

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. WAN YANG, CHAO WUN CHY, SONG TONG, AND YONG HONG, DEFENDANTS AND APPELLANTS.

G.R. No. 11420, August 07, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with a violation of section 7 of Act No. 1757, the law prohibiting gambling. The complaint alleged:

"That the said accused, Wan Yang, Chao Wun Chy, Song Tong and Yong Hong, in or about the month of August, 1915, in the municipality of Bacolor, Pampanga, P. I., and in a house situated in the said municipality, did, willfully, unlawfully and criminally, play the game known as 'yampong,' a game of chance, the accused Wan Yang acting as banker and the three other accused bettors, the accused using for the game a certain mechanical contrivance or device which determines by chance who wins and who loses the money wagered; the sum of P92.98, the mechanical apparatus employed in the game and the other articles which served as accessories thereof having been seized in the place where the game was being conducted. With violation of the section and Act aforecited (Act No. 1757, section 7)."

Upon said complaint the defendants were duly arrested, arraigned, pleaded not guilty, were tried, found guilty of the crime charged in the complaint, and each sentenced by the Honorable Percy M. Moir to pay a fine of P300 and in case of insolvency to suffer subsidiary imprisonment, and each to pay one-fourth part of the costs. From that sentence the defendants appealed to this court

In this court the defendants attempt to show that the lower court committed an error in not sustaining the demurrer which was presented to the complaint in the lower court. They allege that said demurrer should have been sustained for the reason that there was no proof before the court showing that the game at which they were found playing was a game of chance. The defendants have evidently overlooked the rule that you cannot raise a question of fact by a demurrer. The complaint alleged that said game was a game of chance. The complaint was, therefore, sufficient upon that question and the demurrer was rightfully overruled. When defects in a complaint are not apparent on the face of the pleadings an objection can not be raised by a demurrer. Such objection must be raised by an answer. Objections to a complaint can only be raised by demurrer when such objections are apparent upon the face of the complaint.

The appellant further contends that the evidence adduced during the trial of the cause does not show that the game at which they were playing was a game of chance and that therefore they are not guilty under section 7 of Act No. 1757. During the trial of the cause the defendants demonstrated the method of playing the alleged game ("yampong" or as it is sometimes called "liampó"). The prosecution also presented a witness who is familiar with said game and who also gave, in minute detail, the method of playing the same. The method by which the game is played seems to be about as follows:

"It is a game played by means of a rectangular, brass device, weighing more than two pounds; a second device, also of brass, marked with a visible line, is inserted in the first as in a cover. In this second device or cube there is inserted a square die, the surfaces of which are in two colors, red and white, and inscribed with Chinese characters. After this die has been set in its proper place in the second device, it is completely covered by the larger one, the whole then having the appearance of a single piece. All these arrangements are effected by the banker while the contrivance is concealed under his shirt or under a sheet and this concealment seems to give him a certain advantage over the players. After this is done, some one of the players gives the device a turn on a piece of cloth more than a meter square marked by lines radiating from the center to form squares. Between the lines are separately marked the numbers 1, 2, 3 and 4. The banker stations himself opposite the number 1 and bets are placed on the corresponding lines after the device has stopped turning. Then the outer cube is lifted, and the number toward which the red side of the die points is the winning number and the other numbers lose."

The foregoing description of the manner in which the game is played is in conformity with the manner as given by both the prosecution and the defense.

The record shows that it is a common game of chance played among the Chinamen, not only here but in China as well. The lower court, after having seen the game played, or rather having seen the method exemplified by the witnesses during the trial of the cause, reached the conclusion that it was a game of chance. The defendants admitted that they were playing at said game of "yampong" or "liampó."

After an examination of the method by which the game is played, taking into consideration that it is generally regarded as a game of chance, as was stated by the witnesses for the prosecution, we are convinced that it is a game of chance and is one of the games prohibited by section 7 of Act No. 1757. A careful examination of the record fails to disclose any error upon which a modification or reversal of the sentence of the lower court can be based. The same is therefore hereby affirmed, with costs. So ordered.

Torres, Trent, and Araullo, JJ., concur.

Moreland, J., see dissenting opinion.

DISSENTING OPINION

MORELAND, J.,

I think the demurrer was good. The game of "yampong" is not specifically mentioned in the statute (Act No. 1757) as a prohibited game. It is not a game generally or commonly known as a gambling game; in fact, no gambling game of this name has ever heretofore been before this court, so far as I know; and, therefore, the fact that it is a gambling game cannot be established by the principle of judicial notice. The information alleges that it is a game of chance—a pure conclusion which in no way takes the place of facts which should have been alleged so that the court might know the nature of the game instead of being obliged to take the bare word of the prosecuting attorney as to whether it was a game of chance or not. "Yampong" not being a game generally or commonly known as a gambling game, and not being mentioned by the statute as a prohibited game, the facts should have been set forth in the information which show the nature of the game. The accused is entitled to have before him in the information "the acts or omission complained of as constituting the crime * * *" (Sec. 6, Code Crim. Proc). No acts have been set forth—only conclusions drawn from acts not alleged. Men may not be put on their trial and pilloried before the public on the mere conclusion of a prosecuting attorney.

The information states that the game was played with the aid of a "mechanical device." No description of this device is given. What it is, how it is used or in what respect it assists in making the game one of chance no one

knows. Until the evidence is offered on the trial the court is ignorant of the nature of the game, how it is played, what kind of mechanical device is used by the players—in short, does not know whether it is a gambling game or not.

There is no doubt about the guilt of the accused on the evidence. If the questions raised by the appeal from the order overruling the demurrer are settled adversely to the appellant, the case on the merits is clear.

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