

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. HERMOGENES CASION ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 12461. October 25, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendants were charged with a violation of the Gambling Law (Act No. 1757). The complaint alleged:

"That on or about October 15, 1916, in the municipality of Butuan, Province of Agusan, Philippine Islands, the above-named accused did, willfully, unlawfully and criminally, play the prohibited game of monte; an act committed with violation of law.

"The accused Hermogenes Casion, Santiago Calo, and the Chinaman, Tiana, are recidivists."

Upon said complaint the defendants were duly arrested, arraigned, tried, found guilty of the crime charged in the complaint, and sentenced as follows: Hermogenes Casion and Santiago Calo, for the reason that they had been convicted theretofore for the same crime, to be imprisoned for a period of two months; Juan Padaran was sentenced to be imprisoned for a period of 15 days; and Santiago Tiana, for the reason that he had theretofore been convicted twice for the same offense, was sentenced to be imprisoned for the period of two months and 15 days, and each to pay one-fourth part of the costs. From that sentence each of the defendants appealed to this court, and made the following assignments of error:

"1. The court erred in holding in his judgment that the evidence conclusively shows that the game played was monte and not banca-banca.

"2. The court erred in holding that the game called banca-banca is a game of chance and not one of sleight and skill.

"3. The court erred in holding that the several pieces of nipa leaves, called regla, the playing-cards case, and the two pesos in money, all found on the mat spread out in the house where the game was played, are sufficient evidence for a conviction in this cause.

"4. The court erred in pronouncing a sentence of conviction in this cause, beyond all reasonable doubt, without sufficient and conclusive proof to show the defendants' guilt."

Said assignments of error may be discussed together. They all present but one question. The question is, whether or not the defendants, at the time and place mentioned in the complaint, were engaged in playing a game of chance in violation of Act No. 1757. It matters little what the particular game of chance is called, whether it is "monte," "banca-banca," "nones y p«res," "yampong," "liampo," or "hueteng," if the game is in fact a game of chance and is prohibited by the Gambling Law. The name of the game is immaterial. If the game is a game of chance the law cannot be evaded by playing the same under a new name. The name does not make the game. Whether it is a game of chance or not must be determined from the method by which it is played. The lower court, after hearing the evidence, made the following statement with reference to the game at which the defendants were found playing:

"The defendants admitted that they played, not the game of monte but that called banca-banca. The latter is played with three cards, two for the banker* or dealer and one for the players. The three cards are laid face down and then are interchanged so rapidly that the players lose sight of their original positions. Then the bets are made. If the players, in making their bets, guess rightly any one of the cards, they win; otherwise, the 'bank' (dealer) wins. The defense maintains that this game is not one of chance, but of sleight and skill.

"The court finds that the game of banca-banca, as was stated by the defense, depends principally, if not entirely, on chance. It is similar to roulette, only that the manner of playing is the reverse, that is to say the cards are shuffled before the bets are made, as if the roulette were turned in a closed box, and afterwards the bets are made, each player choosing a certain number. But the court does not deem the allegation of the defense to have been proven, that the game played was banca-banca; the evidence conclusively shows that it was monte.

"The defense argues that monte cannot be played with three cards—one of them (being, in the case at bar) the nine of spades, found in the Chinaman Santiago Tiana's pocket—the only ones presented at the trial. That is true. But the court draws the conclusion that, during the raid, someone who might have come into the room before his arrest, perhaps the person who was dealing, or Hermogenes Casion, or Santiago Calo, carried away the cards of the stock. The officers did not search the room; they contented themselves with the two cards, the reglas, the card case and the money, which they found on the spread-out mat and supposed them to be sufficient evidence for conviction, as indeed this court does also."

In addition to the findings of the lower court we have the following statements from the defendants themselves concerning the method of playing the particular game in question.

Hermogenes Casion, one of the defendants, testified as follows concerning the method by which the particular game was played:

"Q.

Whose are these Exhibits C, D, and E?

—

A.

They are mine.

"Q.

Were you people playing with only these cards?

—

A.

Yes, sir.

"Q.

In what does the game of banca-banca consists? By means of these three cards can you show the court here ?

—

A.

Before commencing the game these three cards are laid down in front and the players are asked which of the three is to be chosen for the bets. The card Exhibit E (for instance) is agreed upon.

"Q.

How does one win and how does one lose in this game?

—

A.

After the cards have been cut, as I stated before, these three cards are laid face down. The player bets on Exhibit E, placing his money on one of the three cards laid down. If, when the card bet on is turned up, it is found to be the Exhibit E—the card pointed out and chosen (beforehand) by the player, he wins, and if not, he loses. What I mean is that the player chooses one of the three cards, and the other two are for the banker or dealer, ,If it is either of these two cards, the dealer wins, while the better stakes his bet on but one of them—the one chosen by him at the beginning of the game. These two cards are the Exhibits C and D.

"Q.

"Do you mean to say that only one card can win for the player?

—

A.

One single card.

"Q.

Which one of these three cards served the player?

—

A.

The nine of spades or Exhibit E.

"Q.

And which, the dealer?

—

A.

These two, Exhibits C and D.

Q.

"Then, how are the three cards manipulated? Show us.

—

A.

The three are laid face down and the dealer turns them up rapidly one by one then turns them face down again on the table.

"Q.

So that the dealer manipulates the cards in such a way as to keep changing their position, one after the other. Does he not?

—

A.

Yes, sir.

"Q.

And while the dealer is changing the position of the cards, one after the other, rapidly inverting their order, the player tries to keep his eye on his card; does he not?

—

A.

Yes, sir.

"Q.

Is skill required, or not, in manipulating the cards ?

—

A.

Yes, sir (it is).

"Q.

What does the player need to do in this game in order to win?

—

A.

He must fix his attention on the card chosen by him (for instance, in this case), on the nine of spades.

"Q.

Who was manipulating the three cards that night ?

—

A.

I was.

"Q.

To whom did the two pesos in money belong, that were seized?

—

A.

They were mine.

"Q.

What is the vulgar name of this game?

—

A.

Banca-banca.

"Q

(By" the prosecuting attorney.) In this game of banca-banca, do the cards lie face down when they are changed in position?

—

A.

Face down.

"Q.

In such wise that the better cannot see the face of the card that he has choosen to bet on?

—

A.

He can see it at the commencement of the game, for it is shown to him; so that he must be alert to see just where his card is placed, and if when the card is turned up it is the same one he chose, he wins the game and all his bets must be paid." The other defendant, Santiago Calo, testified as follows concerning the method of playing the game in question:

Q.

"What does the player do to win this game of banca- banca, which is played with these three cards, one of them intended for him?

—

A.

The card intended for the player and which is shown to us before it is placed face down, must be kept track of while the dealer or banker performs his sleight-of-hand movements to deceive the eye, and when the dealer has finished these he lays the cards down on the table, or on the floor which serves as a table. If we believe that the middle card is the one we chose, we bet on that card, laying our money beside it; and when the card is exhibited, if it is found that we have guessed right, we win; otherwise, we lose.

"Q.

In trying to follow the movements of the cards intended for the player, is there usually one, or several, of the players present who is, or are, more skillful in guessing the card correctly?

—

A.

There is, always. It is the person who is skillful enough to keep track of the cards while they are being changed from one position to another.

"Q.

And what happens when the dealer is less skillful in effecting the rapid changes of the three cards?

—

A.

The dealer loses.

"Q.

Who was the banker or dealer on that occasion?

—

A.

Hermogenes Casion.

"Q.

In the game of banca-banca, is there need of following some system of play, which the players call regla?

—

A.

Sometimes it is necessary to follow some system to win, for if the bettor is not clever and skillful in keeping track of his card, he sometimes loses and sometimes wins.

"Q.

The purpose of following a system at times is to determine the player's luck, more or less; is it not?

—

A.

Yes, sir.

"Q.

In the game of banca-banca, the three cards are faced down, so that the player cannot see them after they have been changed by the dealer; are they not?

—

A.

Before the cards are put face down, they are shown to the player.

"Q.

But once they have been placed down, they are not shown to the player; are they?

—

A.

No."

What constitutes gambling under Act No. 1757 is defined by the law itself. Section 1 provides that, "Gambling, within the meaning of this Act, consists in the playing of any game for money or any representative of value or valuable consideration or thing the result of which game depends wholly or chiefly upon chance or hazard, or the use of any mechanical invention or contrivance to determine by chance the loser or winner of money or of any representative of value or of any valuable consideration or thing."

That the game at which the defendants were found playing at the time and place mentioned in the complaint was played for money is admitted by them. That the result of said game depended wholly upon chance or hazard is fully demonstrated by their own statements as to the method by which the game was played. Whether the game was "banca-banca" or "monte" or what not, the defendants themselves, in describing the method by which it was played, clearly showed that if the bettors in the game ever won their bets it was wholly a matter of chance.

The essence of gaming and wagering is that one party is to win and the other to lose upon a future event, which, at the time the wager is made is of uncertain nature—that is to say, if the event turns out one way A will lose, but if it turns out the other way he will win.

We find nothing in the record upon which a modification of the sentence imposed by the lower court can be based. The sentence of the lower court is, therefore, hereby affirmed, with costs. So ordered.

Arellano, C. J., Carson, Araullo, Street, and Malcolm, JJ., concur.

Judgment affirmed.

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