

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FILEMON D. MALABANAN, DEFENDANT AND APPELLANT.

G. R. No. 43430. January 07, 1936

Ponente: HULL, J.

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HULL, J.:

Appellant was convicted in the Court of First Instance of Batangas of a violation of article 208 of the Revised Penal Code.

In July, 1933, appellant was municipal president of the municipality of San Juan, Province of Batangas, and was engaged in raising funds for the construction of a ward in the provincial hospital, for tubercular patients. Notwithstanding all his efforts to secure contributions, he was unable to approximate the quota which had been set for his town by the provincial authorities, and he therefore on July 22 and July 29, organized and held cock-fights, neither day being authorized by law for such purposes.

Article 208, of which appellant was found guilty, reads as follows:

"ART. 208. Prosecution of offenses; negligence and tolerance.—The penalty of prision correccional in its minimum period and suspension shall be imposed upon any public officer, or officer of the law, who, in dereliction of the duties of his office, shall maliciously refrain from instituting prosecution for the punishment of violators of the law, or shall tolerate the commission of offenses."

It is not clear whether the Government is claiming the right to punish appellant because he did not institute prosecution against himself for organizing a cock-fight on a day other than those permitted by law or, under the last clause, that it was his duty to have prosecutions instituted against all who attended the cock-fights and bet money thereon.

It is also contended in argument that the word "maliciously" in the Act means no more than mere knowledge or voluntary violation of the law and that it only applies to the first clause and does not qualify the toleration therein denounced. It is true that the word "maliciously" has been, given by the courts different meanings according to the context of the legislation in which the word is used. The Spanish text of the Act being the controlling one, the definition of malicia found in 21 Enciclopedia Juridica Española, page 542, is instructive.

"MALICIA. El estado de espfritu que se complace en el deseo y practica de una accion perversa, a sabiendas de su maldad y no obstante esta.

"La malicia es la característica subjetiva o psicologica del delito, segun las ideas tradicionales de la escuela penal espanola. Asi, desde los comienzos de la codification, elCodigo Penal de 1822 definia el delito de esta suerte: 'Comete delito el que, libre y voluntariamente, y con malicia, hace u omite lo que la ley prohíbe o manda bajo alguna pena' (art. 1.º). Y aun despues de eliminada la palabra en la redaccidn delCodigo de 1870, todavia la repite elCodigo Penal de la Marina de guerra, como si fuera de hecho insubstituible: 'Son delitos y faltas las

acciones u omisiones penadas por la ley y ejecutadas con malicia' (art. 1.º). Pero, ¿llamaríamos realmente 'malicia' al estado de ánimo del delincuente político generoso, del delincuente pasional honrado? La fórmula, no obstante sus apariencias de exactitud, nos parece incapaz de servir de común denominador a todos los delitos.

"En otra de sus acepciones que en Derecho tiene menos valor, la palabra 'malicia' equivale a la penetración, sutileza y sagacidad propia de ciertos espíritus, más o menos habitualmente."

These definitions indicate what the ordinary use of the word connotes, that the action complained of must be the result of a deliberate evil intent and does not cover a mere voluntary act.

Looking at it from a practical standpoint, it is clear that giving this section the most liberal interpretation possible would result in impossible conditions in these Islands. If every public functionary who fails to institute criminal proceedings for every misdemeanor which he has reason to believe has been committed, is liable to be sent to jail for a year and a half as a felon, an intolerable situation would occur. Every municipal president in the Islands would be subject to conviction by the machinations of his political enemies, under a statute as rigorous as any devised by Draco.

Appellant admits in his testimony acts which are clearly denounced by article 199, paragraph 1, of the Revised Penal Code.

"ART. 199. Illegal cockfighting.—The penalty of arresto mayor or a fine not exceeding 200 pesos, or both, in the discretion of the court, shall be imposed upon:

"1. Any person who directly or indirectly participates in cockfights, by betting money or other valuable things, or who organizes cockfights at which bets are made, on a day other than those permitted by law."

For his infraction of the law he can be punished under this section, and there is no necessity of straining a highly criminal statute to adequately punish his acts.

We therefore find appellant not guilty of a violation of article 208 but guilty of a violation of article 199, paragraph 1, of the Revised Penal Code, and sentence him to pay a fine of P10, with subsidiary confinement in case of insolvency.

The judgment appealed from, as thus modified, is affirmed. Costs against appellant. So ordered.

Malcolm, Villa-Real, Abad Santos, Vickers, Butte, Goddard, and Diaz, JJ., concur.

DISSENTING

ABANCEÑA, C.J., :

It is alleged in the information, among other things, that the appellant, being municipal president of San Juan, Batangas, tolerated cock-fights at which money was betted on days not permitted by law. The appellant's admission that he organized and conducted these cock-fights establishes this allegation of the information in the sense that he tolerated the commission of the violation of the law wherein others, besides him, intervened. In my opinion, this is sufficient to warrant the affirmance of the sentence. In view of the circumstances of the case, however, the absolute pardon of the appellant should be recommended to the Chief Executive. Judgment modified.

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