

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISIDORO ESPIRITUSANTO, DEFENDANT AND APPELLANT.

G.R. No. 7404. December 11, 1912

Ponente: TORRES, J.

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TORRES, J.:

This is an appeal by the defendant from the judgment of conviction rendered in this case by the Honorable Herbert D. Gale, judge.

In view of certain proceedings in the justice of the peace court of Malabon and the appeal by the defendant from the judgment therein rendered, whereby he was sentenced to the payment of a fine of P50, to subsidiary imprisonment and the costs, the provincial fiscal of Rizal on June 24, 1911, an information in the Court of First Instance, charging Isidoro Espiritus a violation of municipal ordinance No. 1, series of 1910, enacted by the municipal council of Malabon, Rizal, inasmuch as the accused, on November 16, 1910, was in that pueblo found to be engaged, willfully, unlawfully and criminally, in collecting wagers for the gambling game known as jueteng, the tickets necessary for conducting the same having been seized in his possession.

Therefore this cause was instituted, and after due consideration of the evidence adduced judgment was rendered, on September 25, 1911, sentencing the defendant, for a violation of the said ordinance, to the payment of fine previously imposed upon him by the justice of the peace and, in case insolvency, to the corresponding subsidiary imprisonment, and the costs. Defendant's counsel appealed from this judgment on the ground that said ordinance was unconstitutional.

The ordinance in question, exhibited on page 9 of the record, was passed by the municipal council of Malabon on January 5, 1910, and amended at the sessions of the 27th of March and the 14th of June of the same year. It strictly prohibits the game of jueteng within the limits of the said and prescribes the penalties to be imposed for its violation; and it further provides that any person who shall collect money for wagers on the said game, or who shall keep, make, or prepare any list of numbers, or representative signs thereof, for use in such game, shall be deemed to be collector of jueteng, and bankers, those who directly conduct the receive from the collectors the tickets or other contrivances, and are for possession of the tambolos or other articles used for the purpose of conducting the said game; and that, finally, those who keep or maintain jueteng games shall be deemed to be keepers or maintainers of gambling houses, in accordance with the provisions of section 6 of Act No. 1757.

After this judgment had been rendered, defendant's attorney presented a motion requesting that it be set aside on the grounds that the court lacks jurisdiction to try the case and sentence the defendant, for the reason that the ordinance under which he was tried and convicted was unconstitutional and invalid, but the court held in its judgment that it defect in an ordinance or municipal regulation to fail to express its in its title. This motion was overruled.

Assuming the defendant's guilt, since he was engaged in collecting wagers the game of jueteng, a game prohibited by law as one of chance, and since the judgment of conviction, rendered by the justice of the peace of pueblo of

Malabon, was affirmed by the Court of First Instance, we shall only treat in this decision of the argument advanced by the defense in maintaining this second appeal, to wit, that the Court of First Instance jurisdiction over the subject matter of the suit, for the reason that the aforementioned ordinance passed by the municipal council of the pueblo Malabon, under which the appellant was prosecuted and convicted, is unconstitutional.

Defendant's attorney argues that the ordinance is contrary to the municipal code because the council exceeded the powers conferred upon it by the code which, in subsection (u) of section 39, only authorizes it provide against the evils of gambling, gambling houses, and disorderly ho of whatsoever sort," while the first paragraph of the said ordinance prescribes that it is strictly prohibited to play jueteng within limits of Malabon, and provides the penalties for its violation.

From a perusal of the text of the ordinance referred to, it is unquestioned that it is in accord with the provisions of Act No. 1757, inasmuch as the latter strictly prohibits the playing of monte, jueteng or any ot lottery, banking or percentage games; and the said Municipal Code, by providing in section 39 that the municipal council shall provide against evils of gambling, granted it the authority to prohibit gambling games such as those specified in the said ordinance; therefore, the municipal council acted within the powers conferred upon it by the Municipal Code and in accordance with the provisions of the said Act No. 1757, since the game jueteng, as one of chance absolutely prohibited by the latter, is not susceptible of regulation, but must be prosecuted and completely suppressed in order avoid repetitions of the great and far reaching social and moral evils been producing in the towns of these Islands.

Hence it is undeniable that the said municipal council, in passing the said ordinance, did not exceed its authority and kept strictly within the powers conferred upon it by its organic law and the general laws that deal with gambling.

With regard to the allegation that the said ordinance is in conflict wit provisions of section 5 of the Act of Congress of July 1, 1902, it must considered that an ordinance has not the character of and is not a genera law, but is merely a regulation of a local nature, and one perfectly valid effective, provided it is in harmony with the general laws in force in Islands. Therefore, it is not indispensable that its subject should in the title, for the provisions of the said Act of Congress refer to general laws that govern in a State and to those enacted in these Island which, indeed, must not embrace more than one subject and that subject must be expressed in the title. This constitutional provision has no application to municipal ordinances, as these do not partake of the nature of laws, b are mere rules provided for the fulfillment of the laws. This principle down in the Encyclopedia of Law and Procedure. (Vol. 28, p. 378, and vol. 36, p. 1021.)

For the foregoing reasons we deem it proper to affirm and do hereby affirm the judgment appealed from, with the costs against the appellant.

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

Carson and Trent, JJ., dissent.

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