

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. RESTITUTO FAJARDO, DEFENDANT AND APPELLEE.

G. R. No. 26143. August 07, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Restituto Fajardo was convicted in the justice of the peace court of Baguio, Mountain Province, on the following complaint:

"That on or about the 5th day of April, 1926, in the City of Baguio, subprovince of Benguet, Mountain Province, Philippine Islands, the said accused pawned to Bugtong Otek a watch with its chain and fob for the sum of P50 which the accused received from said Bugtong Otek who also received and got possession of the aforementioned watch with its chain and fob; that on May 3, 1926, also in the City of Baguio, the said accused willfully, unlawfully, and feloniously made Bugtong Otek believe that he had the sum of P50 to redeem the said watch, chain and fob and he asked to hold and examine the same and if he found them in good condition he would immediately give him the. money, but as soon as Bugtong Otek delivered him the aforementioned watch, chain and fob he pocketed them, refused to return them to said Bugtong Otek or to give him said sum of P50, said accused Restituto Fajardo having thereby deceived and defrauded Bugtong Otek in the value of said watch, chain and fob, equivalent to 250 pesetas to the damage and prejudice of the latter."

The accused was sentenced by the justice of the peace court and appealed to the Court of First Instance. At the trial of the case, after a witness for the prosecution had testified, counsel for the accused raised the question of lack of jurisdiction of the Court of First Instance to proceed with the trial of this case on appeal. The judge who tried the case, held that the crime complained of being penalized with *arresto mayor*, and inasmuch as this penalty carries with it suspension from public office and the right of suffrage during the term of the sentence, in accordance with article 61 of the Penal Code, the justice of the peace had no jurisdiction to render judgment and, therefore, the Court of First Instance could not try the case on appeal. Consequently, the case was dismissed and the accused released. The provincial fiscal appealed from said judgment.

The Attorney-General asks for the dismissal of the appeal for the reason that after a witness for the prosecution has testified, the accused has been placed in jeopardy and the Government cannot appeal from the decision of the court. (*Kepner vs. U. S.*, 195 U. S., 100; 11 Phil., 669; *People vs. Borja*, 43 Phil., 618.)

It must be noted that the trial judge found that he was without jurisdiction to try the case on appeal upon the grounds that the justice of the peace, according to him, lacked jurisdiction to try the case originally. If the holding of the trial court is correct, the motion of the Attorney- General must be denied, otherwise it must be granted. An examination of the complaint shows that the crime is that of *estafa* of P50, penalized in paragraph No. 1 of article 538, in connection with article 537 of the Penal Code, or *arresto mayor* in its minimum and medium degrees, and a fine of not more than triple the amount of the damage that has been caused.

That the justice of the peace of Baguio had jurisdiction to try and render judgment in the present case is evident, in our opinion, inasmuch as the penalty imposed for the crime complained of does not exceed six months nor a

fine of P200. It is so provided in section 1 of Act No. 2131 which amended section 4 of Act No. 1627 as amended by section 4 of Act No. 2041. (See English text.)

In the case of *United States vs. Mendoza* (14 Phil., 198), the defendants were accused in the Court of First Instance of having violated article 343 of the Penal Code which punishes bankers and owners of houses where a game of luck, chance, or hazard is played, with the penalty of *arresto mayor* and a fine of "from 625 to 6,250 pesetas. The court found the accused guilty of the crime charged and sentenced them to two months of *arresto mayor* with hard work in the provincial jail of Ambos Camarines and to pay a fine of P125 with subsidiary imprisonment in case of insolvency. The accused appealed from this judgment and assigned as one of the grounds for the appeal, the lack of original jurisdiction of the court to try the case which was within the jurisdiction of the justice of the peace. In deciding this phase of the appeal, this court said:

"The defendants cite section 108 of General Orders, No. 58, as well as section 56, paragraph 6 of Act No. 136, and also section 4 of Act No. 1627, for the purpose of sustaining their contention that the present action was within the original jurisdiction of the justice of the peace. It will be noted, upon a reading of these provisions of the law relating to the jurisdiction of the justice of the peace, that he has original jurisdiction only of cases where the imprisonment is six months and a fine not exceeding \$100 (P200). It is clear, therefore, that the justice of the peace did not have jurisdiction of the present crime. The Court of First Instance had jurisdiction of the crime charged against the defendants."

In *United States vs. Ang Suyco* (17 Phil., 92), this court held that justices of the peace (with the exception of those in Manila) have no jurisdiction to try cases where the penalty for any offense included in the complaint exceeds six months of imprisonment or a fine of P200 or both. (Sec 4 of Act No. 1627.) Therefore, if the penalty provided for any offense included in the complaint does not exceed six months of imprisonment or a fine of P200, or both, the justice of the peace has jurisdiction to try the case and render judgment provided the act complained of was committed within his territorial jurisdiction. (Sec. 2, Act No. 2131.)

The accessories to the penalty of *arresto mayor* provided for in article 61 of the Penal Code do not affect the jurisdiction of the justice of the peace court in the case now before us, for they do not modify nor alter the nature of the penalty provided by the law. The accessory penalties do not determine the jurisdiction of the court in which the complaint is filed. What determines the jurisdiction of the court in criminal cases is the extent of the penalty which the law imposes for the misdemeanor, crime or violation charged in the complaint. If the penalty does not exceed six months or a fine of P200, the justice of the peace court has original jurisdiction; otherwise the Court of First Instance. (*U. S. vs. Jimenez*, 41 Phil., 1.)

It is true that in the case of *United States vs. Nobleza* (8 Phil., 515) and *United States vs. Regala* (28 Phil., 57) this court held that a justice of the peace has no jurisdiction to try a case of *estafa* committed by a justice of the peace although the penalty provided by law is only *arresto mayor*; but that is because article 399 of the Penal Code provides an additional penalty, ranging from temporary disqualification in its maximum degree to perpetual special disqualification, for a Government employee who, taking advantage of his office commits *estafa*.

Similarly, the justice of the peace has no jurisdiction in cases of rape although article 443, paragraph 3, of the Penal Code provides the penalty only of *arresto mayor* and that is because article 449 provides that any person guilty of rape, seduction, or abduction shall also be sentenced to pay by way of indemnity:

"1. To endow the offended woman, if she be single or a widow.

"2. To recognize the offspring, unless the situation of the parents be such that the status of a recognized natural child cannot be conferred upon such offspring.

"3. In every case to support the offspring."

In the case of *United States vs. Bernardo* (19 Phil., 265) this court said:

"These declarations, necessarily required by statute, are not really, in a strict legal sense, accessories of the personal penalty imposed by the Penal Code upon the seducer, but are rather those which the penal law prescribes shall be made by the judge in passing final sentence in the cause, in order that it may be shown that, besides the personal penalty, the accused, in consequence of his crime, has incurred the obligations expressly stated by the said code.

"These obligations imposed upon the culprit ordinarily exceed the amount of the penalty fixed by the law as being within the jurisdiction of the justice of the peace court and comprise, moreover, by virtue of the forced recognition imposed by article 135 of the Civil Code, the special determination of the civil status of the offspring which resulted from the crime, consequently, although the said crime of seduction is only punished by the penalty of *arresto mayor*, a judgment of conviction cannot be pronounced by a justice of the peace, on account of his lack of jurisdiction."

In view of all of the foregoing, we hold that the justice of the peace of Baguio had jurisdiction to try the case presented to him against Restituto Fajardo, and this being so, the trial court committed an error of law in holding that it had no jurisdiction to try the case on appeal. Its judgment, however, dismissing the case and releasing the accused is unappealable for the reason that he was already in jeopardy, and therefore the motion of the Attorney-General must be granted and this appeal must, as it is hereby, dismissed, with the costs *de oficio*. So ordered.

Avanceña, C. J., Street, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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