

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. WILLIAM C. HART, C.J. MILLER, D.P. DUNN, AND SERVILIANO NATIVIDAD, DEFENDANTS. WILLIAM C. HART AND SERVILIANO NATIVIDAD, APPELLANTS.

G.R. No. 8327. March 28, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that each of the above defendants, in the Court of First Instance of the Province of Pampanga, was accused of a violation of the gambling law (Act No. 1757). The complaint alleged:

"That the said accused, on or about the 1st or the 17th of July, 1912, did, in the municipality of Angeles, Pampanga, P. I., willfully, unlawfully, and criminally, engage in and play, the first of them, to wit, C.J. Miller, the gambling game of monte, in the bar of Hart, the latter as landlord, and the other two accused, to wit, D.P. Dunn and Serviliano Natividad, the gambling game of poker, in the same bar; in violation of law."

Upon said complaint the defendants were each duly arrested, and upon arraignment plead guilty. Upon hearing the plea of guilty, the Honorable Julio Llorente sentenced the said William C. Hart to pay a fine of P30 and each of the other defendants to pay a fine of P15, and each to pay one-fourth part of the costs, and in case of insolvency to suffer subsidiary imprisonment for the fine imposed. Said sentence was rendered on the 20th of July, 1912. The defendants immediately paid the fine imposed.

Later, upon the 31st of July, 1912, the prosecuting attorney of the Province of Pampanga presented a motion in the Court of First Instance in which he alleged that.—

"The aforesaid accused in this cause were arraigned, plead guilty of the crime charged to them in the complaint, and were sentenced by this court to pay, each of the gamblers, to wit, C.J. Miller, D.P. Dunn, and Serviliano Natividad, a fine of P15, and the landlord, William C. Hart, a fine of P30, with subsidiary imprisonment in case of insolvency, and the costs of the trial.

"That the said accused accepted and acquiesced in the judgment rendered against them, for they paid to the clerk of the court the fines imposed in the sentence, whereby the said judgment became final.

"That, subsequent to the rendition of the said judgment, which was pronounced on July 20, 1912, this office of the provincial fiscal learned that the senior inspector of Constabulary of this province had seized, in the place where the gambling occurred, a certain sum of money which was deposited by him in the treasury of this province," and requested the court to modify its decision of the 20th of July, 1912, with reference to the sum of money mentioned in said motion, "and to make any other provision proper under the law,"

Upon the presentation of the foregoing motion the said defendants were cited to appear in court and to answer the same upon the 1st of August, 1912. Upon the hearing of said motion, so far as the record shows, no additional evidence was taken. The facts stated in said motion apparently, so far as the record shows, were admitted by both

parties. The record shows that the prosecuting attorney and the attorney for the defendants argued the questions of law involved in said motion. After hearing the arguments pro and con by the respective attorneys, the Honorable Julio Llorente, on the 4th of October, 1912, rendered the following decision:

"The accused in this cause, on arraignment, all plead guilty. In consequence of that plea, they were sentenced, the landlord, William C. Hart, to pay a fine of P30, and each of the others to pay a fine of P15, with the corresponding subsidiary imprisonment, and to the payment of the costs. Subsequent to the said judgment, the prosecuting attorney, alleging that a certain sum of money had been seized in the place where the gambling was conducted, presented a motion wherein he prayed the court to amend its said judgment in so far as it concerned the disposition to be made of the said sum, and to make any other provision in accordance with the law.

"Act No. 1757, section 13, expressly repeals article 1801 of the Civil Code and articles 343 and 579 of the Penal Code. The said Act did not repeal article 345 of the last-mentioned code, wherefore we believe it remains in force. This article 345 specifically provides that the money or property and the instruments or appliances used for gambling games or raffles shall be forfeited. The court holds, therefore, that the sum seized, to which the prosecuting attorney refers, should be confiscated.

"The said sum shall be confiscated and finally disposed of in the manner determined by law. So ordered."

From that sentence the defendants William C. Hart and Serviliano Natividad, appealed to this court and made the following assignments of error here:

"1. The court erred by amending its judgment.

"2. The court likewise erred in ordering the confiscation of the sum in question."

In support of the first assignment of error the appellants contend that inasmuch as they had complied with the sentence of the lower court of the 20th of July, 1912, said sentence was final and could not, after said satisfaction, be again opened for the purpose of modifying it or for the purpose of imposing an additional penalty. The appellants contend that where a defendant has paid his fine, the court has no power to recall him, to reverse the sentence imposing the fine and impose another sentence which inflicts a different or greater punishment.

In reply to the arguments of the appellants, the Attorney-General contends that the order of the lower court made on the 4th of October, 1912, declaring forfeited the money mentioned in said motion, did not have the effect of imposing upon the defendants an additional or other penalty than that imposed in his original sentence. In this connection it will be noted, by reference to said motion, that the money in question was "found by the Constabulary officers at the place and at the time when the defendants were arrested under the original complaint." There is no allegation nor proof in the record showing that the money so found by the Constabulary officers at the time and place where the defendants were arrested belonged to any of the defendants. While, of course, the allegation raises a strong presumption that the money was used in the game, yet the fact is neither alleged nor proved. Admitting, however, that the money was used by the defendants in the prohibited game and did belong to them, then certainly it should be returned to them, unless the same is declared to be forfeited. If the money belongs to them and is declared forfeited, as an additional penalty to the fine imposed in the decision of the 20th of July, 1912, there can be little doubt that the additional sentence declaring the money forfeited is an additional penalty imposed upon the defendants. This, of course, presupposes that the money belonged to the defendants. It seems clear, therefore, admitting the facts alleged but not sustained by proof, to wit, that the money belonged to the defendants, that the additional sentence is an additional penalty to a sentence which had already become final. The sentence had become final by reason of the fact that the defendants had complied with it. The sentence of the court had been executed. The defendants had complied with the terms of the sentence imposed.

Certainly it cannot be contended that after the sentence had been complied with that the same had not become final. No rule is better settled than the rule that courts cannot modify, alter, or change a sentence after it has become final. Under the practice in the Philippine Islands a sentence in a criminal cause may become final in two ways: First, by the lapse of fifteen days after the same is rendered and pronounced (sec. 47 of General Orders, No. 58); and, second, by compliance with the terms of the sentence. The, present case is certainly a good illustration showing how a sentence may be complied with and thus become final. Another illustration might be given. Suppose, for example, that a man is sentenced to be imprisoned for a period of ten days. He immediately enters upon the performance of the sentence. Can the court thereafter, without any objection on the part of the defendant to such sentence, change, alter, or modify said sentence, as, for example, to impose a longer sentence? We believe that this question must necessarily be answered in the negative. With reference to the first assignment of error we are of the opinion that the lower court committed an error in imposing an additional penalty upon the defendants by declaring forfeited the money in question. This conclusion, however, is based upon the assumed fact that the money in question belonged to the defendants. Of course if the money did not belong to the defendants, then the sentence declaring the same forfeited could in no way affect them.

With reference to the second assignment of error, the appellants contend:

- That in the original criminal action there was no allegation in the complaint showing or tending to show that there had been any money used by the defendants, or that any money had been found which had been in any way used in connection with the prohibited game; and
- That, inasmuch as the criminal action was based upon the provisions of Act No. 1757 of the Philippine Commission, the lower court could not invoke the provisions of article 345 of the Penal Code for the purpose of declaring the money forfeited, even admitting that it had been used in connection with the prohibited game.

The Attorney-General, in reply to the contention of the appellants, asserts or contends that Act No. 1757 is in effect an amendment of the Penal Code and that all of the provisions of the Penal Code relating to the same subject matter are equally applicable to the crimes punished under said Act (No. 1757). (See Act No. 2212.) In view of the fact that we have reached the conclusion that the lower court committed a reversible error in attempting to change or modify his sentence after the same had become final, we deem it unnecessary to decide for the present the questions raised by the second assignment of error. We prefer to leave that question to be decided in a case where the same is directly in point and important for the decision.

For the reasons above stated, the sentence of the lower court as above quoted, of October 4, 1912, is hereby reversed and declared to be of no effect; and without any finding as to costs. So ordered.

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

Moreland, J.; concurs in the result.

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