

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. DONATO FLORES ET AL., DEFENDANTS. DONATO FLORES, APPELLANT.*G.R. No. 13826. October 14, 1918*

Ponente: JOHNSON, J.

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

"That on or about May 20, 1917, the aforesaid accused did willfully, illegally, and criminally play the game of monte for money; that the accused Donato Flores, as councilor, was the person in possession of the house. All in violation of law."

Upon said complaint the defendants were duly arrested and arraigned. Upon arraignment, Antonio Magallanes, Jose Negrosa, Felipe Nario, Santiago Rodriguez, Raymundo Bantilan and Nicolas Oquing plead guilty to the crime charged in the complaint, and each was sentenced to pay a fine of P20. The other three defendants, Donato Flores, Bonifacio Caores, and Teodoro Seron plead not guilty and the trial proceeded as to them only.

After hearing the evidence adduced during the trial of the cause, the Honorable Cayetano Lukban, judge of the Nineteenth Judicial District, found each of said three persons guilty of the crime charged in the complaint, and sentenced Donato Flores to pay a fine of P300 and Teodoro Seron and Bonifacio Caores to pay a fine of P25 each, and in case of insolvency, to suffer subsidiary imprisonment and each to pay one-ninth part of the costs. From that sentence Donato Flores appealed.

The Attorney-General, in a very carefully prepared brief, taking into consideration that the appellant, Donato Flores, is a councilman of his municipality, in relation with the special facts which appear of record, recommended that the sentence of the lower court be modified by imposing upon the appellant a more severe penalty.

From an examination of the evidence, the following facts appear to be proved beyond a reasonable doubt:

- (1) That the appellant, Donato Flores, is a councilman of the municipality of Dulag of the Province of Leyte;
- (2) That the prohibited game of "monte" was played in his house frequently; that he, personally, invited his friends and neighbors to his house for the purpose of playing said game; that he not only invited his friends and neighbors to come to his house and play the said prohibited game, but, in effect, ordered some of them to come, using his authority as councilman for that purpose; that he did from time to time call the people of his neighborhood to his house for the purpose of playing said prohibited game by an instrument known as caratong, una pieza de caña gruesa con clos nudos y una pequeña abertura a lo largo de la misma, y a la que se golpea en su parte centrica con un palo de madera para que se produzca el sonido que se apetezca (A bulky piece of bamboo with two knots and a small hole at a distance from the same, on the middle part of which one strikes with a piece of wood to produce whatever sound one wishes) ; that on the afternoon or evening of the day on which the crime in question was committed the defendant went through the streets of his barrio and requested his friends and

neighbors to come to his house on that particular night for the purpose of playing the game of "monte;" that when some of his neighbors hesitated because of the fact that certain members of the Constabulary had been seen in the barrio, he assured them that if they were surprised or arrested by the Constabulary that he would pay whatever fine might be imposed upon them; that at times when his friends and neighbors hesitated to go to his house for the purpose of playing "monte," he assured them that no harm would come to them; that from time to time those who played the game of "monte" in his house paid to him certain sums of money from time to time, depending upon the circumstances of the particular game.

From the foregoing it appears that the appellant was a councilman of his municipality, and as such it was his duty to assist in the preservation of good order and maintenance of the law; but instead of performing his duties faithfully and honestly, encouraged the people of his barrio to violate the law and at the same time promising them immunity from the effect of such violation, and at the same time permitted the use of his house for the violation of the law. During the trial of the cause in the court below, the appellant offered no evidence whatever in exculpation of his acts.

Rarely are the courts called upon to decide criminal cases which show a greater culpability on the part of the appellant than do the facts in the present case. It is difficult to see how the laws of a country can be enforced if the officials themselves openly and notoriously violate the law and encourage others to join with them in such violation. Governments are organized and public officials are appointed for the purpose of enforcing the laws and maintaining good order, peace and quietude among the people. If the public officials prove untrue to the trust imposed in them, then indeed, will organized governments have been organized in vain and the taxes imposed and collected from the people will have been imposed and collected without beneficial result.

The objection made by the appellant in this court, to the sufficiency of the complaint, is not tenable. Considering the facts which appear of record in relation with the fact that the appellant is an official of his municipality, and that he not only, personally, violated the law but encouraged others so to do, using his position for the purpose of promising them immunity for their acts, we are of the opinion that the recommendation of the AttorneyfGeneral should be followed and that the maximum penalty of the law should be imposed.

Therefore, the sentence of the lower court is hereby revoked, and it is hereby ordered and decreed that the defendant and appellant be sentenced to be imprisoned for a term of one year and to pay a fine of P500, and, in case of insolvency, to suffer subsidiary imprisonment, and to pay the costs. So ordered.

Torres, Street, Malcolm, Avanceña, and Fisher, JJ., concur.

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