1 Phil. 595

**[ G.R. No. 81. December 27, 1902 ]**

**THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. RAMON GOMEZ RICOY, DEFENDANT AND APPELLEE.**

**D E C I S I O N**

**ARELLANO, C.J.:**

During the month of January, 1900, chips and stub tickets were used in the Spanish Casino for gambling games, including *monte*, which was being played there. These chips were made of mother of pearl and were worth from 5 to 100 pesos each; the checks represented $1,000 each. The chips circulated as money in the Casino and also at times on the Escolta. They belonged to the Casino and were to be exchanged for cash therein. In that month there was a person engaged whose duty it was to deliver the chips to the gamblers in exchange for money or I. O. U's. It does not appear clearly from the record who was in charge of the *comptoir* during that month, but it is proven that Mr. Lobaton was in charge of the chips and that Ricoy, the accused, was the inspector of the games. The duty of Mr. Ricoy as such inspector was to give orders to Mr. Lobaton with respect to requests for chips made by the players, who purchased them by notes or I.O.U's signed by them. Mr. Lobaton delivered no chips to anyone without previous orders from Mr. Ricoy. Mr. Ricoy also signed the stub tickets used in the Casino.

At 2 o'clock on the afternoon of January 3, 1900, a game of *monte* was commenced in the Spanish Casino, the game on which this case turns, and was ended at 7 o'clock on the morning of the 4th. It was the practice or custom observed in the Casino during that month that the Casino and one of the players were to alternate as bankers. That night Mr. Angeles was banker, and therefore he was entitled to all the profits of the game.

Several players took a hand in the game, including the accused, Ricoy, himself, and Messrs. Sabas del Rosario, Mapua, and others. On the night in question, at the request of Ricoy, Sabas, and others who made up the set for the game, Don Joaquin Lafont took part,

receiving chips from Señor Lobaton in the *comptoir* and distributing them to those sitting around the table. Upon receiving chips for the value of $100, $500, or $1,000 the players gave their I. O. U.'s to Señor Lobaton, who kept their account on a half sheet of paper until the liquidation of the deal. Señor Ricoy gave an I. O. U. or note to Mr. Lafont every time he received from the latter $5,000. Señor Mapua did the same. At the end of the game a liquidation was had among all the players. This liquidation was carried out "on the basis of the number of due bills or I. O. U's which Señor Lobaton had received from each player and his note of having made delivery to them."

The result of the liquidation was that Señor Angeles, the banker, had won chips and stub tickets to the value of $39,300. All the witnesses have testified that Sefior Angeles delivered to Señor Ricoy all the chips and tickets, and that Señor Ricoy immediately told Sefior Lobaton to draw up a note or I. O. U. for the amount; this Señor Lobaton did and Sefior Ricoy signed the note and delivered it to Señor Angeles. It does not appear from the record whether Señor Ricoy signed this note as inspector or in his individual capacity. The witness Señor Lobaton repeatedly testified in the case that Señor Ricoy had lost this amount and it appeared from his notes that he had delivered to Ricoy the sum of $39,300. It also appears by the record that Señor Mapua lost the sum of $6,000 in this game, which he paid in his house to Señor Lobaton that same morning, Señor Lobaton turning over the note or I. O. U. to Señor Mapua. It appears froin the record of the testimony of the witness Don Jose Olivares that when the note for $39,300 was delivered to Señor Angeles, the latter accepted it, took up the note, and went away. There was no protest on the part of anyone.

The witness Enrique Godino in his testimony used language which indicates that there might be some responsibility on the part of the Casino with respect to the chips and tickets which were in the hands of Señor Angeles before they were delivered to Señor Ricoy. The same appears from the testimoy of Señor Olivares.

Señor Lobaton testified that he could not state precisely whether the sum which was represented by the due bill or I. O. U. was won entirely from Ricoy by Angeles, and Señor Lafont testified to the same effect.

Señor Sabas del Rosario affirms that Sefior tticoy made this liquidation by virtue of his office in the Casino.

Señor Lobaton testified that Sefior Ricoy had directed him to tell Señor Angeles that he wanted to see him in order to pay him that amount, and that in consequence Señor Lobaton

on the 7th told Señor Angeles to call on the following day. On the 8th Messrs. Ricoy, Palma, and others were in the Casino. Señor Ricoy asked Señor Angeles if he had brought the note or due bill, and the latter, having replied affirmatively, took it out of his pocket and handed it to Señor Ricoy. The two immediately went into another room, and there were no eyewitnesses to what occurred between them there. The record only discloses that Señor Angeles returned carrying in his hand a letter which had been delivered to him by Señor Lobaton. This letter is in the record, and reads as follows: "Lucio, I have been anxious for a long time to fool an Indian, and I take advantage of this occasion to fool you. Ricoy." And Señor Ricoy disappeared.

It does not appear from the record that any attempt was made to recover the note.

The record contains an information charging the accused with the crime of *estafa* as denned and punished by articles 534 and 535, paragraph 9, of the Penal Code.

The act of which the accused is charged and as it appears to have been committed constitutes *prima facie*> a crime. The decision of his inculpability and the judgment of acquittal were premature, the trial not having been terminated either on behalf of the prosecution or defense. The latter had not been able to offer or introduce any testimony, and it appears that on frequent occasions during the taking of the testimony for the prosecution the defense was not allowed to introduce testimony in its behalf, which was postponed to the proper time.

The accused being entitled to a full and complete trial, we are of the opinion that the judgment of acquittal rendered by the Court of First Instance must be set aside and the case remanded, with directions to the court to continue the same from the point in which it was interrupted by the decision, without retaking the testimony received up to that time, which, in so far as it may be relevant and competent, may be considered, and such evidence as may be offered by the accused, and any additional evidence which either of the parties may be entitled to introduce will be taken in the manner prescribed by law. So ordered.

*Cooper, Smith,* and *Mapa, JJ.,* concur.

*Torres, J.,* disqualified.

DISSENTING

**WILLARD, J.:**

I dissent. I think that the evidence shows conclusively that the defendant is not guilty oi the crime of *estafa* charged against him and that the judgment of acquittal should consequently be affirmed.

Article 343 of the Penal Code is as follows:

> "The bankers and proprietors of houses where games of chance, stakes, or hazard are played shall be punished with the penalty," etc.
>
> "The players who assemble at the houses referred to shall be punished with," etc.

It was plainly proven that mmite was played habitually in the Casino during the time in question. It appears from the evidence that the Casino, to encourage the playing of this game, adopted a practice which allowed the members to alternate with the Casino as bankers. It was by the operation of this rule that Angeles was banker on the night in question. The Casino was, therefore, a gaming house within the meaning of the article above cited. The decisions of the Supreme Court are uniform to this effect. (Judgment of November 8,1897.)

That *monte* is a game of chance, stakes, or hazard is of course undoubted.

The playing of the game in question was a violation of said article 343. For this crime Angeles was liable as a principal, having been the banker. Ricoy was liable as a principal, having .been a player. Whether the Casino owned the building or leased it is immaterial. In either event it was the owner of it for the purposes of said article 343. (Judgment of November 16, 1872.) It was, therefore, liable as a principal in this crime.

From this unlawful game it is claimed that there resulted a binding obligation in favor of Angeles. It is not necessary to determine against whom this alleged obligation existed.

From the evidence I am however inclined to think that it was against the Casino. Before the *vale* was issued Angeles had in his possessions chips and checks which represented no obligation other than of the Casino. They did not purport to be claims against Mapua, Ricoy,

or any other player. The Casino had issued them and had promised to redeem them. The *vale* may have been signed by Ricoy in his capacity as inspector. There is no evidence that Angeles agreed to accept this *vale* as the individual obligation of Ricoy in substitution of the claim which he had against the Casino.

Assuming that the obligation, if it exists, is against the Casino it results that the Casino while it and Angeles were engaged in the commission of a crime furnished to him and others tokens to be used in said criminal act, and at the time of furnishing them impliedly promised to redeem them. Can that promise be enforced?

Article 1305 of the Civil Code, speaking of the nullity of contracts, says:

> "When the nullity arises from the illegality of the consideration or the object of the contract, if the fact constitutes a crime or misdemeanor common to both contracting parties, they shall have no action against each other, and proceedings shall be instituted against them, and, furthermore, the things or sum which may have been the object of the contract shall be applied as prescribed in the Penal Code with regard to the goods or instruments of the crime or misdemeanor."

This alleged contract sprang from an unlawful enterprise. It had its origin in this criminal act which the parties were then committing. Its cause and object were connected with nothing else. They were both unlawful. (Article 1275 of the Civil Code.)

The crime was common to all the contracting parties, for Angeles, Ricoy, and the Casino were all principals in it. By the express terms of said article 1305 Angeles has no action against the Casino for the purpose of enforcing this alleged contract.

It may be added that in addition to what is contained in said article 1305, article 345 of the Penal Code says: "The money or other articles and the instruments and tools used in gambling or raffles shall be confiscated." Had Ricoy and his companions been surprised by the police on the night in question the chips and checks from which this supposed contract proceeded would have been confiscated.

If we suppose that this is the obligation of Ricoy the same result would follow. They were both principals in crime out of which the alleged contract grew. We arrive at this result with reference to Ricoy without considering the provisions of article 1798 of the Civil Code.

In what has been said the Casino has been spoken of as a natural person. But the fact that it may be an artificial entity can not alter the result in this case. It.is not necessary here to decide against what person connected with the Casino a criminal prosecution should be directed. It is enough to say that when an artificial body is the owner of a gaming house its civil rights and obligations growing out of prohibited games are governed by the provisions of said article 1305.

Was the concealment or destruction of the vale by Ricoy an offense punished by article 535, 9, of the Penal Code?

It represented no obligation. It did not prove or tend to prove the existence or extinction of any right. It was simply a small piece of paper with writing on it. As a mere piece of paper its intrinsic value is too small to be appreciable. Its destruction could not injure Angeles, for it had no value extrinsic or intrinsic.

The words of article 535, 9, are “any process, record, document, or any other paper of any character whatsoever.” While this language is broad it can not be construed as including the destruction of any kind of a paper regardless of what it is in itself or what it represents. A letter of friendship, a card of invitation, a note of regret, which have no value extrinsic or intrinsic, can not be covered by it.

The constant doctrine of the Supreme Court has been that no person could be convicted of *estafa* unless damage has resulted. It matters not that there may have been deceit or that the defendant thought he was causing damage. If the act which he did was from the nature of the object incapable of causing that damage there can be no conviction. (Judgment of February 4, 1874.) It was claimed by the Solicitor-General in his brief that while an action could not be maintained to recover money won at gaming, by reason of the provisions of article 1798 of the Civil Code, yet, the transaction created a natural obligation, which, by subsequent ratification, might be changed into a legal one.

It is not necessary to decide that question. Article 1798 is applicable to gambling whether that gambling constituted a crime or not. It would, for example, apply to a game of *monte* played for the first time in a private house, a thing not prohibited by the Penal Code. But this case goes further. Here as we have seen the promise grew out of the commission of a crime. It is similar to a promise to pay money to one man for unlawfully killing another.

Promises like these can not by ratification be converted into binding obligations.

Article 565 of the Penal Code is as follows:

> "The burning or destruction of papers or documents, the value of which can be estimated, shall be punished according to the provisions of this chapter; if the value can not be estimated, with the penalties of arresto mayor m its maximum degree to *prision correccional* in its medium degree and a fine of from 625 to 6,250 pesetas."
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> "The provisions of this article are to be considered as applicable if the deed should not constitute another graver crime."

Ricoy might be convicted under this article, but it seems clear that he can not be convicted of *estafa*.

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Date created: April 14, 2014