

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FERNANDO C. QUEBRAL, DEFENDANT AND APPELLANT.

G.R. No. 46094. September 27, 1939

Ponente: MORAN, J.

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MORAN, J.:

In June, 1937, the provincial fiscal of Pangasinan filed an information against the accused, Fernando C. Quebral, for violation of section 770 of the Administrative Code. The pertinent portion of the information reads as follows:

"Que en o hacia y desde el año de 1930 en adelante hasta el mes de mayo de 1937, inclusive, en los municipios de San Jacinto, Mapandan, Mangaldan y Dagupan, Provincia de Pangasinan, Filipinas, y dentro de la jurisdiccion de este Juzgado, el acusado arriba nombrado voluntaria, ilegal y criminalmente y sin haber obtenido previamente el certificado de registro correspondiente, expedido por la Junta Examinadora de Medicos, ejercio la medicina dentro de los terminos del articulo 770 delCodigo Administrative Revisado, * *

*."

There is no question that the accused diagnosed, treated and prescribed for certain diseases suffered by certain patients, from whom he received money as compensation; but it is contended that no evidence has been adduced to the effect that the accused had thus practiced medicine "without having previously obtained the proper certificate of registration issued by the Board of Medical Examiners," as provided in section 770 of the Administrative Code.

As to this question, the lower court said:

"No hay cuestion alguna en cuanto al hecho de que los actos del acusado probados por la acusacion constituyen un ejercicio de la medicina. La unica cuestion, por tanto, a determinar es la de si o no incumbia a la acusacion probar que dicho acusado habia ejercido la profesion medica sin estar previamente registrado como tal medico.

"Teniendo en cuenta lo dispuesto en el articulo 297 delCodigo de Procedimiento Civil y la doctrina enunciada por nuestra Honorable Corte Suprema en las causas Estados Unidos contra Gonzalez (10 Jur. Fil., 67); Estados Unidos contra Co Pinco (10 Jur. Fil., 370); Estados Unidos contra Tria (17 Jur. Fil, 304); y Estados Unidos contra De la Torre (42 Jur. Fil., 65), el Juzgado cree que no es necesario que la acusacion pruebe que el acusado no estaba previamente registrado como medico antes de ejercer la profesion medica, pues, si el acusado lo estaba, y funda su defensa en tal hecho, a el incumbe probarlo."

The accused was found guilty of the offense charged and was sentenced to pay a fine of two hundred pesos (P200) with subsidiary imprisonment in case of insolvency. He appealed, and, in this court, he reiterates his contention that it is incumbent upon the prosecution to prove that he practiced medicine without the proper certificate, and that there being no evidence to that effect, he should be acquitted.

The rule is, and has always been, that, if the subject of the negative averment, like, for instance, the act of voting without the qualifications provided by law, inheres in the offense as an essential ingredient thereof, the

prosecution has the burden of proving the same. (Sec. 297, Act No. 190; U. S. vs. Tria, 17 Phil., 303, 306, 307.) In view, however, of the difficult office of proving a negative allegation, the prosecution, under such circumstance, need do no more than make a prima facie case from the best evidence obtainable. (U. S. vs. Tria, supra.) It would certainly be anomalous to hold " * * * that mere difficulty in discharging a burden of making proof should displace it; and as a matter of principle the difficulty only relieves the party having the burden of evidence from the necessity of creating positive conviction entirely by his own evidence; so that, when he produces such evidence as it is in his power to produce, its probative effect is enhanced by the silence of his opponent." (22 C. J., pp. 81, 82.)

The rule, however, is different when the subject of the negative averment does not constitute an essential element of the offense, but is purely a matter of defense. In such case, the burden of proof is upon the defendant. As to whether or not a negative averment is a matter of defense, is a question which we have fully discussed in *United States vs. Chan Toco* (12 Phil, 262).

Section 770 of the Administrative Code provides that "no person shall practice medicine in the Philippine Islands without having previously obtained the proper certificate of registration issued by the Board of Medical Examiners * * *." This provision clearly includes the want of certificate as an essential element of the offense charged. The negative fact is not separable from the offense as defined. It is, therefore, incumbent upon the prosecution to prove that negative fact, and failure to prove it is a ground for acquittal.

In the instant case, however, the decision rendered by the lower court makes mention of Exhibit F-2 as showing that the accused is not a registered physician. That document is signed by Jose Ma. Delgado, chairman of the Board of Medical Examiners, wherein it is stated, in part, that "there is nothing in the records of this Board to show that Mr. Fernando C. Quebral is a registered physician." This document is admissible as evidence of its contents, under one of the exceptions to the hearsay rule, regarding official written statements. "The certificate of a custodian that he has diligently searched for a document or an entry of a specified tenor and has been unable to find it ought to be usually as satisfactory for evidencing its non-existence in his office as his testimony on the stand to this effect would be." (3 Wigmore on Evidence, p. 561.) Furthermore, Exhibit H-3 is also mentioned in the decision of the lower court, which is a letter of the accused to the President of the Philippines, quoting approvingly an article published in the *Philippines Herald*, wherein it is said that Fernando Quebral is not a holder of a doctor of medicine degree. These Exhibits, F-2 and H-3, are sufficient evidence to show that the accused has been practicing medicine without the required certificate of registration issued by the Board of Medical Examiners.

Judgment is affirmed, with costs against appellant.

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

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