46 Phil. 857

[G.R. No. 20600. October 16, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. APOLINARIO ABELLA AND FLORENTINO BACALLA, DEFENDANTS AND APPELLANTS.

D E C I S I O N

ROMUALDEZ, J.:

The lower court sentenced the accused for a violation of Act No. 3023 to two years' imprisonment and P2,000 fine each, with subsidiary imprisonment and costs. The accused appealed from this judgment, and assign errors to the action of the trial court: (1) In finding that they had sold and delivered dynamites, shells, and wicks to Lieutenant David; (2) in giving credit to the testimony of Lieutenant David and not holding it insufficient; (3) in not considering the testimony of Juanita Quiros, not presented by the prosecution, as confirmatory of the evidence of the defense; (4) in not acquitting the accused Abella, even supposing his coaccused Bacalla to be guilty; (5) in finding the appellants guilty of a violation of Act No. 3023; and (6) in imposing upon them, supposing them to be guilty, so excessive a penalty.

The punishable acts in connection with explosives are enumerated in Act No. 3023, alleged to have been violated, section 1 of which says:

> "The manufacture, distribution, storage, use, or possession of gunpowder, dynamite, explosives, blasting supplies, or ingredients thereof, except in accordance with the provisions hereof and of Act Numbered Fourteen hundred and
> ninety-nine, as amended, is hereby declared illegal:" etc.

This Act No. 3023 amends sections 1 and 2 of Act No. 2255, section 1 of which

provides:

> "The manufacture, possession, or sale, without special permit from the Director of Constabulary, or senior inspector of the province, of dynamite or other high explosives, or their components, for any use or purpose except in the execution of *bona fide* engineering and mining work, and as provided in section one of Act Numbered Fourteen hundred and ninety-nine, as amended, is hereby prohibited:" etc.

The complaint under which the appellants were prosecuted is an follows:

> "The undersigned accuses Apolinario Abella and Florentino Bacalla of a violation of Act No. 2255, as amended by Act No. 3023, in that on or about the night of the 18th, or the dawn of the 19th of November, 1922, in the municipality of Mandawe, Province of Cebu, Philippine Islands, the above-named accused, without special permit of the Insular Director of the Philippine Constabulary or of the provincial commander of Cebu, had in their possession and
> sold dynamites, shells, and wicks, all for purposes not allowed by law."

As the acts complained of took place on November 19, 1922, the law to be applied is Act No. 3023, which took effect on March 8, 1922, and not the original sections 1 and 2 of Act No. 2255, amended by said Act No. 3023.

As may be seen, the complaint charges the accused with having sold dynamites, shells, and wicks. And while it contains also an allegation to the effect that the accused had such explosives in their possession, yet that mere possession is not the subject of the prosecution, for, according to the evidence, the accused Bacalla, who was the one having the dynamites in his possession, had the proper permit for the purpose. And the efforts of Lieutenant David were not limited to surprising the accused in the mere possession of the explosives, but tended to ascertain whether or not they were selling dynamites. So that the act for which this action was prosecuted is that of *selling* dynamites, shells, and wicks for purposes not allowed by law.

But Act No. 3023, then in force, does not use the word *sale*, found in section 1 of the former law, Act No. 2255, as amended, which is omitted therefrom and in lieu thereof the word *distribution* is inserted. If what the law punishes is the *distribution*, may the sale be punished?

We agree with the Attorney-General that the substitution of sale in the former law by *distribution* is due to an intention on the part of the legislator to extend the sphere of the prohibition, and consequently by the word *distribution* is meant any apportionment among several persons without excluding the delivery made by virtue of a contract of sale.

We think, however, that the word *distribution* is used in this Act in its etymological sense, as derived from *distribute*, which comes from the Latin "distribuo," composed of the inseparable preposition "dis," which in this case indicates division, and "tribuo," which means to give. The word *distribution* therefore, as used in Act No. 3023, implies division and apportionment of a thing among various persons. This being so, a doubt may arise as to whether a single isolated sale constitutes *distribution*.

Furthermore, this *distribution* used in the aforesaid sense, includes sale only so far as in every sale there is delivery of the thing to the purchaser. Consequently in order that a complaint under Act No. 3023 may be sufficient as one for *distribution* of dynamites, it must allege such *distribution*, and if it alleges only a sale, it must state that there was delivery of the explosive sold, inasmuch as there may be a sale without delivery of the thing sold. It is elementary that the contract of sale is perfected, and therefore exists, upon the mere agreement as to the subject-matter of the transfer and the price, although neither one may have been delivered.

If, as is the case here, the complaint does not, in the first place, charge but one isolated sale, and, in the second and supposing that a single sale constitutes *distribution*, does not say that any explosive was delivered, the conclusion is obvious that the complaint does not allege facts sufficient to constitute an offense.

The defense attacks the testimony of Lieutenant David, as being no proof at all. He testified in substance that having received information that certain

persons in Cebu were illegally selling dynamites, he put on a disguise, simulating a merchant, and acting through Juanita Quiros and offering a tempting price, being a very high one, caused the accused to sell, as they in fact did sell, him dynamites. The appellants contend that, this official having induced the accused to violate the law, his testimony is no proof at all; and cite in support thereof the case of United States *vs*. Phelps (16 Phil., 440), wherein the following doctrine was laid down:

> "When the evidence given by the witness for the Government in a criminal case shows that he actually induced the defendant to commit the alleged crime, the probative force of such testimony is thereby destroyed, and such conduct is most reprehensible and should be reproved and not encouraged by the courts."

The Attorney-General contends that this doctrine is not applicable to the instant case, in view of the different means employed by the witness in the two cases and because in this case Lieutenant David did not induce, but merely tried to ascertain whether his informations as to the sale of dynamites were well founded. We believe there was inducement, direct, persistent, and effective. It is true that said official wanted to satisfy himself of the veracity of the informations he had, but it is also true that he did not limit himself to inquiring: into the consummated acts, but induced the accused to commit another act similar to those about which he had information.

We find no sufficient reason for not applying here the doctrine laid down in the case of United States *vs*. Phelps, *supra*. That such an inducement is highly reprehensible, is also indicated by the Manual of Insular Police, prepared under the provisions of section 843 of the Administrative Code, section 1204 of which says:

> "Any member of the Constabulary who may know of a contemplated criminal act, or of any act that may lead to the commission of the crime, will do his utmost to prevent it rather than allow it to continue merely for the purpose of securing the conviction of the offenders." (Manual for the Philippines

Constabulary, 1922.)

If for the respectable organization of the Insular Police, to which Lieutenant David pertains, it is justly reprehensible not to prevent the commission of a crime of which there is notice, what would it be to induce its commission?

And if, under this doctrine, the testimony of Lieutenant David has no probative force, let us see whether, without it, there is in the case enough proof to convict the accused.

After an examination of the record, we find that, outside of the testimony of said official, there is no sufficient evidence to support the judgment appealed from. The witness for the prosecution, Banaay, did not hear the conversation between Lieutenant David and the accused Bacalla, concerning the sale. This witness, Banaay, is not sufficiently acquainted with the sale of the explosive. On the other hand the accused deny that the sale was ever made.

For the purposes of this decision, we deem it unnecessary to examine the other assignments of error made by the appellants.

For all of the foregoing reasons, the judgment appealed from is reversed, and the appellants are acquitted, with all proper pronouncements in their favor. So ordered.

Araullo, C.J., Johnson, Street, Malcolm, Avanceña, Villamor, and *Johns, JJ.,* concur.

Date created: June 17, 2014