

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JACOB TANI Y TANI, DEFENDANT AND APPELLANT.

CA-G.R. No. 15. March 26, 1946

Ponente: FERIA, J.

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FERIA, J.:

Appellant Jacob Tani y Tani was accused and convicted on March 30, 1944, of the crime of illegal possession of firearms committed on or about February 12, 1944, in the municipality of Sorsogon, Sorsogon, and was sentenced to suffer the minimum penalty of six (6) years and one (1) day of imprisonment, to pay a fine of two hundred pesos (P200), with subsidiary imprisonment in case of insolvency, and to pay the costs. The court also ordered the confiscation of the revolver and six rounds of ammunition illegally possessed.

The information and conviction was based on the violation of Executive Order No. 226 of the Chairman of the Philippine Executive Commission of October 12, 1943, duly approved by the director general of the Japanese military administration on October 11, 1943. Section 27 of said Executive Order provides:

"Unlawful possession. —Any person who manufactures or possesses any firearm, parts of firearms, or ammunition therefor, in violation of any provision of this order, shall upon conviction by a court of competent jurisdiction, be punished by imprisonment for a period not less than six years and not more than twelve years and a fine not exceeding two thousand pesos. A conviction under this section shall carry with it the forfeiture of the prohibited article or articles to the Government, and shall be without prejudice to the punishment of the offender under military laws."

Although not raised in the briefs because they were filed during the Japanese regime, the only question we have to determine in this case is the validity of the punitive sentence imposed upon the appellant after the reoccupation or liberation of the Philippine Islands.

In the case of *Co Kim Cham vs. Valdez Tan Ken and Dizon* (75 Phil., 113), and in the case of *Peralta vs. Director of Prisons* (75 Phil., 285), we held that all judgment of a political complexion of the courts during the Japanese regime ceased to be valid upon the reoccupation of the Islands by virtue of the principle or right of postliminium, and that a sentence of conviction of a crime of a political complexion must be considered as having ceased to be valid ipso facto upon said reoccupation. (See authorities cited therein.)

The only question to be decided in this appeal, therefore, is whether or not the punitive sentence imposed upon appellant was of a political complexion.

In the case of *Alcantara vs. Director of Prisons* (75 Phil., 494), this court denied a punitive or penal sentence of a political complexion as one which "penalizes either a new act not defined in the municipal laws or acts already penalized by the latter as a crime against the legitimate government, but taken out of the territorial law and penalized as new offenses committed against the belligerent occupant, incident to a state of war and necessary for the control of the occupied territory and the protection of the army of the occupier. They are acts penalized for

public rather than for private reasons, acts which tend, directly or indirectly, to aid or favor the enemy and are directed against the welfare, safety and security of the belligerent occupant."

The present case falls within the above definition. Although it is true that the crime of illegal possession of firearms was penalized by the municipal law, or section 2692 of the Revised Administrative Code as amended, it was taken out of the territorial law and penalized by the above-quoted section 27 of Executive Order No. 226, as a new offense committed against the belligerent occupant, with a penalty much heavier than that provided in said section 2692 of the Revised Administrative Code. The reason for this excessively heavier penalty is obvious. Executive Order No. 226 of the Chairman of the Philippine Executive Commission, an instrumentality of the Japanese army of occupation, was directed mainly against the resistance movement and the guerrillas. In the occupation of enemy territory, drastic punishment of illegal possessors of firearms is necessary for the control of the occupied territory and the protection and security of the belligerent occupant.

We therefore hold that the punitive sentence under consideration, although good and valid during the occupation of the Philippines by the Japanese forces, ceased to be good and valid upon the reoccupation of these Islands and the restoration therein of the Commonwealth Government.

In view of the foregoing, the present action against the accused and appellant is hereby dismissed with costs de oficio. So ordered.

Moran, C. J., Paras, JaratnUa, Pablo, and Briones, JJ.,
concur.

Case dismissed.

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