

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO MERCADER ET AL., DEFENDANTS. FRANCISCO MERCADER, MARIA CAUBANG, FRANCISCO CAUBANG AND ELPIDIO ARAO, APPELLANTS.

G.R. No. 16529, February 16, 1921

Ponente: MALCOLM, J.

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MALCOLM, J.:

This appeal presents for resolution the grave question of whether or not Francisco Mercader, while municipal treasurer of Sorsogon, Sorsogon, together with three other individuals, violated the Gambling Law.

Eleven individuals were charged in the information (Francisco Mercader as owner, Maria Caubang as banker, and the rest as players), with having played the prohibited game of monte in violation of law. During the preliminary investigation, the action was dismissed as to two of the defendants. After trial the remaining nine were found guilty, and Francisco Mercader as owner of the gambling house and municipal treasurer of Sorsogon, was sentenced to three months' imprisonment and to pay a fine of P300; Maria Caubang as banker, to three months' imprisonment and to pay a fine of P250, and the remainder as players, to two months' imprisonment and to pay a fine of P200; all with the corresponding subsidiary imprisonment in case of insolvency, with a one-ninth part of the costs against each defendant.

Five of the accused, Francisco Mercader, Maria Caubang, Francisco Caubang, Elpidio Arao, and Olimpio Jimenez, appealed from the decision of the trial court. The last named, however, later retired his appeal.

The evidence for the prosecution is clear-cut and convincing. The defendants were caught in flagranti by the Constabulary and each of them was positively identified as a participant in the playing of the prohibited game. The explanation of the various defendants as to why they happened to be in the house of Francisco Mercader on this occasion is too transparent to be believed.

One of the appellants, Francisco Mercader, it should be recalled, was the municipal treasurer of Sorsogon. The trial judge undoubtedly took this fact into consideration in imposing a relatively severe sentence on him. In doing so the court acted properly, for nothing more dangerous can be imagined than to have an official entrusted with public funds, engage in gambling. This was exactly the sort of a case we had in mind when in our decision in *U. S. vs. Salaveria* ([1918], 39 Phil., 102), we suggested that where a person found guilty of a violation of the Gambling Law is a man of station or standing in the community, the maximum penalty should be imposed.

Gambling is an act beyond the pale of good morals which, for the welfare of the Filipino people, should be exterminated. To be condemned in itself, it has the further effect of causing poverty, dishonesty, fraud, and deceit. Our experience as judges has constantly demonstrated that the cause of the commission of many crimes is a passion for the gambling board. It is better, therefore, to strike at the root of the tree of crime than merely to whittle off the twigs, only to see them continually renew themselves in fresh branches. To change the figure of speech, the gambling cancer must be eradicated if the disease be kept from permeating the whole social and political body.

In so far as the judgment relates to the defendants and appellants Elpidio Arao and Francisco Caubang, it is affirmed, with a one-fourth part of the costs of this instance against each of them; and in so far as the judgment relates to the defendants and appellants Francisco Mercader and Maria Caubang, it is reversed, and the defendant and appellant Francisco Mercader, as owner of the gambling house and municipal treasurer of Sorsogon, Sorsogon, shall be sentenced to the maximum penalty provided by law of one year's imprisonment and a fine of P500, with subsidiary imprisonment in case of insolvency, and to pay a one-ninth part of the costs of the first instance and a one-fourth part of the costs of this instance; and the defendant and appellant Maria Caubang, as banker, shall be sentenced to six months' imprisonment and to pay a fine of P250, with subsidiary imprisonment in case of insolvency, and to pay a one-ninth part of the costs of the first instance and a one-fourth part of the costs of this instance. So ordered.

Araullo, Street, Avanceña, and Villamor, JJ., concur.

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