

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANTONIO PARRONE, DEFENDANT AND APPELLANT.

G.R. No. 7038. January 07, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of the falsification of a personal cedula. The complaint was as follows :

"That on or about February 24, 1908, in the barrio of Roosevelt, municipality of Calabanga, Province of Ambos Camarines, the said accused Antonio Parrone did maliciously, criminally and unlawfully alter and falsify his personal cedula Nos. B222063, series of 1906, and A435197, series of 1907, by substituting for his own surname 'Parrone' as it appeared on said cedulas, that of 'Partacio' the surname of one Antonio Partacio, and then delivering them to said Partacio in payment of the sum of P2.20, which the latter had given said accused."

After hearing the evidence, the Honorable Herbert D. Gale, judge, found the defendant guilty of the crime charged and sentenced him to be imprisoned for a period of three years and to pay a fine of P200, and in case of insolvency to suffer subsidiary imprisonment, in accordance with the provisions of section 55 of Act No. 1189 of the Philippine Commission.

From that sentence the defendant appealed to this court. The only question presented here by the appellant is one of fact. From an examination of the evidence, the following facts seem to be established beyond a reasonable doubt:

- That in each of the years 1906 and 1907, Antonio Partacio delivered to the defendant herein money for the purchase of his personal cedula for said years.
- That in the year 1908, the said Antonio Partacio arranged with Severo Abad for the purchase by the latter for the former of the municipal treasurer, Rufino P. Ponte, of his personal cedula for said year.
- That when the said Severo Abad attempted to purchase the said cedula for Antonio Partacio, for the year 1908, the treasurer requested that (Abad) exhibit the cedula of Antonio Partacio for the year 1907.
- That Abad notified Partacio of the necessity of having his cedula for the year 1907, in order to purchase his cedula for the year 1908, without having to pay a penalty; that then Partacio notified Abad that the defendant was in possession of his cedulas for the years 1906 and 1907; that Abad then went to the defendant for the purpose of securing the cedulas of the said Partacio for the said years; that the defendant delivered to Abad two cedulas marked Exhibits A and B (pages 34 and 35). Later Abad again appeared at the office of the municipal treasurer, exhibiting the two cedulas, for the purpose of purchasing the cedula for the year 1908 for Partacio. The treasurer and his clerk noted that the cedulas, Exhibits A and B, for the years 1906 and 1907, had been changed. They were then in the name of Antonio Partacio. 'the municipal treasurer, Ponte, examined his records and found that the

numbers of the cedula corresponding to Exhibits A and B in his registry showed that the same had been delivered to Antonio Parrone, the defendant, and not to Antonio Partacio.

During the trial of the cause in the lower court the defendant denied that he had ever purchased cedulas for Antonio Partacio and tried to make it appear that he had lost the cedulas, Exhibits A and B, and that they had been found and altered by some other person than himself. The trial judge did not believe this theory of the defendant. There seems to be no reason why the witnesses for the Government should have sworn falsely with reference to the method by which they obtained the possession of Exhibits A and B. Their declarations were direct and positive. The facts contained in the record are sufficient to convince us, beyond a reasonable doubt, that the defendant made the alterations complained of in said Exhibits A and B.

The crime described in the complaint at the time of its commission was punishable under section 55 of Act No. 1189. (U. S. vs. Morales, 14 Phil. Rep., 227.) The penalty provided by that section (55) was a fine in the sum of not less than P2,000 nor more than P10,000 and imprisonment for a term of not less than one year nor more than five years, in the discretion of the court. Said Act and said section (Act No. 1189, sec. 55) were amended by Act No. 2126 of the Philippine Legislature on the 1st day of February, 1912. The punishment provided by said amendment for the crime described in the complaint in the present cause is a fine in a sum not less than P200 nor more than P500, or by imprisonment for a term of not less than two months nor more than five years, or both, in the discretion of the court. The alleged offense in the present case was committed upon the 24th day of February, 1908, nearly four years before the amendment to said law. It will be noted that the penalty in the new law is more favorable to the defendant than that provided for by the old.

In the case of *United States vs. Cuna* (12 Phil. Rep., 241) we decided that where an Act of the Commission or of the Philippine Legislature, which penalizes an offense, repeals a former Act which penalized the same offense, such repeal does not have the effect of thereafter depriving the courts of jurisdiction to try, convict, and sentence offenders charged with violations of the old law prior to its repeal. (U. S. vs. Aron, 12 Phil. Rep., 778; U. S. vs. Bernarda, 12 Phil. Rep., 778; U. S. vs. Tonga, 15 Phil. Rep., 43; U. S. vs. Kulang, 15 Phil. Rep., 634; U. S. vs. Gaffud, 15 Phil. Rep., 634; U. S. vs. Dumon, 15 Phil. Rep., 635; U. S. vs. Dayag, 15 Phil. Rep., 635; U. S. vs. Molina, 17 Phil. Rep., 582.)

It would seem, therefore, from the foregoing decisions that inasmuch as the crime was committed before the above amendment (Act No. 2126), that the punishment of the former law (Act No. 1189) should be imposed. By virtue of the provisions of article 22 of the Penal Code, however, penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony or misdemeanor, even though at the time of the promulgation of such laws a final sentence has been pronounced and the convict is serving same. Article 7 of the Penal Code states that "offenses punishable under special laws are not subject to the provisions of this Code." If Act No. 1189 and its amendment, Act No. 2126, are special laws, and we hold that they are, then we have the question presented, in view of the provisions of said article 7, whether or not parties convicted under said Acts (Nos. 1189 and 2126) can claim the benefits of article 22 provided the punishment created by the amendment is more favorable to the accused than the original law. Act No. 2126 provides a lesser punishment than Act No. 1189. It is, therefore, favorable to the accused.

In the case of *Tavera vs. Valdez* (1 Phil. Rep., 468) we decided, in discussing article 22, that said article has no application where the later law is expressly made inapplicable to pending actions or existing causes of action. In said Act No. 2126 there was no provision made for the continuance in force of the former law (Act No. 1189) as to pending actions or existing causes of action. In other words, Act No. 2126 took effect upon its passage and was applicable, certainly to all cases arising after the date of its enactment.

In the case of *United States vs. Cuna* (12 Phil. Rep., 241) this court expressly reserved its opinion as to whether article 22 of the Penal Code was applicable to Acts of the Philippine Commission or Legislature so as to require the imposition of the penalty provided in the repealing Act in case such penalty should be more favorable to the accused than that prescribed in the former Act. The Act of the Commission involved in this case was less favorable to the accused than the Act which it repealed.

In the case of *United States vs. Herrero* (10 Phil. Rep., 752, Notes), we decided that notwithstanding the provisions of Act No. 1773, the offended party still had the right to pardon, or remit the penalty imposed by the provisions of the Penal Code for the offenses, mentioned in said Act (No. 1773), which had been committed prior to its enactment (October 11, 1907). Act No. 1773 was an amendment of certain sections of the Penal Code and contained nothing which was more favorable to the accused party than the provisions amended. There was, therefore, no occasion to discuss the question whether or not article 22 of the Penal Code applied to the new law (No. 1773).

In the case of *United States et al. vs. Hocbo* (12 Phil. Rep., 304) in discussing Act No. 1773 (the Act which made certain private crimes under the Penal Code public crimes) we held "that all amendments to the law (Penal Code) which are beneficial to the defendant should be given retroactive effect in so far as they favor the accused, when the acts complained of had been committed while the old law was still in force."

In that case (*U. S. et al. vs. Hocbo*) one Laureana Igle presented a complaint against Leodegario Hocbo charging him with the crime of seduction, alleging that the crime had been committed in the month of September, 1906. Act No. 1773 made the crime of seduction a public crime. It went into effect upon the 11th day of October, 1907. The crime charged, therefore, had been committed more than a year before the new law went into effect. Act No. 1773 was an amendment of the Penal Code and cannot be considered a special penal law. This act in no way changed the penalties fixed for the crimes mentioned therein. The Penal Code gave the offended party, in the crime of seduction, the right to pardon the offender. Section 2 of said Act No. 1773 prohibited the pardon of the penalty imposed by the law by the aggrieved party. We held (*U. S. et al. vs. Hocbo*) that the right of pardon given under the provisions of the Penal Code was favorable to the offending party. Act No. 1773 only applied to crimes committed after the passage of that Act. The Act itself said that "hereafter these private crimes shall be considered public crimes." The right of pardon, which the offended party had under the provisions of the Penal Code, she still possessed for a crime committed prior to Act No. 1773, even though the trial did not occur until after the passage of said Act. (*U. S. vs. Cuna*, 12 Phil. Rep., 241.) The Penal Code, therefore, being more favorable to the offending party than its amendment (Act No. 1773), there was no occasion for the application of article 22 of the Penal Code.

In many cases we have held that the provisions of the Penal Code relating to subsidiary imprisonment did not apply to the penal laws of the Philippine Commission or to special decrees of the Kingdom of Spain by reason of the provisions of article 7 of the Penal Code. (*U. S. vs. Hutchinson*, 5 Phil. Rep., 343 (Acts Nos. 610, 652); *U.S. vs. Glefonea*, 5 Phil. Rep., 570 (Act No. 619); *U. S. vs. Lineses*, 5 Phil. Rep., 631 (Act No. 292); *U. S. vs. Carvajal et al.*, 4 Off. Gaz., 705 (Act No. 292); *U. S. vs. Ang Kan Ko*, 6 Phil. Rep., 376 (Acts Nos. 355, 653, 864); *U. S. vs. Cortes*, 7 Phil. Rep., 149 (Act No. 518); *U. S. vs. Lopez*, 8 Phil. Rep., 89 (Act No. 82); *U. S. vs. Macasaet*, 11 Phil. Rep., 447 (Act No. 1189); *U. S. vs. Servillas*, 12 Phil. Rep., 12 (Act No. 1461); *Ocampo vs. Jenkins*, 14 Phil. Rep., 681, 683; *Cruz vs. The Director of Prisons*, 17 Phil. Rep., 269; *U. S. vs. Kennedy*, 18 Phil. Rep., 122 (Act No. 1761).)

Considering the provisions of article 7 of the Penal Code, are the provisions of article 22 of the same Code applicable to the penal laws of the Philippine Islands other than the provisions of the Penal Code? Article 22 is found in chapter 1 of title 3 of the Penal Code. Said chapter is entitled "Penalties in General" Article 21 of said

title and chapter provides that "no felony or misdemeanor shall be punishable by any penalty not prescribed by law prior to its commission." This article is general in its provisions and in effect prohibits the Government from punishing any person for any felony or misdemeanor with any penalty which has not been prescribed by the law. It (art. 21), therefore, can have no application to any of the provisions of the Penal Code for the reason that for every felony or misdemeanor defined in the Penal Code a penalty has been prescribed.

The provisions of article 21 can only be invoked therefore, when a person is being tried for a felony or a misdemeanor for which no penalty has been prescribed by law. Article 21 is not a penal provision. It neither defines a crime nor provides a punishment for one. It has simply announced the policy of the Government with reference to the punishment of alleged criminal acts. It is a guaranty to the citizen of the State that no act of his will be considered criminal until after the Government has made it so bylaw and has provided a penalty. It (art. 21) is a declaration that no person shall be subject to criminal prosecution for any act of his until after the State has defined the misdemeanor or crime and has fixed a penalty therefor. The doctrine announced by this section has been considered of so much importance to the citizens of a state that many of the States of the Union have been pleased to include its precepts in their constitutions or have so declared by express provision of law.

Article 22 provides that "Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony or misdemeanor, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving same." This provision clearly has no direct application to the provisions of the Penal Code. Its (art. 22) application to the Penal Code can only be invoked where some former or subsequent law is under consideration. It must necessarily relate (1) to penal laws existing prior to the Penal Code, in which the penalty was less severe than those of the Penal Code; or (2) to laws enacted subsequent to the Penal Code, in which the penalty was more favorable to the accused. Rule 80, Ley Provisional para la aplicacion de las disposiciones delCodigo Penal. Under the provisions of said article 22, if a crime had been committed prior to the date of the Penal Code the punishment for which was more favorable to the accused than the provisions of the Penal Code, it is believed that the accused might invoke the provisions of said article (22) even though he was not placed upon trial until after the Penal Code went into effect. (U. S. vs. Cuna.[1]) So also if by an amendment to the Penal Code or by a later special law the punishment for an act was made less severe than by the provisions of the Penal Code, then the accused person might invoke the provisions of said article. It appears to be clear, then, that article 22 of the Penal Code can only be invoked when the provisions of some other penal law than the provisions of the Penal Code are under consideration. In other words, the provisions of article 22 can only be invoked with reference to some other penal law. It has no application to the provisions of the Penal Code except in relation with some other law. It is not believed, therefore, that the Legislature in enacting article 7 of the Penal Code intended to provide that article 22 should not be applicable to special laws.

In consideration, then, of the provisions of article 22 in, relation with the more favorable provisions of Act No. 2126, and in view of the nature of the offense in this case, we are of the opinion that the sentence of the lower court should be modified and that the defendant should be sentenced to be imprisoned for a period of two months and to pay a fine in the sum of P200 and costs. So ordered.

Arellano, C. J., Torres and Mapa, JJ., concur.

[1] 12 Phil. Rep., 241

TRENT, J., concurring in part:

I concur in the result, but I cannot agree that Act No. 1189, and Act No. 2126, amendatory thereof, are special laws within the meaning of article 7 of the Penal Code. In my opinion these Acts are not special laws and article

22 of the Penal Code is perfectly applicable to this case. According to the majority opinion, as set forth in this decision, each and all of the provisions of the Penal Code, when applied to acts of the Commission or of the Legislature, cease to be such provisions of the Penal Code.

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