THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO PEREZ, DEFENDANT AND APPELLANT

G.R. No. 21713. August 28, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The judgment appealed from sentences Pedro Perez to one month of imprisonment and fine of TWO with subsidiary imprisonment in case of insolvency, with deprivation of the right of suffrage and disqualification from public office for six months and costs, for a violation of sections 2174 and 2659 of the Administrative Code, as amended by Act No. 3030.

The error assigned to the judgment of the lower court is its failure to sustain the defense of the defendant that he believed that a judgment of six months of imprisonment did not disqualify him from the office of municipal president.

On June 20, 1914, the herein accused, Pedro Perez, was convicted, with others, of the crime of assault against a person in authority in criminal case No. 3447 of the Court of First Instance of Cebu, which judgment in its disposing part says:

"Considering the plea of guilty entered by the defendants in open court and taking into account the circumstances surrounding the act complained of, the court finds that the penalty provided by law, even if it is imposed in the minimum degree, is exaggerated and too severe; wherefore while this court sentences each of the defendants to the penalty of two years, four months and one day of prision correctional and the payment of a fine of 625 pesetas each, and, in case of insolvency, to suffer the corresponding subsidiary imprisonment, yet it is resolved to recommend to the Honorable Governor-General the commutation of this penalty to three months for each of the defendants, for it is believed that this punishment is more than sufficient, specially if it is taken into consideration that these defendants have already been administratively punished, being as they are suspended from their respective offices.

"The clerk is hereby ordered to send a certified copy of this judgment to the Chief Executive for such action as may be deemed proper.

> "So ordered.
>
> "Cebu, Cebu, June 20, 1914.
>
> (Sgd.) "BARTOLOME REVILLA
> "Judge on duty"

On August 5, 1914, the Honorable Governor-General commuted the penalty imposed by the trial court, reducing it to six months' imprisonment. The order for the purpose is in the words following:

"OFFICE OF THE GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS

"MANILA, Aug. 5, 1914.

"By authority of the President of the United States, and upon the recommendation of the Chief of Constabulary the sentence in the case of Pedro Perez and Vicente Perez, both convicted by the Court of First Instance of Cebu of 'atentado contra la autoridad' and each sentenced on June 20, 1914, to imprisonment for two years, four months and one day and to pay a fine of 625 pesetas, or, in case of insolvency, to suffer subsidiary imprisonment in lieu thereof, is hereby commuted to imprisonment for six months, with good conduct time allowance.

"Francis Burton Harrison
"Governor-General"

In the general elections of June 6, 1922, Pedro Perez was elected municipal president of Medellin, Cebu, and on the 16th day of October of that year he entered upon the discharge of the functions of said office.

It is in this in which the offense is made to consist, for section 2659 of the Administrative Code now in force punishes him who, without any right, should knowingly assume an office.

And it is alleged that the herein defendant had no right to such office, not being a qualified voter (sec. 2174 of said Code), inasmuch as he had been convicted in the aforesaid criminal case of assault against a person in authority, and sentenced to a penalty exceeding eighteen months, the minimum limit established in section 432 of said Code.

The first question that presents itself for consideration is whether or not by virtue of the judgment imposing two years, four months and one day of prision correctional upon the accused in the aforesaid criminal case for assault against a person in authority, the appellant became disqualified from assuming said office of municipal president.

If we confine ourselves to the field of the Penal Code now in force, our answer would be in the negative for two reasons: First, because in said judgment, whose disposing part is set out hereinabove, he is ndt expressly sentenced to be disqualified, which disqualification would have been an accessory penalty in the form of suspension from office and from the right of suffrage during the life of the sentence, according to article 61 of the Penal Code. Article 90 of this Code provides that the accessory penalties are to be imposed upon the convict expressly, and, according to Viada, they are not to be presumed to have been imposed (see question presented by Viada in his comments on the provisions of article 91 of the Spanish Penal Code of 1870).

Secondly, even supposing the aforesaid suspension to have been expressly imposed, it could not have lasted for a longer period than the principal penalty, because it is so provided in said article 61. And said principal penalty having been imposed in the year 1914, it is obvious that the two years, four months, and one day imposed upon the defendant, even without the commutation made, had elapsed and terminated, together with the accessory suspension, several years before 1922 in which the defendant assumed the office of municipal president.

If we view the question under the Election Law, the solution is not so clear. Was the defendant disqualified to assume the aforesaid office because of being disqualified to vote, according to section 432 of the Administrative Code? Following is the pertinent part of the section:

"SEC. 432. Disqualifications.—The following persons shall be disqualified from voting:

* * * * * * *

"(b) Any person who, since the thirteenth day of August, eighteen hundred and ninety-eight, has been convicted in a court of competent jurisdiction of an offense punished by death, reclusion, prision, or imprisonment for more

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than eighteen months, such disability not having been removed by plenary pardon."

Construing this provision, it may be said that one who, since the 13th day of August, 1898, was sentenced by a competent court to more than eighteen months of imprisonment, confinement or death, is disqualified to vote unless he has been granted an absolute pardon.

Considering the case under the light of this provision of the law, we may, of course, say that, strictly speaking the appellant was not pardoned. But in view of the wording of the judgment of conviction in the aforesaid case, it might perhaps be inferred that in such judgment the true intention of the trial court in sentencing the defendant was in fact not to sentence him to two years, four months and one day of prision correctional, which penalty the judge who rendered said judgment did not hesitate to call "exaggerated and too severe," but to three months which is the penalty to which he recommended to the Governor-General that the former be commuted.

But let us admit for a while that the penalty imposed upon the accused in said case was that of two years, four months and one day of prision correctional, and that for this reason the defendant was, by virtue of said section 432 of the Administrative Code, disqualified to vote and therefore not qualified to assume the office of municipal president, under section 2174 of the Administrative Code, does it necessarily follow from this that the appellant has incurred the penalty provided in section 2659 of this Code ?

This leads us to studying the elements of the offense defined in said section 2659, the text of which, as amended by Act No. 3030, is as follows:

"SEC. 2659. Unlawful assumption of office by ineligible persons.—Any person who knowing that he is disqualified assumes any office shall be punished by imprisonment for not less than one month nor more than one year, and by a fine of not less than one hundred pesos nor more than one thousand pesos, and by deprivation of the right of suffrage and disqualification from public office for a period of not more than three years."

Special attention must be paid to the phrase employed in the law "y a sabiendas de que no lo tiene" (and knowing that he has not), that is, knowing that he has no right to assume the office, which phrase in the English text is "knowing that he is disqualified."

Evil intent being presumed juris tantum in every unlawful act (sec. 334, No. 2, Act No. 190), it would seem to be superfluous to use said phrase, if the intention of the law in this case were not to require positive allegation and proof, as a part of the corpus delicti, of the knowledge on the part of the accused of his disqualification to assume the office; so that without such knowledge there is no crime, and consequently without proof of said knowledge no judgment of conviction can be rendered.

And the necessity of this knowledge is the greater if it is taken into account that when the unlawful assumption of an office is to be punished not judicially as a crime, but administratively, with a view to removing the incumbent, the positive element "knowingly" expressly inserted in said section 2659 of the Administrative Code is no longer required, as may be seen from section 408 of said Code which says:

"Where an ineligible person is elected to and assumes office he shall be removed therefrom," etc.

As to the scope of the term "knowingly" there is a conflict of opinions, although the weight of authority seems to be that the knowledge required by the law as an element of the punishable act is the knowledge of the facts and not of the law, inasmuch as ignorance of the law does not constitute a valid excuse.

But there are cases in which by such word as "knowingly" the law requires corruption, malice, or evil intent, and this is undoubtedly the intention of the law in section 2659 of our Administrative Code, which does not content itself with saying "knowing," but says "knowing that he is disqualified." This shows that what the law requires is

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not only the knowledge of the facts constituting the ground of disqualification, but also the knowledge of the conclusion,—the knowledge of the disqualification.

Said section thus construed, we think the following decision is applicable to the instant case:

"In Byrne vs. State (12 Wis., 519), wherein an election officer was prosecuted for 'knowingly' receiving an illegal vote, the court said: 'The law only required of them true candor and sincerity, and it will only punish them for curruption and falsehood—for acting contrary to their own sense of duty and the dictates of their own consciences. In this sense we understand the word "knowingly" to be used in the statute; that is, knowing that their duty and the obligation of their oaths commanded them to act otherwise. It is the wicked intent or corrupt motive which the laws punish as a crime, and it cannot be supposed that it was the intention of the legislature, in this instance, to substitute for them the upright but misdirected efforts of the mind or judgment of one whose action was not voluntary, but in obedience to the requirements of the law." (Note to the decision in Crawford vs. Joslyn, Ann. Cas., 1912 A, pag. 437.)

We hold that the violation of the law which is the subject-matter of the information was not sufficiently proven.

The judgment appealed from is reversed, and the appellant is acquitted with, all favorable pronouncements and the costs de oficio. So ordered.

Johnson, Street, Villamor, and Ostrand, JJ., concur.

DISSENTING OPINION

AVANCEÑA J., with whom concurs MALCOLM, J.:

I vote for the affirmance of the judgment appealed from. The appellant knew the facts by which he was disqualified in accordance with section 432 of the Administrative Code. It was not necessary for the prosecuting attorney to prove that the appellant also knew this law.

Judgment reversed, defendant acquitted.

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