

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DONATO INDUCTIVO, LUCAS LIZARONDO AND FRANCISCO CHICO, DEFENDANTS AND APPELLANTS.

G.R. No. 14709. September 09, 1919

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal from a judgment of the Court of First Instance of Nueva Ecija, finding the defendants Donato Inductivo, Lucas Lizarondo, and Francisco Chico guilty of a violation of Act No. 1757, the Gambling Law, and sentencing each of them to three months' imprisonment and to pay a one-third part of the costs.

Appellants rely on four assignments of error. Assignments 1, 3, and 4 require but little consideration. Collectors of jueteng can be convicted of a violation of the Gambling Law if the proof is sufficient. (U. S. vs. De la Cruz, R. G. No. 13808.)[1] And, in this instance, waiving for the time being any other debatable question, the defendants have been proved guilty of an infraction of the Gambling Law.

Assignment of error No. 2, which requires more serious consideration, is as follows:

"II.

"The admission without objection of a coaccused or of a person that ought to be accused with the defendants to testify as government witness does not free his testimony given at the trial from the requisites set forth in Act No. 2709, and said testimony was not sufficient to convict the appellants Donato Inductivo and Francisco Chico and the court below erred in not so holding."

For a proper understanding of the question thus presented, it is necessary to include a sketch of the incidents pertaining to this case. The criminal complaint filed in the justice of the peace court of San Antonio, Nueva Ecija, was laid against four persons, Maximo Obdulio, Lucas Lizarondo, Donato Inductivo, and Francisco Chico. Subsequently, a motion was made in the justice of the peace court by the municipal president asking that the complaint against Maximo Obdulio be dismissed "para utilizarle como testigo de cargo" (in order that he might be used as a government witness). This motion was granted by the justice of the peace. Later, an information was filed in the Court of First Instance against three persons, Donato Inductivo, Lucas Lizarondo, and Francisco Chico. The fourth person, Maximo Obdulio, was named as a witness for the prosecution. The cause came to trial before the Honorable Vicente Nepomuceno, without any motion or demurrer to the complaint having been presented. Claro Soriano, the chief of police, was first called as a witness for the prosecution. He testified relative to the arrest of the three defendants and Maximo Obdulio, and identified them as collectors of the prohibited game of jueteng. Maximo Obdulio, who was the second witness for the prosecution, was permitted to begin his testimony without objection of any sort being raised by counsel for the defense. It was only along in the cross-examination that the following appears:

"Q. Is it not true that the chief of police promised you your release in case you testify as government witness in

this, cause?—A. No, sir.

"Q. And you are not now accused; how do you explain that?—A. Because the judge told me I would be a government witness.

"Q. What judge?—A. The justice of the peace of San Antonio.

"Q. And what else did the justice of the peace tell you, after telling you that you would be used as a government witness?—A. Nothing more than that, that they will use me as witness of the chief.

"Q. And by reason of the fact that you are now a witness, you are no longer one of the accused?

"FISCAL. Objection for being incompetent and immaterial ; it is a conclusion.

"JUDGE. Objection sustained.

"YAPCHIONGCO. That is all."

Even after it was thus brought to the notice of counsel and of the court that Maximo Obdulio had been dismissed as an accused in order to be used as a government witness, no formal objection was raised nor was any adverse action taken by the trial court. With this the statement of the case and of the facts, judgment was rendered against the three defendants Inductivo, Lizarondo, and Chico. It is only on appeal that counsel for defendants first argue against the competency of Maximo Obdulio as a witness because of the fact that the provisions of Act No. 2709 were not followed.

There are two very apparent reasons which disclose why such a contention cannot prosper at this time. In the first place, it is an almost universal rule which has found favor in numerous cases in the Philippines that, aside from matters jurisdictional, which can always be raised for the first time on appeal, and aside from a few other exceptions which need not be noticed, questions not raised in the trial court will not be considered on appeal. (17 C. J., 50, 51; U. S. vs. Perez [1902], 1 Phil., 203; U. S. vs. Mabanag [1902], 1 Phil., 441; U. S. vs. Li-Dao [1903], 2 Phil., 458; U. S. vs. Cajayon [1903], 2 Phil., 570; U. S. vs. Mack [1905], 4 Phil., 291; U. S. vs. Sarabia [1905], 4 Phil., 566; Mortiga vs. Serra and Obleno [1905], 5 Phil., 34; [1907], 204 U. S., 470; 11 Phil., 762; U. S. vs. Paraiso [1905], 5 Phil., 149; [1907], 207 U. S., 368; 11 Phil., 799; U. S. vs. Aldos [1906], 6 Phil., 381; U. S. vs. Cells [1907], 8 Phil., 378, 385, 394; U. S. vs. Eusebio [1907], 8 Phil., 574; U. S. vs. Flores [1907], 9 Phil., 47; U. S. vs. Kosel [1908], 10 Phil., 409; U. S. vs. Macaspac [1908], 12 Phil., 26; U. S. vs. Lampano and Zapanta [1909], 13 Phil., 409; U. S. vs. Ancheta [1910], 15 Phil., 487; U. S. vs. Palacio [1909], 16 Phil., 660; U. S. vs. Planas [1911], 21 Phil., 90; U. S. vs. Laranja [1912], 21 Phil., 500; U. S. vs. Carlos [1911], 21 Phil., 553, 563; U. S. vs. Gow Chiong [1912], 23 Phil., 138; U. S. vs. Cardell [1912], 23 Phil., 207; U. S. vs. Rivera [1912], 23 Phil., 383; Ngo Yao Tit and Chua EngCheng vs. Sheriff of Manila [1914], 27 Phil., 378; U. S. vs. De los Santos [1916], 33 Phil., 397; U. S. vs. Ang [1916], 34 Phil., 44; U. S. vs. Kelly [1916], 35 Phil., 419, 595; U. S. vs. Cruz [1917], 36 Phil., 727; U. S. vs. Lafuente [1918], 37 Phil., 671; Garcia Valdez vs. Director of Prisons [1918], 38 Phil., 596; U. S. vs. Ondaro [1918], 39 Phil., 70.) As was said by this court in *United States vs. Laranja* (supra), following the decision of Judge Cooley in the case of *People vs. Murray* ([1883], 52 Mich., 290), an appellate court, strictly speaking, has no question of law to review if the trial court has made no ruling. This incontrovertible proposition would be sufficient to dispose of appellants' second assignment of error. There is, however, another method of approach leading to the same result. It is this—

The motion intended to secure Maximo Obdulio as a government witness was, it will be recalled, filed in the justice of the peace court; it was not filed in the court of first instance where the trial was had. The justice of the peace court was, under these circumstances, not a "competent court" within the meaning of Act No. 2709. Conceding then that the provisions of this Act were not followed, it is, nevertheless, not fatal, because the clear

and convincing testimony of the chief of police is sufficient to warrant the conviction of the three defendants, not taking into consideration the testimony of Maximo Obdulio at all. Parenthetically, it may be remarked that since this is so, and since the record discloses that Maximo Obdulio was equally guilty with the other three defendants, he can now be prosecuted for the same offense. It is a situation somewhat akin to proceedings in a court having no jurisdiction, which is no bar to subsequent prosecution in a court which has jurisdiction of the offense. (U. S. vs. Jayme [1913], 24 Phil., 90; U. S. vs. Rubin [1914], 28 Phil., 631.)

What has been said shows that an}" further discussion of Act No, 2709 would be beside the point.

Judgment is affirmed, with a one-third part of the costs of this instance against each appellant. The attention of the provincial fiscal of Nueva Ecija is brought to the advisability of instituting criminal proceedings against Maximo Obdulio for a violation of Act No. 1757. So ordered.

Arellano, C.J., Torres, Johnson, Araullo, Avanceña, and Moir, JJ., concur.

Judgment affirmed.

[1] Decided November 13, 1918, not published.

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