

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. JOSE FINEZA, DEFENDANT AND APPELLEE.

G.R. No. 14513. July 28, 1919

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that this defendant and appellee was charged with a violation of Act No. 1757. The complaint was presented in the Court of First Instance of the Province of Laguna on the 24th day of January, 1917. The complaint alleged:

"That on and from the month of April, 1912, till the month of August, 1914, in the municipality of Paete, Province of Laguna, P. I., the accused Jose Fineza, wilfully, unlawfully, and maliciously, was engaged in exploiting and exploited the prohibited game of chance known as 'lottery' and took part in said game, organizing, managing, and directing, for such purpose, a society or association commonly known as Turnuhan and named Abuluyan ng salapi the purpose of which was apparently mutual help and aid among those associated and affiliated, but that, in reality, its object was the exploitation and undertaking of the said game of chance known by the name of 'lottery;' and. the said society or association has been in operation within the dates above mentioned in the following manner: The society was divided into two sections or series named A and B; the persons who desired to affiliate themselves or to become members of the society could acquire one or more shares in any of the two series, each share being represented by a number, and for each number or share a member had to turn in to the accused, as director and manager of the society, the sum of ₱50 every Sunday and ₱1 every 4th Sunday, and received from the accused a memorandum book for each number that he had, in which were stated the amounts turned in every Sunday. The members had the right, by reason of the amounts turned in by them every Sunday, to win a prize which the accused paid, that is ₱150 for shares belonging to series A and ₱182.50 for those of series B. Said prizes were obtained by means of raffles conducted and supervised by the accused every Sunday, the drawing being double and the value of each prize also double every 4th Sunday. The said raffles were carried out by means of balls placed in two containers called, tambiolos, placing in one of the containers a number of balls equal to the number of members. The balls were numbered and each represented the number or the corresponding share of each member; and in the other container (tambiolito) was placed the same number of balls as that placed in the first one, all of them being 1 in blank, with the exception of one upon which the word 'Suerte' was written., A numbered ball was taken out of the first tambiolito and another ball taken out of the second, and successively in this manner until the extraction of a numbered ball coincided with the extraction of a ball that had the word 'Suerte' written on it, which would terminate the raffle, and the prize would be awarded to that numbered ball, the value of which would be delivered and paid by the accused to the member or associate who owned the lucky number.

"Act committed in violation of Act No. 1757."

Upon said complaint the defendant was duly arrested and arraigned, and after several adjournments of the trial of the cause, the .attorney for the defendant presented a motion asking for a dismissal of the action upon the ground that the crime charged against the defendant could not be committed without the concurrence or participation of other persons and that said other persons had not been included as defendants. Said motion was based upon the

provisions of Act No. 2709. Upon a consideration of the motion, the Honorable Manuel Camus dismissed, the action with costs de officio. From that judgment the prosecuting attorney of the province of Laguna appealed to this court. Upon the question presented by the appellant, we find that we have heretofore, in the case of the United States vs. Abanzado (37 Phil. Rep., 658), decided the precise question against the contention of the appellee as well as the conclusion of the lower court. In that case (U. S. vs. Abanzado, *supra*) this court said.

"Section 1 of the statute prescribes that every prosecution for a crime shall be against all persons who appear to be responsible therefor, except in the cases determined in section two of the Act. But this does not require the prosecuting officer to do the impossible, and to include the names of unknown participants in an information filed by him. Nor does it relieve him of the duty, when he institutes criminal proceedings on an 'information' in the absence of a commitment by a magistrate, not to force to trial any person whose guilt he has no sufficient reason to believe he will be able to establish by the production of competent evidence. (U. S. vs. Barredo, 32 Phil. Rep., 444.) It is very clear, then, that the statute does not relieve the prosecuting officer of the duty to exercise his sound discretion in determining what persons 'appear' to be responsible for the commission of crimes in such cases, though it imposes upon him the duty to include the names of all persons in his 'information' who 'appear' to have been guilty participants in the crime charged therein, either as a result of the exercise of his discretion upon the facts of which he is apprised, or because they have been held for trial by order of a committing magistrate. (U. S. vs. Barredo *supra*.) But no one would contend that if for lack of knowledge of the facts, by mistake, or for any other reason, the prosecuting officer fails to include the names of one or more persons in an information filed by him, who were in fact guilty participants in the commission of the crime charged therein, such persons will be relieved of criminal liability; or that those accused who have been charged with the offense, brought to trial, and found guilty will be permitted to escape punishment merely because it develops in the course of the trial, or after the trial, that there were other guilty participants in the crime. This would be to enlarge rather than to restrict the power of the fiscal, contrary to the manifest spirit and intention of the act."

For the reasons above given it is hereby ordered and decreed that the order of the lower court be annulled and set aside and that the cause be reinstated and that the lower court shall proceed at once to a trial. Without any findings as to costs, it is so ordered.

Arellano, C.J., Torres, Street, Araullo, Malcolm, and Moir, JJ., concur.

Order annulled and set aside, case remanded for reinstatement and trial.

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