the three exhibits¹. At any rate, the "attempt would have been fruitless because in Exhibit H, signed' by Gorostiza, he recognized the presence of one maong sack, referring to bag Exhibit F, the cash P4.43,' and "jueteng parapher-nalias"; and in Exhibit I, signed by Ticzon, the latter admitted the presence of "jueteng paraphernalias" as evidence. Lastly, Gorostiza and Ticzon jointly admitted in Exhibit J that, when they were arrested, policemen Azucena, Lacatan and Cruz found in their possession pieces of paper containing jueteng numbers and that at the time they were in search of jueteng collectors to make effective the bets they made in the pieces of paper referred to, in view of their strong hunch in favor of the numbers written in said pieces of paper, although they were unable to make the bets effective because of their arrest. The statement Exhibit J is worded as follows:

"Kaming mga nakalagda sa ibaba nito, ay may mga sapat na gulang naninira sa Lunsod nang San Pablo, dito sa hinaharap na kasulatan ay malaya naming sinasaysay, pinagtitibay at pinanunum-paan itong mga sumusunod:

"Na, noong ika 21 nang Octubre, 1942, kami ay nahuli nang mga policiang si Azucena, Lacatan at Cruz mga policia nang Lunsod nang San Pablo nang tig-kakapirasong papel na may sulat nang numero nang Jueteng dahil sa mga sandaling kami ay mahuli nang nabangit na mga policia ay kasalukuyan kami ay naghahanap ng cobrador ng Jueteng na matatayaan, sapagkat ang mga numerong natatala sa nabangit na mga papel na nahuli sa amin ay mahihigpit naming mga 'anuncio.' Hinde na nga namin naitaya ang aming mga anunciong ito dahil sa kami ay nadakip na iiga nang mga policia at dinala kami sa kanilang himpilan.

"Ito ang lubos namin mapapatunayan at dahil dito ay aming nilagdaan ngayon ika 25 nang buan nang Octubre, 1942, sa Lunsod ng San Pablo, Kapuluan Filipinas."

The defense tried to establish that the two defendants did not participate, in the afternoon and place in question, in a game of jueteng either as collector or cashier, each accused offering: explanations as to their respective presence at the place of their arrest. The lower court made, in its decision, an ample analysis and discussion of the evidence presented both by the prosecution and the defense, and a perusal and study of the records of this case convince us that the conclusions of fact arrived at by the lower court are substantially correct and are supported by the evidence. Appellants have failed to show us sufficient grounds why we should disturb the conclusions of fact of the lower court.

Appellant Ticzon alleges that he signed Exhibit J because he was promised to be prosecuted only as a mere jueteng bettor; while Gorostiza, attacked the admissibility of said exhibit because the chief of police "told me to sign it so that I will not be molested anymore, and as I have never been accused before during my life time I signed it," pointing out that neither the chief of police nor policemen Lacatan and Cruz, instrumental witnesses of Exhibit J, refuted him on the alleged promise. But there are circumstances which make us refrain from accepting appellants' theories. When Exhibit J was signed by appellants on October 25, 1942, they were not under arrest because, as they themselves had testified, they were allowed to go home after they had signed Exhibits H and I on October 21, 1942, the date of their arrest. Exhibit J is written in Tagalog, the language of the locality. Before signing it, Gorostiza read it. Ticzon pretended not to know how to read and write, a pretension belied by his signatures in Exhibits I and J which show the penmanship of a person who ought to know how to read and write. The strokes and the letters of the signatures are characteristic of a person experienced in the long and frequent use of the pen. Ticao declared that he was promised that he would be prosecuted only as jueteng bettor and would be made to pay only a fine. It is probable that the accused, losing all hopes of acquittal, offered to accept responsibility as mere jueteng bettors and were made to sign a statement of what they were willing to admit.

Upon the evidence in this case, we entertain no doubt as to the guilt of appellants. The social scourge of gambling must be stamped out. The laws against gambling must be enforced to the limit.

The lower court sentenced each of said appellants to an indeterminate penalty of from six (6) months and one (1) day to two (2) years, four (4) months and (1) day of prision correccional, to suffer the accessory penalties provided by law, and to pay one-half of the costs. The Solicitor General suggests that the maximum penalty should be not less than two (2) years, eleven (11) months and eleven (11) days of prision correccional. The suggestion is correct. (Article 195, paragraph 2 [c] of the Revised Penal Code, as amended by Commonwealth Act No. 235.)

With the modification that the maximum of the penalty that should be imposed upon defendants be two (2) years, eleven (11) months and eleven (11) days, the judgment of the lower court is affirmed in all other respects, with costs against the appellants.

Paras, and Pablo, J.J., concur.

DISSENTING

HILADO, J.:

The present case is concerned with judicial proceedings ha'd during the Japanese occupation of the Philippines, culminating in a judgment rendered by the Court of First Instance of Laguna, dated May 8, 1943, acting as an agency of the so-called and defunct Republic of the Philippines.

This being a case of the Second Division of this Court composed of five Justices, the affirmative vote of a majority of said members is sufficient to pronounce a judgment by such Division. (Executive Order No. 86, dated January 7, 1946, amending Executive Order No. 40, dated May 4, 1945, of His Excellency, the President of the Philippines, amendatory of section 133 of the Revised Administrative Code, as amended.) There are three Justices voting affirmatively for the rendition of the foregoing judgment. Therefore, I need not waive my stand on the question of validity or nullity of the proceedings in this case in the Japanese-sponsored Court of First Instance of Laguna. Nor need I reiterate here the reasons and considerations supporting my stand in my dissenting and concurring opinions already delivered in *Co Kim Cham vs. Valdez Tan Ken and Dizon* (75 Phil., 113) ; *Peralta vs. Director of Prisons* (75 Phil., 285) ; *People vs. Jose* (75 Phil., 612) ; *Alcantara vs. Director of Prisons* (75 Phil, 494) ; and *De Castro vs. Court of Appeals* (75 Phil, 824). Nor need I state here the additional reasons and considerations to be set forth in my dissenting opinions in *Ibanez vs. Hernandez* (p. 772, post) and in *Rustia vs. Aguinaldo* (G. R. No. 48928, Sept. 5, 1946)[1] now in course of preparation.

[1] Unpublished

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