5 Phil. 385

[G.R. No. 2083. December 06, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MANUEL CHAN-CUN-CHAY, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

This defendant was charged in the municipal court of the city of Manila with the violation of section 1 of Ordinance No. 2 of the city of Manila in the following words:

> "That the said accused, on or about the 29th of February, 1904, in the city of Manila, Philippine Islands, established, sustained, maintained, and permitted that there should be established, sustained, and maintained in a house kept and controlled by the said accused, instruments and devices for the purpose of gaming or gambling, which were used in gambling for money."

This complaint was duly sworn to by the fiscal.

After hearing the evidence, the municipal court of the city of Manila found the said defendant guilty of the crime charged in said complaint and sentenced him to be imprisoned for a period of six months and to pay a fine of $100, United States currency. From this decision the defendant appealed to the Court of First Instance of the city of Manila, and the cause was tried *de novo* in that court.

After hearing the evidence, the judge of the Court of First Instance of the city of Manila found the defendant guilty of a violation of section 1, Ordinance No. 2, of the city of Manila, and sentenced him to

be imprisoned for a period of three months and to pay a fine of $100, gold, to suffer in case of insolvency subsidiary imprisonment, and to pay the costs. The said court in its decision ordered that the instruments and devices used in gambling and the money found in the possession of the defendant, which had been obtained or used in gambling, should be confiscated.

From this decision the defendant appealed to this court upon the ground that the ordinance of the city of Manila under which he had been convicted was null. The theory of the defendant is that Ordinance No. 2 is null and void for the reason that it is in conflict with article 343 of the Penal Code. Section 1 of said ordinance contains the following provisions:

> "No person shall set up, keep, or maintain or permit to be set up, kept, or maintained on any premises occupied or controlled by him, any table or other instrument or device for the purpose of gaming or gambling or with which money, liquor, or anything of value shall in any manner be played for."

Section 4 of said ordinance, as amended by Ordinance No. 34, reads as follows:

> "A violation of any of the foregoing provisions of said ordinance shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months, or both, for each offense. All money and every table, instrument, or. other device used, set up, kept, or maintained for the purpose of gaming or gambling shall be seized and confiscated."

Article 343 of the Penal Code provides:

> "The bankers and proprietors of houses where games of chance, stakes, or hazard are played shall be punished with the penalty of *arresto mayor* and a fine of from six hundred and

> twenty-five to six thousand two hundred and fifty pesetas, and, in case of a repetition, with those of *arresto mayor* in its maximum degree to *prision correccional* in its minimum degree, and a fine double the above mentioned.
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> "The players who assemble at the houses referred to shall be punished with those of *arresto mayor* in its minimum degree and a fine of from three hundred and twenty-five to three thousand two hundred and fifty pesetas. In case of repetition, with that of *arresto mayor* in its medium degree and double the fine."

An examination of the provisions of the said ordinance in connection with the provisions of said article of the Penal Code will disclose the fact that the said ordinance provides for the punishment of a different offense than that provided for by the said article of the Penal Code. The ordinance punishes a person who shall set up, keep, or maintain, etc., on any premises occupied or controlled by him, instruments for the purpose of gaming or gambling, etc., which may be used for gambling for anything of value. It will be seen that under this ordinance these things need not be used for gambling, whereas article 343 of the Penal Code punishes bankers and proprietors of houses where games of chance, stakes, or hazard are played. The ordinance punishes the maintenance of a house in which are kept gambling paraphernalia, while the Penal Code punishes the maintenance of a house where games of chance are actually played. Therefore the ordinance punishes a different offense from that provided for by the Penal Code in said article.

But even though we should admit that the ordinance provided punishment for the same act as that provided for by the Penal Code, nevertheless said ordinance would not be null. The mere fact that the city of Manila has legislated upon a question upon which the Central Government of the Philippine Islands has also legislated does not make such legislation in conflict, provided that the city had authority to enact such legislation.

Section 16 of Act No. 183 (the Charter of Manila) provides, among other things, that the Board (Municipal Board)—

> "Shall make such ordinances and regulations as may be necessary to carry into effect and discharge the powers and duties conferred by this act, and to provide for the peace, order, safety, and general welfare of the city and its inhabitants; shall fix penalties for the violation of ordinances, provided that no fine shall exceed one hundred dollars and no imprisonment shall exceed six months for a single offense."

Paragraph (*n*) of section 17 of the said act provides that the Board shall have power to—

> "Suppress houses of ill fame, other disorderly houses, gaming houses, gambling and all fraudulent devices for the purpose of gaining and obtaining money or property, and to prohibit the printing, sale, or exhibition of immoral pictures, books, or publications of any description."

Thus it will be seen that the city of Manila, under its Charter, was given authority to enact said Ordinance No. 2.

But it is further argued that the defendant is liable to be punished twice for the same act; first by the city under its ordinance, and second under the general laws of the State. Even though we should admit that the crime covered by the ordinance and that by the Penal Code are the same, yet that fact would not render the ordinance null nor in conflict with the provisions of the Penal Code for thereason that in that case the act would be an offense both against the city of Manila and against the State. While it is the general rule that a defendant can not be punished twice for the same act, yet there is an exception to this rule, which is when the same act constitutes an offense against two political entities he may be punished by each. Under these circumstances the fact that he has been punished by one can not be pleaded as a defense to an action brought by the other on the ground of second jeopardy. When a criminal act violates the laws of two political entities, each exercising rights of sovereignty over the same territory, such act may be punished by each political entity.

This court said in the case of In re Carr:

> "When a soldier commits an offense which makes him amenable both to civil and military law, he can be tried by either. If the military authorities have him (the defendant) in their possession, they can turn him over to the civil courts for trial, or they can try him themselves. The fact that they have agreed to surrender him to the civil courts does not deprive them of the right to try him before such surrender." (1 Phil. Rep., 514,)

If any municipality, by its charter, is authorized to legislate upon a particular question, such legislation must be in harmony with the general laws of the State, and, of course, in harmony with the provisions of its charter. The fact, however, that the municipality has been given power to legislate and impose penalties for the regulation of some specific subject upon which the State has already legislated does not necessarily supersede the said law on the same subject; upon the contrary, however, the State law and the municipal ordinance may both stand together, if not inconsistent. (City of St. Louis *vs*. Bentz, 11 Mo., 61; People *vs*. Hanrahan, 75 Mich., 611.)

An act may be a penal offense under the laws of the State and other penalties under proper authority may be imposed for its commission by a municipal ordinance, and the enforcement of one penalty would not preclude the enforcement of the other by such municipality. (Rogers *vs*. Jones, 1 Wendell (N.Y.), 261; Cooley's Constitutional Limitations, 239; Ex parte Hong Shen, 98 Cal., 681.)

In this particular case we have seen that the offense punished under the provisions of the city ordinance is not the same offense as that provided for under the Penal Code; but if we should admit that they were the same, the one is a mere police regulation and contemplates the maintenance of the peace and good order of the city, while the other has a more enlarged object in view— the maintenance of the peace and dignity of the" State. (Mayor, etc., *vs*. Allaire, 14 Ala., 400.)

Where the same act constitute an offense against each of two

sovereignties exercising jurisdiction over the same territory, a prosecution brought by one does not necessarily bar a prosecution by the other. (United States *vs*. Barnhart, 10 Sawyer, 491; 22 Fed. Rep., 285.)

An act may constitute an offense against both a State and the United States and may be punished by both. For example, the uttering of a forged or counterfeited coin may be punished by the State under one aspect and by the United States under another. (Abbott *vs*. State, 75 N. Y., 602; United States *vs*. Barnhart; Campbell *vs*. People, 109 111., 565; Fox *vs*. State of Ohio, 5 How., 432; United States *vs*. Marigold, 9 How., 560.)

Of course one sovereign may, in its discretion, refrain from punishing a person who has already been punished for the same act by another, or the fact of such punishment by one sovereign may be considered by the court of another in mitigation of punishment. (United States *vs*. The Pirates, 5 Wheat., 184.)

It has also been held that a prosecution before a court-martial will not bar a prosecution by a State or *vice versa*. (Coleman *vs*. Tennessee, 97 U. S., 509; State *vs*. Rankin, 4 Cold. Tenn., 145; Steiner's Case, vol. 6, Opin. Atty. Gen., U. 8., 413; 1 Colo., 179; 4 Kans., 49; 8 Mont, 57; 1 Wyo., 40; 30 Texas Appeals, 387.)

Ordinance No. 2 of the city of Manila is not in conflict with article 343 of the Penal Code, and the fact that the defendant may also be punished again by the courts of the Archipelago for an offense resulting from the same act for which he was here punished does not render the sentence in this case void.

The judgment of the inferior court is therefore affirmed with costs. So ordered.

Arellano, C. J., Mapa, Carson, and *Willard, JJ.,* concur.

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