1 Phil. 146

[G.R. No. 513. February 25, 1902]

BENITO LEGARDA, COMPLAINANT AND APPELLANT, VS. VICENTE GARCIA VALDEZ, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

Article 56 of Act 136 defines the jurisdiction of Courts of First Instance. Under clause 6 of this article these courts have jurisdiction "in all criminal cases in which a penalty of more than six months' imprisonment or a fine exceeding one hundred dollars may be imposed."

It does not admit of doubt that the court has jurisdiction of an offense if it *may* impose a fine of more than $100. The fact that it *may* under the law impose a fine of less than $100 does not deprive it of jurisdiction. The Court would, for example, clearly have jurisdiction of the offense prescribed and punished' by article 459 of the Penal Code. The fine there may be no more than $31, but it may, in the discretion of the court, be $310. So if the Code punished an offense with imprisonment for one year and a fine of $50 the court would have jurisdiction not only to direct the imprisonment but also to impose the fine. This would also be true if the fine were $200 and the imprisonment three months.

The prosecution in this case is based upon article 458, which assigns a penalty of *destierro* and a fine of from 625 to 6,250 pesetas. We can not, therefore, see why it is necessary in this case to decide whether the penalty of banishment is lighter or heavier than imprisonment for six months. Even assuming that it is a lighter punishment the court had, as far as this point is concerned, jurisdiction to try this case because it had power to impose a fine of nearly $600.

It remains to be considered whether Courts of First Instance have power to impose the penalty of banishment.
We do not agree with the counsel for the defendant in his claim that the language of article

56 of Act No. 136 prevents Courts of First Instance from inflicting any punishment except fine or imprisonment. Such a construction would prohibit the infliction of the death penalty.

The penalty of *destierro* is defined as follows by article 114: "Those sentenced to *destierro* shall be precluded from entering the place or places designated in the sentence; or within the radius therein designated, which shall include a distance of 25 kilometers at least, and 250 kilometers at most, from the place designated."

If in this case the defendant is convicted the sentence might be such as to enable him to live free from all restraint in any place in the Archipelago that was more than 25 kilometers from Manila, and to return hither upon the expiration of the penalty. Groziard (vol. 2, p. 511), in distinguishing this penalty from that of confinement, says: "The punishment involved is, nevertheless, much less than that of confinement. For the exile there is only one prohibition—that of entering the places designated in the judgment. All other parts of the territory are free and open to his person. The criminal, sentenced to confinement, is not permitted to depart from the place whither he has been transported; the exile may go anywhere with the exception of the places designated in the judgment."

Punishment of this character is not new, for it is found in the *Fuero Juzgo* (law 12, title 5, book 6; law 13, title 5, book 6). It is not limited to the Spanish law. It has existed in the French, Austrian, Italian, Portuguese, and other codes. It can not be and is not claimed to be a cruel punishment. It is, however, claimed to be a punishment unusual in the United States, and therefore prohibited in these Islands by the instructions of the President to the Commission. Those instructions use the words "cruel *and* unusual punishment." They were, of course, taken from the Constitution of the United States and originally from the English statute.. It is to be observed that the words are "cruel and unusual." To be prohibited by this provision the punishment must not only be unusual but it must also be cruel. There is no reason why unusual punishments which were not cruel should have been prohibited. If that had been done it would have been impossible to change the punishments that existed when the Constitution was adopted. A law which changes a penalty so as to make it less severe would be unconstitutional if the new penalty were an unusual one. It would prohibit the introduction in the matter of penalties of new ideas intended to ameliorate the condition of criminals. Such a construction has never been given to this provision. Speaking of the law of New York providing for electrocution the Supreme Court of the United States said: "The provision in reference to cruel and unusual punishments was taken from the well-known Act of Parliament of 1688, entitled 'An Act for Declaring the Rights and Liberties of the Subject, and Settling the Succession of the Crown,' in which, after rehearsing various grounds of

grievance, and among others, that 'excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects; and excessive fines have been imposed; and illegal and cruel punishment inflicted'—it is declared that 'excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.' (Stat. 1 W. & M., chap. 2.)"

So that, if the punishment prescribed for an offense
against the laws of the State wereinanifestly cruel and unusual, as burning at the stake, crucifixion, breaking on the wheel or the like, it would be the duty of the courts to adjudge such penalties to be within the constitutional prohibition. And we think this equally true of the Eighth Amendment, in its application to Congress.

In *Wilkerson vs. Utah*, 99 U. S. 130, 135, *Mr. Justice* Clifford, in delivering the opinion of the court, referring to Blackstone, said: 'Difficulty would attend the effort to define with exactness the extent of the constitutional provision, which provides that cruel and unusual punishments shall not be inflicted; but it is safe to affirm that punishments of torture, such as those mentioned by the commentator referred to, and all others in the same line of unnecessary cruelty, are forbidden by that Amendment to the Constitution.' Punishments are cruel when they involve torture or a lingering death; but the punishment of death is not cruel, within the meaning of that word as used in the Constitution. It implies there something inhuman and barbarous, something more than the mere extinguishment of life." "The courts of New York held that the mode adopted in this instance might be said to be unusual because it was new, but that it could not be assumed to be cruel in the light of that common knowledge which has stamped certain punishments as such." (*Ex parte* Kemmeler, 136 U. S, 436)

By disposing of this claim on this ground we do not wish to be understood as giving our assent to the proposition that the said instructions could in any event have any bearing on this case. It is not necessary to pass upon this question and we do not do so.

The defendant demurred to the complaint on three grounds: The first attacked the jurisdiction of the court, the other two were directed to the sufficiency of the complaint. The court expressly refrained from passing upon these and limited itself to deciding that the court was without jurisdiction. These objections were made before the defendant had pleaded to the complaint. Article 9 of General Orders, No. 58, allows the complaint to be amended before that time in substance or form without leave of the court. When the case is remanded the complaining witness will have that right. Article 23 of General Orders, No. 58,

provides also that if the court below sustains a demurrer for defects in the complaint it has the power to order a new complaint to be filed. The court may take this course if, upon the remanding the case, the demurrer is renewed and sustained. For these reasons we decline to consider the other points raised by the demurrer.

The judgment of dismissal is reversed and the cause remanded with instructions to proceed therein according to law, with costs of this instance *de oficio*.

Arellano, C. J., Torres, Cooper, Mapa, and *Ladd, JJ.,* concur.

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