

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CRISANTO TAMAYO, DEFENDANT AND APPELLANT.

G.R. No. 41423. March 19, 1935

Ponente: HULL, J.

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HULL, J.:

Appellant was convicted in the justice of the peace court of Magsingal, Province of Ilocos Sur, of a violation of section 2, municipal ordinance No. 5, series of 1932, of said municipality. Upon appeal to the Court of First Instance of Ilocos Sur conviction resulted and a fine was imposed. From that decision this appeal was brought.

While this appeal was pending, the municipal council repealed section 2 in question, which repeal was duly approved by the provincial board, and the act complained of, instead of being a violation of the municipal ordinances, is now legal in that municipality.

Appellant has moved for a dismissal of the action against him on account of that repeal.

In the leading cases of the United States vs. Cuna (12 Phil., 241), and Wing vs. United States (218 U. S., 272), the doctrine was clearly established that in the Philippines repeal of a criminal Act by its reenactment, even without a saving clause, would not destroy criminal liability. But not a single sentence in either decision indicates that there was any desire to hold that a person could be prosecuted, convicted, and punished for acts no longer criminal.

There is no question that at common law and in America a much more favorable attitude towards the accused exists relative to statutes that have been repealed than has been adopted here. Our rule is more in conformity with the Spanish doctrine, but even in Spain, where the offense ceases to be criminal, prosecution cannot be had. (1 Pacheco Commentaries, ¶96.)

The repeal here was absolute, and not a reenactment and repeal by implication. Nor was there any saving clause. The legislative intent as shown by the action of the municipal council is that such conduct, formerly denounced, is no longer deemed criminal, and it would be illogical for this court to attempt to sentence appellant for an offense that no longer exists.

We are therefore of the opinion that the proceedings¹ against appellant must be dismissed. So ordered. Costs de oficio.

Avanceña, C.J., Malcolm, Villa-Real, Abad Santos, Vickers, Imperial, Butte, Goddard, and Diaz, JJ., concur.

Case dismissed.

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