

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEON ESTEBAN, DEFENDANT AND APPELLANT.

G. R. No. 16861. July 18, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is a criminal action commenced in the Court of First Instance of the Province of Bulacan on the 13th day of May, 1918. The defendant was charged with a violation of section 2751 of Act No. 2711. The lower court, in a carefully prepared opinion, found the defendant guilty of the crime charged in the complaint, and sentenced him to pay a fine of P1,053.80, with subsidiary imprisonment in case of insolvency, and, in addition thereto, fifteen days of imprisonment, and to pay the costs. From that sentence the defendant appealed to this court, and the cause was submitted for decision on the 12th day of July, 1921.

The appellant presented no defense in the court below. He admits his guilt in his brief presented in this court, but raises two questions: (1) That Act No. 1732 which provides for subsidiary imprisonment in certain crimes created by Acts of the United States Philippine Commission does not apply to crimes defined and punished by Acts of the Philippine Legislature; and (2) that if it does, then the subsidiary imprisonment provided for by said law (Act No. 1732) was improperly applied in the present case.

With reference to the first contention, it may be said that the change in the personnel or character of the legislative department of the Government, which does not change the form nor the sovereignty of the Government, in our opinion, does not change the applicability of the law of one period to the laws of another. The Penal Code expressly provided for subsidiary imprisonment in certain cases. None of the penal laws passed by the legislative department of the Government under the American sovereignty contained any such provision, and Act No. 1732 was enacted for that very purpose. Prior to Act No. 1732 there was no provision for imposing subsidiary imprisonment for crimes created by the United States Philippine Commission. We are of the opinion that Act No. 1732 applies to all crimes committed after its adoption, whether such crimes are defined and punished by Acts of the Philippine Commission, or by the Philippine Commission and the Philippine Assembly, or by the Philippine Assembly and the Philippine Senate. Our conclusion, therefore, is that the provisions of Act No. 1732 are applicable to the crime created by section 2751 of Act No. 2711.

With reference to the second question, viz.: whether the subsidiary imprisonment imposed by the lower court was imposed in accordance with the provisions of the law, it may be said that paragraph (6) of section 1 of Act No. 1732 provides that "in case the sentence of the court imposes both fine and imprisonment, the subsidiary imprisonment shall not exceed one-third of the term of imprisonment imposed by such sentence, and in no case shall such subsidiary imprisonment exceed one year." In view of this provision and the fact that both fine and imprisonment were imposed in the present case, and the period of imprisonment was fifteen days only, the subsidiary imprisonment can only be one-third of that period, i. e., five days.

Therefore, the sentence of the lower court is hereby modified, and it is hereby ordered and decreed that the

defendant be sentenced to pay a fine of P1,053.80 and to be imprisoned for a period of fifteen days, and in case of insolvency, to suffer subsidiary imprisonment for a period of five days in addition thereto, and to pay the costs. So ordered.

Mapa, C. J., Araullo, Street, Avancena, and Villamor, JJ., concur.

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