

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MACARIO CONCEPCION ET AL., DEFENDANTS. MACARIO CONCEPCION AND FELIX CRUZ, APPELLANTS.

*G.R. No. 12841. October 25, 1917*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

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

"The undersigned, fiscal for the Province of Rizal, P. I., charges Macario Concepcion, Felix Cruz, Faustino Morales, Catalino Pasco, Marcelo Santos, Jose Santos, Valentin Cruz, Simplicio Estacion, Modesto Victoria, Donato Bautista, Julian Teopisto, and Rufino Sifiedo—the accused abovementioned—with the crime of violation of Act No. 1757, committed as follows:

"That the said Macario Concepcion and the other aforementioned accused did, on September 5, 1916, in the municipality of Pasig, of the Province of Rizal, P. I., willfully, maliciously and unlawfully, Macario Concepcion as tirador, Felix Cruz as casero, and the others as bettors, play and take part in a game of nones y pares (odds or evens), which is a game of chance, and did make money bets among themselves, 1 billiard table, 2 balls, 1 cue, 9 little balls, 22 centavos, and other effects having been seized in their possession by the Constabulary.

"An Act committed with violation of law."

Upon said complaint the defendants were duly arrested and arraigned and each plead not guilty. The record shows that said defendants were first arrested and taken before the justice of the peace of the municipality of Pasig, and were given a preliminary examination; and because said justice of the peace thought that there was probable cause for believing that they were guilty of the crime charged, held them for trial in the Court of First Instance. They were finally brought for trial in the Court of First Instance. The record shows that the trial was commenced upon the 13th day of October, 1916, with all of said defendants present, represented by their attorney, Silvestre Apacible. The record further shows that on the 27th day of November, 1916, the trial was continued with the said defendants, Macario Concepcion and Felix Cruz, as the only ones of said defendants who were present. While the record does not show what was done with reference to the other defendants, the attorney for the appellants in this court, in his brief, makes the statement that they were dismissed by order of the court upon the 4th day of November, 1916. At the close of the trial, and after hearing the evidence, the Honorable Alberto Barretto, judge, found the defendants Macario Concepcion and Felix Cruz guilty of the crime charged in the complaint and sentenced each of them to be imprisoned for a period of one month, with a proportional amount of the costs. The lower court further ordered the confiscation of the gambling effects found at the time the defendants were arrested. From that sentence each of said defendants Macario Concepcion and Felix Cruz appealed.

In this court the appellants make the following assignments of error:

"First. The Court a quo erred in convicting the appellant Felix Cruz as the owner of the billiard table and the camarin where the supposed game of nones y pares was played on the fifth of September, 1916.

"Second. The Court a quo erred in finding that appellant Macario Concepcion took part in the game of nones y pares on the night of the fifth of September, 1916.

"Third. The Court a quo erred in finding that the game of nones y pares, as described by the witnesses of the prosecution, is a game of chance."

With reference to the first assignment of error, the appellants, in their brief, contend that Felix Cruz was convicted of a crime not charged in the complaint. In other words, the appellants contend that Felix Cruz was convicted of the crime charged in the complaint, not because he played the game "nones y pares," but because he was the owner of the "camarin" in which such game was played. The appellants evidently base their argument upon the original complaint presented in the court of the justice of the peace. They evidently did not note the fact that that complaint had been amended, and that the complaint which was presented in the Court of First Instance did charge that Felix Cruz was the "casero." The appellants did not attempt to show that the proof does not sustain the allegations of the complaint in that respect.

With reference to the second assignment of error, the lower court found that Macario Concepcion did take an active part in the said game at the time and place mentioned in the complaint acting as the "tirador." An examination of the record shows that the conclusions of the lower court are proved beyond a reasonable doubt.

With reference to the third assignment of error that the game of "nones y pares" is not a game of chance, the lower court found that said game, as was played by the defendants, constituted a game of chance. The game of "nones y pares," as it was played by the defendants in the present case, is best described by the witnesses themselves.

Fructuoso Nazareno testified as to the manner of playing said game as follows:

**"Q.**

Please show the court how nones y pares is played.

—

**A.**

Let us suppose that this table here in the court room is a billiard table. The player places himself on the left-hand side of the head of the table. The two balls are placed at a certain distance from the cushion of the left side. The player impels one of these balls against the other and the latter is driven against the upper opposite cushion and, on returning toward the center of the table, touches the little pegs. If an even number of these fall down, the 'even' win; and if an odd number, the 'odds' win.

**"Q.**

Please show the court how nones y pares is played.

—

**A.**

Let us suppose that this table here in the court room is a billiard table. The player places himself on the left-hand side of the head of the table. The two balls are placed at a certain distance from the cushion of the left side. The player impels one of these balls against the other and the latter is driven against the upper opposite cushion and, on returning toward the center of the table, touches the little pegs. If an even number of these fall down, the 'even' win; and if an odd number, the 'odds' win.

**"Q.**

On what does the player bet, on the 'odds' or the 'evens?'

—

**A.**

The player always bets on the 'even.'

**"Q.**

On what does the player bet, on the 'odds' or the 'evens?'

—

**A.**

The player always bets on the 'even.'

**"Q.**

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**A.**

The player always bets on the 'even.'

**"Q.**

On what does the player bet, on the 'odds' or the 'evens?'

—

**A.**

The player always bets on the 'even.'

**"Q.**

And what do the other betters bet on?

—

**A.**

On the 'odds.'

**"Q.**

Do they always bet on the 'odds?'

—

**A.**

Yes, sir.

**"Q.**

So that the player always bets on the 'evens' and the other betters, on the 'odds?'

—

**A.**

Yes, sir.

"Q.

In the games of 'odds and evens' in which you personally have taken part, have you seen that when the player wished to make 'evens,' he did so?

—

A.

What I can say is that the player is not always able to make 'odd' or 'evens.'

The witness Esteban Santa Maria testified as a witness and said that said game was played as follows:

"Q.

Please show the court how 'odds and evens' is played. (Witness placed the nine pegs in the middle of the court room table and in the form of a square.)

—

A.

The two balls are placed toward the left hand side of the table, one after the other, at a certain distance from the cushion. The player drives the first ball against the second, and the latter, on striking the cushion at the head of the table, returns by the way of the pegs, and if, on touching them, three of them fall down, then it is 'odds,' and if two fall, it is 'evens.'

"Q.

When you were a player, could you always make 'odds' or 'evens,' at will?

—

A. No, sir. The player cannot be sure whether it will be 'odds' or 'evens;' that depends upon his luck.

"Q.

On that occasion, in that game, did you people seize any articles?

—

A. Yes, sir.

"Q.

For how long a period did you devote yourself to the game of 'odds and evens?'

—

A. One year, if I remember rightly, when I was in private life.

"Q.

If you should strike the first ball to make it touch the second one and then a determinate point on the upper cushion, could you not realize your purpose?

—

A. If you are lucky enough to make the ball touch at the point you wish—for the player's constant desire is to make 'evens,' but sometimes it comes out 'odds.'

"Q.

In this specific case, leaving the pegs out of the question completely, with the two balls in the same position you have indicated to the court, could you not make this first ball, after striking against the second one, touch a determinate point of the upper cushion of the table?

—

A. If you are in luck, even though you wish otherwise, the ball will touch at that point and will roll toward this place.

"Q.

Where did you post yourself to watch the defendants play?

—

A. Behind the billiard table."

From the method disclosed by said declarations it clearly appears that the result of the same depends wholly or chiefly upon chance or hazard. That the defendants played said game for money is proved beyond a reasonable doubt. The record clearly shows that the game of "nones y pares," as played by the defendants, is a game of chance and is prohibited under the provisions of Act No. 1757.

After a careful examination of the evidence we find no reason for changing or modifying the sentence of the lower court. The same is, therefore, hereby affirmed, with costs.

So ordered.

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

Judgment affirmed.

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