

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PRUDENCIO FEVIDAL, DEFENDANT AND APPELLANT.

G.R. No. 45532. October 13, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

Based upon the facts inferred from Exhibits A, B and C appearing in the record, an information against Prudencio Fevidal was filed in the Courts of First Instance of Leyte, charging him with having violated section 2761 of the Administrative Code which reads as follows:

"Sec. 2761. Holding of prohibited interest by public officer.—Any municipal or township officer who, contrary to law, shall directly or indirectly be interested in any contract work, or cockpit, or other permitted game, or amusement, or in any business of the municipality or township, or in the purchase of any real estate or any other property belonging thereto shall, upon conviction, be imprisoned for not less than six months nor more than two years."

After the trial, the court found the accused guilty of said violation of law and sentenced him to the indeterminate penalty of from six months to two years' imprisonment, and to pay the costs of the trial. The accused appealed from the judgment which so sentenced him, and in the brief filed by him in this instance, he argues that the lower court erred in finding him guilty.

Exhibits A, B and C show that on December 3 and 12, 1934, stall No. 1 of the public market was awarded to the highest bidder after public auction by the corresponding authorities of the municipality of Jaro of the Province of Leyte, by virtue of the provisions of a municipal ordinance approved six months prior thereto; that said bidder was Abdon Relevo, and that he tendered his bid not on his own account but in the name and for the account of the accused and the latter's wife named Dionisia Malate. Upon this evidence and the admissions made by both the accused and the fiscal during the trial and, perhaps, upon other evidence which it is not incumbent upon this court to examine now because its jurisdiction in cases like the present one is confined to deciding questions of law, the lower court arrived at the conclusion that when the accused, through Abdon Relevo and through his wife, became interested in the acquisition and possession of the stall in question in the public market of Jaro, on December 3 and 12, 1934, by bidding therefor at the public auction held for that purpose on said occasion, he was not yet a member of the municipal council of said municipality, not even an employee thereof; and that from the time he acquired and possessed said stall under the circumstances above-stated, he began paying not the daily rent of P.50 used to be paid formerly but that of P.65 daily, which was exactly the rate for which he had tendered his bid at the public auction.

The provisions of the section allegedly violated, section 2761 of the Administrative Code, prohibit only the act of taking part in the business of the municipality when the person doing so is a public officer, a prohibition which is undoubtedly due to the desire to prevent one, who is a municipal officer or employee, from having more advantages than another who is not so, in taking part in the business of the municipality, and to the desire to likewise prevent one from serving two masters at the same time, because to do one or the other is contrary to

morals and public order.

The accused-appellant not being in the circumstances above set forth, inasmuch as, according to the findings of the lower court, he was not yet a councilor when he indirectly took part in the acquisition and possession of said stall of the public market of Jaro at a public auction, the judgment appealed from should be reversed.

Wherefore, the appealed judgment is reversed, and the accused is hereby acquitted of the violation of law with which he is charged, with the costs de oficio. So ordered.

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

DISSENTING

IMPERIAL, J.:

The information which commenced the process against the accused-appellant contains the following allegation:

"That on or about February 20, 1936, and sometime prior thereto, in the municipality of Jaro, Province of Leyte, Philippine Islands, the said accused being then a municipal councilor of said municipality of Jaro, Leyte, did, then and there, willfully, unlawfully and feloniously take indirectly a part in a public auction over stall No. 1 in the public market of said municipality of Jaro, Leyte, and did, then and there possess pecuniary interest in the municipal contract of lease of public market stall of said municipality of Jaro, Province of Leyte, by then and there occupying the said stall No. 1 of said public market of said municipality of Jaro, Province of Leyte."

Section 2176 of the Revised Administrative Code reads as follows:

"Sec. 2176. Inhibition against holding of pecuniary interest by municipal official.—It shall be unlawful for a municipal officer to possess a pecuniary interest, either direct or indirect, in any municipal contract, contract work, or other municipal business, or to hold such interest in any cockpit or other game licensed by municipal authority."

Section 2761 of the same Revised Administrative Code, under which the information has been filed, is couched in the following language:

"Sec. 2761. Holding, of prohibited interest by public officer.—Any municipal or township officer who, contrary to law, shall directly or indirectly be interested in any contract work, or cockpit, or other permitted game, or amusement, or in any business of the municipality or township, or in the purchase of any real estate or any other property belonging thereto shall, upon conviction, be imprisoned for not less than six months nor more than two years."

The facts upon which the judgment of acquittal is based are stated in the majority opinion as follows:

"Exhibits A, B and C show that on December 3 and 12, 1934, stall No. 1 of the public market was awarded to the highest bidder after public auction by the corresponding authorities of the municipality of Jaro of the Province of Leyte, by virtue of the provisions of a municipal ordinance approved six months prior thereto; that said bidder was Abdon Relevo, and that he tendered his bid not on his own account but in the name and for the account of the accused and the latter's wife named Dionisia Malate. Upon this evidence and the admissions made by both the accused and the fiscal during the trial and, perhaps, upon other evidence which it is not incumbent upon this court to examine now because its jurisdiction in cases like the present one is confined to deciding questions of law, the lower court arrived at the conclusion that when the accused, through Abdon

Relevo and through his wife, became interested in the acquisition and possession of the stall in question in the public market of Jaro, on December 3 and 12, 1934, by bidding therefor at the public auction held for that purpose on said occasion, he was not yet a member of the municipal council of said municipality, not even an employee thereof; and that from the time he acquired and possessed said stall under the circumstances above-stated, he began paying not the daily rent of P.50 used to be paid formerly but that of P.65 daily, which was exactly the rate for which he had tendered his bid at the public auction.

"The provisions of the section allegedly violated, section 2761 of the Administrative Code, prohibit only the act of taking part in the business of the municipality when the person doing so is a public officer, a prohibition which is undoubtedly due to the desire to prevent one, who is a municipal officer or employee, from having more advantages than another who is not so, in taking part in the business of the municipality, and to the desire to likewise prevent one from serving two masters at the same time, because to do one or the other is contrary to morals and public order.

"The accused-appellant not being in the circumstances above set forth, inasmuch as, according to the findings of the lower court, he was not yet a councilor when he indirectly took part in the acquisition and possession of said stall of the public market of Jaro at a public auction, the judgment appealed from should be reversed."

It is admitted in the majority opinion that the accused indirectly took part in the auction held on December 12, 1934, because Abdon Relevo, the one who served as a tool, tendered his bid for stall No. 1 in the name and for the account of said accused. This conclusion is supported by Exhibit A for the prosecution, admitted by the accused, wherein the latter, being the signer of the letter, states: "Now the undersigned informs you that on the day of the auction Mr. Abdon Relevo was only our agent to bid for said stall and we request the President to desist from compelling Mr. A. Relevo to comply with any obligation relative to said stall, it being known by the president that Mr. Abdon Relevo is not the one occupying said stall but Dionisia Malate."

However, the majority opinion acquits the accused solely because it has been proven that he was not yet a councilor of the municipality of Jaro when he indirectly tendered his bid for stall No. 1 of the public market of said town. It is this conclusion that is not supported by the facts admitted by the parties themselves.

To begin with, I shall state that the attorney for the defense himself admits the fact that the accused was a councilor from October 16, 1934. His words are as follows: "The only issue raised in this appeal from the decision of the lower court is whether section 2176 in relation to section 2761 is applicable to the following uncontroverted facts: That the herein accused, Prudencio Fevidal, was a municipal councilor of Jaro, Leyte, since October 16, 1934, up to and during the period alleged in the information: * * *." The court, in its conclusions of facts, states that the accused was a councilor during the entire period of time alleged in the information. In the information, the violations are made to consist not only in the fact that the accused indirectly tendered his bid at the auction held on December 12, 1934, but also in the circumstance of having been occupying said stall up to February 20, 1936. The defenses set up by the attorney for the defense consisted merely in that the municipality was not authorized by law to lease the market stalls by means of public auction and that the bid offered by the accused was not perfected because it does not appear that the municipality has ever accepted it. The defense never discussed nor questioned the indisputable fact that the accused qualified as councilor on October 16, 1934.

It seems that what gave rise to the conclusion of fact in question is the following statement of the court appearing on page 5 of the brief for the defense: "that the public bid for the occupation of said market stall No. 1 was held on December 3, 1934, in accordance with the municipal ordinance No. 7, series of 1933, while the defendant was not yet a member of the municipal council of Jaro, * * *." The last phrase: "while the defendant was not yet a member of the municipal council of Jaro" seems to have been interpreted as referring to December 3, 1934, when in fact it refers to the year 1933 when ordinance No. 7 was approved. The following transcript of the stenographic notes explains what the court meant in said part of its judgment:

"Mr. Ribo:

"That the call for bid conducted on December 3, 1934, was made pursuant to Ordinance No. 7, series of 1933, approved December 3, 1933, when the accused was not yet a municipal councilor; and that, previous to his election as municipal councilor of Jaro, Leyte, the accused Prudencio Fevidal has already been occupying a stall in the public market of Jaro, Leyte.

"Fiscal Saavedra:

"Admitted also. * * *"

(Page 4 of the transcript of stenographic notes.)

The foregoing transcript clearly explains that the court referred to the year of the approval of ordinance No. 7 when it stated in its judgment that the accused was not yet a member of the municipal council of Jaro.

I am of the opinion that under the facts admitted by the accused during the trial of the case, including those contained in Exhibits A, B and C, he is guilty of the violation of law imputed to him (U. S. vs. Udarbe, 28 Phil., 382; U. S. vs. Delgado, 36 Phil., 824). However, for the reasons stated by the Solicitor-General in his brief, I agree with said official that this is one of the cases in which the reduction of the penalty or the pardon of the accused should be recommended to the Chief Executive.

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