

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FILOMENA C. FOSTER, DEFENDANT AND APPELLANT.

G.R. No. 12828. April 13, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Manila finding the accused guilty of violation of Section 5, in relation to Section 12, of Act No. 2706, as amended by Commonwealth Act No. 180, and sentencing her to pay a fine of P250, with subsidiary imprisonment in case of insolvency, and to pay the costs.

The accused is the owner of Pioneer Institute of Arts and Fashions which was operated in Manila since 1917 upon a temporary permit issued by the Secretary of Public Instruction on September 9, 1947. On April 27, 1949, she applied for the renewal of the permit to operate her vocational school. The evidence is not clear whether the application was approved although a witness for the Government testified that it was not, of which she was notified even if a copy of the notice to that effect was misplaced when the Office of the Bureau of Private Schools moved from its former place to the present one. The accused denied having received said notice and so she continued advertising her school as authorized by the Government in the newspapers as a result of which many students were enrolled therein one of them being Pacencia Sorongon who was enrolled on May 10, 1954 upon payment of the sum of P315 as tuition fee. The accused denied having been informed in writing or verbally by the Bureau of Private Schools that her application for renewal had been disapproved. It also appears that the accused was formerly charged with the same offense before the same court but was acquitted on the ground that, having been issued a permit to operate her school and there being no evidence that the same was cancelled, she could not be held liable for the offense charged.

She appealed from the decision to the Court of Appeals, but the case was certified to us on the ground that the issues raised by her are purely of law.

The issues posed are; (a) Do fashion and beauty schools fall under the provisions of Commonwealth Act 180?; and (b) Can defendant validly set up the defense of double jeopardy?

Section 2 of Commonwealth Act No. 180, amending Section 2 of Act No. 2706, provides:

"For the purposes of this Act, the term private school or college shall be deemed to include any private institution for teaching, managed by private individuals or corporations, which is not subject to the authority and regulations of the Bureau of Education or of the University of the Philippines, or of the Bureau of Public Welfare, and which offer courses of kindergarten, primary, intermediate or secondary. instruction or superior courses in vocational, technical, professional or special schools by which diplomas or certificates are to be granted or titles and degrees conferred."

Section 12 of Commonwealth Act No. 180 also provides:

"Sec. 12. Any person or group of persons who shall open, direct maintain, or manage a private school or

college as defined by this Act, without the prior approval of the Secretary of Public Instruction or who shall advertise, publish, or otherwise announce, verbally or by means of signs, cards, letterheads, or advertisements, or through any other form of publicity, that such person or group of persons has applied for authority to open a private school or college, or for the recognition of such school or college, when he has not actually so applied, or that such private school or college has been duly authorized, when, in reality, the same has not been so authorized, or such authority has been cancelled, or that it is recognized, when, in reality, it has not been recognized, or such recognition has been withdrawn; or that it permits itself to be called a university when, in fact, it has not fulfilled the requirements set forth in section three of this Act, or that it has not been granted authority to do so, shall be deemed guilty of misdemeanor and shall, upon conviction, be punished by a fine not exceeding five hundred pesos, or by imprisonment not exceeding six months, or both, in the discretion of the court; Provided, That in the case of corporations or partnerships, the president, secretary, director, administrator, manager shall be held responsible for the violation."

It would appear that the term private school or college includes any private institution which offers courses in vocational, technical, professional or special schools by which diplomas or certificates are granted or degrees conferred, which is not subject to the authority of the Bureau of Education, University of the Philippines, or Bureau of Public Welfare. On the other hand, a vocational school may be defined as follows: "In its broader sense, 'vocational education' refers to life experiences, education, and training, both direct and indirect, that fit one to carry on a socially useful vocation. In a more restricted sense 'vocational education' refers to specific, junctional training for useful employment" Encyclopedia of Modern Education, Rivlin and Schueler, F. Hubbuer and Co. Inc., New York, 1943, p. 882).

Tested under the above definition, it cannot therefore be disputed that the school operated by the accused is vocational in character and as such comes within the purview of Com. Act 180. In fact, it was so understood by her when in 1947 she applied for a permit from the Office of Private Education and was granted the permit applied for by the Secretary of Public Instruction, the permit stating that it was for "special vocational courses in accordance with the provision of Com. Act 180." The school operated by the accused cannot therefore be operated or maintained without the prior approval of the Secretary of Public Instruction, or without obtaining the authority, recognition, or permit required by law. And if said authority or permit has lapsed or has been cancelled, it is necessary that it be renewed, otherwise the operation of the school cannot be continued. Here, it is true, the accused was given temporary permit by the Secretary of Public Instruction in 1944 but the same became ineffective when the period for which it was granted expired. The permit was only temporary in character for it is there clearly stated that the "authority is given for one year only, beginning September 9, 1947 and expiring on September 8, 1948." The permit, being of a limited duration, formal Cancellation thereof is not necessary. It automatically expires and there is need of renewing it before the school could continue to operate.

The accused argues that the Secretary of Public Instruction has not prescribed any standard of instruction for fashion and beauty schools to indicate that they come under the jurisdiction of his department. This is incorrect. The Department of Instruction has prescribed minimum requirements concerning equipment, supplies, first aid facilities, library, cutting and sewing tools, sewing machine attachments, equipment and supplies for the fitting room, etc., aside from the general and special requirements prescribed in the manual of information issued by said department concerning minimum qualifications for faculty members, methods of teaching, limitation of enrollment, and financial requirements.

It is clear that while the accused complied with the requirements of the law for the opening of her school by getting a temporary permit, she failed to comply with the requirement for continuing its operation by securing a certificate of recognition, and yet she continued advertising her school, enrolling students, and charging tuition fees in spite of the expiration of the temporary permit given her, thus rendering herself amenable to prosecution

under Section 5 of Com. Act 180, amending Section 12 of Act 2706.

With regard to the plea of double jeopardy raised by the accused, we agree to the following comment of the lower court:

"It is further contended that the accused is placed in double jeopardy because she has already been acquitted in Criminal Case No. 14936 when she was charged for having committed similar acts but for the period comprising from 1948 to 1952. But she is now being prosecuted for subsequent acts committed from 1952 to November 18, 1954, when the information at bar was filed. Therefore, the accused is herein charged for acts other than those covered by Criminal Case No. 14936 wherein those subsequent acts are not necessarily included as provided for in Rule 113, sub-sec. 9, Rules of Court. And as already ruled by this Court in the motion to quash filed by the accused (p. 34, rec.) her acquittal in said Criminal Case 14936 does not constitute a certificate of immunity or a certificate of recognition by the Government as provided for in said Commonwealth Act 180. To rule otherwise, an anomalous, situation will be created because another fashion school may be opened and advertised, as recognized by the Government although it was not, and for so doing the owner of said school maybe prosecuted and punished for the violation of said Act 180, while this accused is continuously operating said school without said authority but she could not be held criminally liable for violating Act 180 just because of her acquittal in Criminal Case No. 14936."

The decision appealed from being in accordance with law and the evidence, the same is hereby affirmed, with costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

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