

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CHING KUAN, DEFENDANT AND APPELLANT.

G.R. No. 48515. November 11, 1942

Ponente: OZAETA, J.

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OZAETA, J.:

Appellant was accused of a violation of section 86 of the Revised Ordinances of the City of Manila in that on or about the 8th of May, 1941, he constructed a 297-square-meter building of strong materials in the district of Tondo without the proper permit from the city engineer. He pleaded guilty in the municipal court and was there sentenced, to pay a fine of P150 and the costs. He appealed to the Court of First Instance, where he again pleaded guilty and was sentenced to pay a fine of P175, with subsidiary imprisonment in case of insolvency, and the costs. Claiming that the fine imposed on him was excessive, appellant has further appealed to this Court.

The penalty prescribed by section 1137 of the Revised Ordinances for the violation committed by the accused is a fine of not more than P200 or imprisonment for not more than six months, or both, in the discretion of the court. In other words the maximum penalty that the court could have imposed was imprisonment for six months and a fine of P200.

(1) Appellant urges us to take into consideration his plea of guilty as a mitigating circumstance and to reverse our decisions in *People vs. Durano*, G. R. No. 45114, and *People vs. Roque*, G. R. No. 47561, in which we held that the rules of the Revised Penal Code for the application of penalties when mitigating and aggravating circumstances concur do not apply to a case where the accused is found guilty of the violation of a special law and not of a crime penalized by said Code. (2) He also contends that the trial court erred in taking into consideration his financial ability to pay the fine and that article 66 of the Revised Penal Code is unconstitutional.

1. As to the first contention, we find it unnecessary to reexamine or disturb the decisions cited, because, the penalty imposed being only a fine, the rules established in articles 63 and 64 of the Revised Penal Code concerning the presence of aggravating and mitigating circumstances could not in any event be applied herein. If at all, it would be article 66 of the same Code that should be applied. Said article reads as follows:

"Art. 66. Imposition of fines.—In imposing fines the courts may fix any amount within the limits established by law; in fixing the amount in each case attention shall be given, not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit."

2. So we proceed to pass upon appellant's second contention. The trial court said:

"The accused in this case is well-to-do and could afford to pay a fine. According to the attorney of the accused himself, he has a good business, and for that reason he was able to construct a big building. In view (hereof, the Court believes that the penalty imposed by the Municipal Court is reasonable."

After quoting from article 66, counsel for the appellant says:

"As a consequence of this provision, when a fine has to be imposed, a poor person will be required to pay less

than one who is well-to-do, notwithstanding the fact that both commit the same degree of violation of the law. In such case, the above provision creates a discrimination between the rich and the poor, in the sense of favoring the poor but not the rich, and thus causing unequal application of the law. Consequently, the above provision is unconstitutional and void as being a law which denies to all persons the equal protection of the laws. * * *

It may seem paradoxical but the truth is that the codal provision in question, in authorizing the imposition of unequal fines, aims precisely at equality before the law. Since a fine is imposed as penalty and not as payment for a specific loss or injury, and since its lightness or severity depends upon the culprit's wealth or means, it is only just and proper that the latter be taken into account in fixing the amount. To an indigent laborer, for instance, earning P1.50 a day or about P36 a month, a fine of P10 would undoubtedly be more severe than a fine of P100 to an officeholder or property owner with a monthly income of P600. Obviously, to impose the same amount of a fine for the same offense upon two persons thus differently circumstanced would be to mete out to them a penalty of unequal severity and, hence, unjustly discriminatory.

This but goes to show that equality before the law is not literal and mathematical but relative and practical. That is necessarily so because human beings are not born equal and do not all start in life from scratch; many have handicaps—material, physical, or intellectual. It is not within the power of society to abolish such congenital inequality. All it can do by way of remedy is to endeavor to afford everybody equal opportunity.

The sentence appealed from is affirmed, with costs. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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