

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ESTEFANIA MENDOZA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4263. September 22, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendants were charged with the crime of gambling, committed as follows:

"That on or about the months of April, May, June, and July, 1907, in the barrio of Tabuco, municipality of Nueva Caceres, Province of Ambos Camarines, the said accused Estefania Mendoza, as owner of the house, and Manuel Flores, Pastor N. Martin, Felipe San Joaquin, and Bruno de los Santos as bankers, willfully, unlawfully, and feloniously maintained a gambling house in the barrio, wherein during the said months of April, May, June, and July, 1907, and especially on the 17th, 18th, 19th, and 20th of July, 1907, the game called 'monte' which is a game of chance or hazard, was played.

"That the said accused in their respective characters, to wit, the first named as owner of the house, and the latter as bankers, willfully, unlawfully, and feloniously encouraged the said game of 'monte' during the said months and in the said house, where from forty to fifty persons assembled as gamblers, gambling being regularly carried on in the said house. All contrary to law."

The lower court, after hearing the evidence adduced during the trial of the cause, found each of the defendants guilty of the crime charged in the said complaint, and sentenced each of them to be imprisoned at hard labor, in the provincial jail of the Province of Ambos Camarines, for a period of two months and one day of arresto mayor, each to pay a fine of P125, Philippine currency, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of law, and each to pay one-sixth part of the costs.

From this sentence the defendants appealed to this court and made the following assignments of error:

- "1. For not refusing to hear the case as set forth in the complaint when same should have been heard in the justice of the peace court.
- "2. For not stating with clearness and precision the law that was violated by the parties whom I represent.
- "3. For affirming that the accused are guilty of the crime alleged in the complaint, according to the evidence and beyond reasonable doubt.
- "4. For holding that my client, Manuel Flores, testified falsely at the trial of the case.
- "5. For sentencing the accused to suffer subsidiary imprisonment in case of insolvency.
- "6. For holding that my client, Estefania Mendoza, was guilty of the crime charged, and for sentencing her, a woman, to hard labor."

From an examination of the evidence adduced during the trial of the cause the following facts seem to be proven, beyond peradventure of doubt:

That at the time and place mentioned in the complaint, and for a long period prior thereto, the defendant Estefania Mendoza occupied, used and controlled as her own property a house in the central part of the town of Nueva Caceres in the Province of Ambos Camarines; that during the months of April, May, June, and until the 25th day of July, 1907, many persons, at times twenty or more, assembled in said house during the night-time, and then and there played a prohibited gambling game commonly known as "monte" in which game sums of money were bet by the persons present, who took part in said game; that the evidence shows that the said game was carried on in said house at least on seventeen different occasions; that the other defendants, Manuel Flores, Martin Marcelo, Felipe San Joaquin, and Bruno de los Santos, acted as bankers at different times during the time the said game was going on; that these last-named defendants had charge of and played the cards used in said game, employing all the requisites and equipments for the conduct of said game; that the gains and profits, whatever they were, resulting from said gambling game, were divided among the said bankers and the defendant Estefania Mendoza; that Estefania Mendoza not only accepted a portion of the profits resulting from such game, but consented that the same be played in her house; that the persons who assembled in the house, as above indicated, usually assembled at about 8.30 o'clock at night, and remained there playing until sometimes as late as 1 or 2 o'clock in the morning.

All of the defendants testified in their own behalf during the trial of the cause except Bruno de los Santos; each denied any participation in the crime charged. The defendant Manuel Flores admitted that during the time in question he played for money in the said house on four different occasions, but that the game was not "monte" but was the game of "entrecuatro."

With reference to the first assignment of error, the appellants allege, in effect, that the Court of First Instance did not have jurisdiction of the crime; that the crime was within the jurisdiction of the justice of the peace.

During the trial of the cause the defendants introduced an ordinance enacted by the municipal council of the pueblo of Nueva Caceres, providing the punishment for the offense of gambling. This ordinance provides for a fine of from P25 to P100 for its violation. The present complaint, however, charges a violation of the provisions of article 343 of the Penal Code. Said article 343 provides:

"The bankers and proprietors of a house where games of chance, stakes, or hazard are played, shall be punished with the penalty of arresto mayor and a fine of from 625 to 6,250 pesetas, and, in case of a repetition, with those of arresto mayor in its maximum degree to prision correccional in its minimum degree, and a fine double the above mentioned."

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.

With reference to the second assignment of error, that the lower court failed to designate in his decision the provision of law violated, it is true that the sentence of the lower court does not indicate the particular provision of law violated by the defendants. This was not error, however, if the lower court did actually apply the proper provision of the Penal Code to the facts established by the proof during the trial of the cause.

With reference to the third assignment of error, to wit, that the lower court committed an error in holding that the proof adduced during the trial was sufficient to show that the defendants were guilty of the crime charged, we are of the opinion and so hold that the lower court committed no error in making this declaration. We have examined

said proof and find that the same does, beyond peradventure of doubt, show that the defendants were guilty of the crime charged in said complaint.

With reference to the fourth assignment of error, to wit, that the lower court committed an error in declaring that the defendant Manuel Flores swore falsely as a witness during the trial of the cause, we are of the opinion and so hold that the finding of the lower court, taken in connection with the testimony given by the defendant during the trial, was entirely justified.

With reference to the fifth assignment of error, to wit, that the lower court committed an error in imposing subsidiary imprisonment upon the defendants in case of their insolvency, we are of the opinion and so hold that under the provisions of article 50, in its relation with paragraph 5 of article 49 of the Penal Code, the lower court committed no error in imposing subsidiary imprisonment.

With reference to the sixth assignment of error, to wit, that the lower court committed an error in condemning Estefania Mendoza to imprisonment at hard labor, there seems to be no provision of the Penal Code authorizing the court to impose the penalty of hard labor in addition to the penalty of imprisonment. It seems that the nature of the employment of persons sentenced to imprisonment under the provisions of the Penal Code is left to the character of the penalty imposed.

Upon an examination of all of the facts of record brought to this court, in our opinion the defendants are guilty of the crime charged, and they are each hereby sentenced to be imprisoned for a period of two months and one day of arresto mayor, each to pay a fine of P125, Philippine currency, and in case of insolvency each to suffer subsidiary imprisonment in accordance with the provisions of law, and each to pay one-sixth part of the costs. So ordered.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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