

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. CHONG HONG ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 45363. June 13, 1938

Ponente: LAUREL, J.

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LAUREL, J.:

The seven defendants in this case were convicted in the justice of the peace court of Davao, Davao, of violation of ordinance No. 394 of said municipality. On appeal, the Court of First Instance of Davao ordered the dismissal of the case on the ground that the ordinance aforementioned is null and void. The prosecution appeals from and challenges this order of dismissal of the court below. The ordinance in question reads as follows:

"Ordinance No. 394

"ORDINANCE PROHIBITING THE PLAYING OF 'JUETENG'

"By authority of law, the Municipal Council of Davao, Province of Davao, hereby decrees as follows:

"Section 1. Any person who in any manner shall directly or indirectly take part in the game generally known as jueteng, or knowingly and without lawful purpose has in his possession any list, paper or other matter containing letters, figures or symbols which pertain to, or are in any manner used in, the game of jueteng or any similar game which has taken place or is about to take place, shall be punished as follows:

"(1) Imprisonment of not less than one month nor more than two months, and a fine of not less than P50 nor more than P100, if a PLAYER;

" (2) Imprisonment of not less than two months nor more than four months, and a fine of not less than P75 nor more than P150, if a COLLECTOR;

"(3) Imprisonment of not less than three months nor more than six months, and a fine of not less than P100 nor more than P200, if a MASTER or BANKER.

"Sec. 2. For purposes of this ordinance, a player is any person who participates in the game by betting, wagering or staking money or anything of value: collector is any person who collects money for betting on the game, prepares, carries, or in whose possession is found any list, paper, or any matter pertaining to, or in any manner used, in the game: master is any person who keeps, maintains, has charge or possession, or controls the house where the game is played, or who knowingly permits any property, owned by him, to be used for playing the game: banker is any person who directly makes the play, receives lists, papers or matters pertaining to, or is in any manner used in, the game.

"Sec. 3. All ordinances or parts thereof which are inconsistent with or repugnant to the provisions hereof are hereby repealed.

"Sec. 4. This ordinance shall take effect on its approval.

"Approved unanimously.

"Davao, Davao, February 12, 1936."

The municipal council of Davao is empowered by law to enact the ordinance just quoted. By section 2625 (hh) of the Revised Administrative Code, municipal councils are expressly authorized, by ordinance, "To prevent and suppress * * * gambling * * *" and "to make and enforce all necessary police ordinances, with a view to the confinement and reformation of * * * gamblers * * *." The authority may also be made to rest on the general-welfare clause found in section 2625 (jj) of the Revised Administrative Code. The suppression of gambling is within the police power of a municipal corporation and "Ordinances aimed in a reasonable way at the accomplishment of this purpose are undoubtedly valid." (U. S. vs. Salaveria, 39 Phil., 102, 108.) The various penalties imposed for the violation of the ordinance in question come within the limits of paragraph (ii) of the same section of the same Code.

It is admitted that jueteng is already prohibited and penalized in article 195 of the Revised Penal Code. But the fact that an act is already prohibited and penalized by a general law does not preclude the enactment of a municipal ordinance covering the same matter. The rule is well-settled that the same act may constitute an offense against both the state and a political subdivision thereof and both jurisdictions may punish the act, without infringing any constitutional principle. (See U. S. vs. Paris, 31 Phil., 524.) Indeed, this principle is impliedly accepted in our Constitution by the limitation provided that "If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." (Art. III, sec. 1, par. 20.)

The court below, however, lays emphasis on the claim that the ordinance before us is in conflict with law. Conformity with law is one of the essential requisites for the validity of a municipal ordinance. But fatal inconsistency is not disclosed by an examination of the law and ordinance involved. Both article 195 of the Revised Penal Code and municipal ordinance No. 394 prohibit and penalize the playing of jueteng. The difference lies in the details and the penalties imposed. The ordinance distinguishes between a "player", a "collector" and a "master or banker" and prescribes a different penalty for each class. The law, upon the other hand, prescribes a penalty common to all classes. This distinction apparently was made necessary by the peculiar conditions of the locality. At any rate, the enlargement upon the provisions of a statute of the state, as by the imposition of additional penalties, does not result in inconsistency. "As a general rule, additional regulation to that of the state law does not constitute a conflict therewith. The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith, unless the statute limits the requirement for all cases to its own prescription." (43 C. J., 219, 220. See *Rossberg vs. State*, 111 Md., 394; and *In re Hoffman*, 155 Cal., 114.) The fact that the ordinance does not speak of recidivism, which the general law treats of with more severity, is not indicative of inconsistency. There can be no inconsistency 'if either is silent where the other speaks, * * *.' (43 C. J., 218, 219.)

We have not overlooked the observation of the lower court that if a recidivist jueteng gambler is prosecuted under the ordinance, he could not be dealt with more severely as such recidivist as the ordinance fails to meet such a situation. This is true and, we may add that under the aforementioned provision of our Constitution, his conviction or acquittal under the ordinance is a bar to a subsequent prosecution under the Revised Penal Code. The defect pointed out cannot, however, be corrected by judicial interpretation.

As ordinance No. 394 of the municipality of Davao is valid, the court below erred in dismissing the case against the appellees herein. The order appealed from is, therefore, reversed and the case should be, as it is hereby, remanded to the court of origin for trial on the merits and decision in accordance with law. Costs against the appellees. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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