A T E N E O
LAW JOURNAL

Published five times during the academic year by Ateneo Law Students

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INTENT IN CRIMES *MALA PROHIBITA*

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OUR jurisprudence abounds with many legal principles. Some are disputed, others well-established. Prominent among the latter is the rule that in crimes *mala prohibita* the intent of the accused is immaterial in the determination of his acquittal or conviction.[1]

The rule, though seemingly harsh, is a popular one with our courts. Justifying it on grounds of public policy, they have consistently adhered to it.[2]

The Court of Appeals, however, in three comparatively recent decisions apparently departed from this rule. In *People v. Asa*[3] which was a prosecution for illegal possession of firearms, *People v. Sunico*[4] which was a prosecution under the Revised Election Code,[5] and *People v. Navarro*[6] which was a prosecution for violation of the Price Control Act,[7] the Court of Appeals acquitted the accused because no criminal intent was shown.

Statement of the Rule

As a general rule intent is material in felonies. *"Actus non facit reum nisi rea."* The act does not make a person a criminal unless his mind be criminal.[8] The act must therefore be committed with criminal intent be-

* LL.B., 1956.

1. ALBERT, REVISED PENAL CODE ANNOTATED 24 (1932); GUEVARA, COMMENTARIES ON THE REVISED PENAL CODE OF THE PHILIPPINES 10 (4th ed. 1946); I KAPUNAN, REVISED PENAL CODE ANNOTATED 27 (1951); PADILLA, CRIMINAL LAW 29 (1953 ed.).
2. People v. Estoista, 49 O.G. 3330 (1953); People v. Bayona, 61 Phil. 181 (1935); People v. Concepcion, 44 Phil. 126 (1922); U.S. v. Siy Cong Bieng, 30 Phil. 577 (1915); U.S. v. Go Chico, 14 Phil. 128 (1909); People v. Paras, (CA) 45 O.G. 3936 (1949); People v. Conosa, (CA) 45 O.G. 3953 (1949).
3. 50 O.G. 5853 (1954).
4. 50 O.G. 5880 (1954).
5. R.A. No. 180 §§ 101 & 103.
6. 51 O.G. 4062 (1955).
7. EXEC. ORDER No. 447 (1950) in connection with R.A. No. 509.
8. ALBERT, REVISED PENAL CODE ANNOTATED 23 (1932); DE JOYA, THE REVISED PENAL CODE 6 (2d ed. 1946); I FRANCISCO, REVISED PENAL CODE 29 (1952); GUEVARA, COMMENTARIES ON THE REVISED PENAL CODE OF THE PHILIPPINES 9-10 (4th ed. 1946); I KAPUNAN, REVISED PENAL CODE ANNOTATED 18-19 (1951); PADILLA, CRIMINAL LAW 26 (1953 ed.).

fore a person charged therewith may be convicted.[9] But there are certain crimes made such by statutory enactment on grounds of public policy, where the intention of the person committing the act is entirely immaterial.[10] These are "acts which in themselves produce the pernicious effect which the statute seeks to prevent; where the evil sought to be avoided results with the same force and effect whether the intention of the person performing the act be good or bad."[11] These acts are called acts *mala prohibita*, acts which are wrong only because prohibited by statute.[12]

Take the example of adulterated drugs or foods. Their sale and distribution just as effectively endanger the life and health of the community when made with the best of good faith as when made with the most corrupt of intent.[13] The sale and distribution of such adulterated commodities is the evil sought to be avoided by statute.[14] Or take the example of a law prohibiting and punishing the granting of any loans by a government bank to the members of the board of directors thereof. A director prosecuted for violation of such law cannot plead that he acted in good faith, that he was misled by the rulings of the auditor, or that the bank did not suffer any loss or damage. The mere execution of the prohibited act is sufficient to constitute the crime.[15]

The rule, therefore is, that when a statute commands an act to be done or omitted which, in the absence of the statute might have been done or omitted without culpability, and does not make intent an element of the offense,[16] proof of the the performance of the penalized act, or its omission, is sufficient to sustain a conviction.[17] Ignorance of the fact, or the state of things contemplated by the statute will not excuse its violation nor constitute a valid defense.[18] In such cases the law implies conclusively the guilty intent of the performer.[19]

Legislation of such kind is enacted and sustained on grounds of necessity, public policy and interest,[20] and is not deemed to contravene the Constitution. "Courts have always recognized the power of the legislature to forbid, on grounds of public interest, and compelled by necessity, 'the great master of things', the doing of certain acts and to make their commission criminal without regard to the intent of the doer."[21] Our Supreme Court has held that in such cases "no judicial authority has the power to require, in the enforcement of the law, such knowledge or motive to be shown."[22]

The rule has grown old with our judicial system.[23] It is now so well-settled that it can safely be regarded as doctrine.

Recent Decisions of the Court of Appeals

Last May 1954 the Court of Appeals rendered its decision in the case of *People v. Asa*.[24] Asa and his co-accused, one Balbastro, were found in possession of two garand rifles. Both were members of a civilian guard association during the height of the Hukbalahap depredations. The rifle in Asa's possession carried a permit under the name of the head of the guard association. The one in Balbastro's hands had no permit but it was shown that he was on his way to surrender the same to the authorities.[25] Charged with illegal possession of firearms, both were convicted but the trial court recommended executive clemency. On appeal the Court of Appeals acquitted them both relying on the ruling of the Supreme Court in the case of *U.S. v. Samson*.[26] According to the Court, ". . . it was obvious that neither even intended to commit the offense charged."[27]

[9] People v. Pacana, 47 Phil. 48 (1924); U.S. v. Pascual, 26 Phil. 234 (1913); U.S. v. Elviña, 24 Phil. 230 (1913); U.S. v. Catolico, 18 Phil. 504 (1911); U.S. v. Morales, 18 Phil. 236 (1910)

[10] ALBERT, REVISED PENAL CODE ANNOTATED 24 (1932); GUEVARA, COMMENTARIES ON THE REVISED PENAL CODE OF THE PHILIPPINES 10 (4th ed. 1946); I KAPUNAN, REVISED PENAL CODE ANNOTATED 27 (1951); PADILLA, CRIMINAL LAW 29 (1953 ed.).

[11] U.S. v. Go Chico, 14 Phil. 128 (1909); People v. Paras, (CA) 45 O.G. 3936 (1949).

[12] 54 C.J.S., *Mala, Malum, Malus* § 209 (1948); 14 AM. JUR., *Criminal Law* §§ 11-12 (1938).

[13] ALBERT, REVISED PENAL CODE ANNOTATED 24 (1932).

[14] U.S. v. Siy Cong Bieng, 30 Phil. 577 (1915).

[15] Cases cited note 2 *supra*.

[16] I BISHOP, A TREATISE ON CRIMINAL LAW 136 § 206 (a) (9th ed. 1923); CLARK, HANDBOOK OF CRIMINAL LAW 48-49 (3d ed. 1915).

[17] Cases cited note 2 *supra*.

[18] *Ibid.*

[19] U.S. v. Siy Cong Bieng, 30 Phil. 577 (1915).

[20] People v. Estoista, 49 O.G. 3330 (1953); People v. Concepcion, 44 Phil. 126 (1922); People v. Conosa, (CA) 45 O.G. 3953 (1949).

[21] U.S. v. Ah Chong, 15 Phil. 488 (1910).

[22] U.S. v. Siy Cong Bieng, 30 Phil. 577 (1915).

[23] Cases cited note 2 *supra*.

[24] (CA) 50 O.G. 5853 (1954).

[25] "The evidence for the defense is to the effect that on account of the threats of dissident elements after Juan L. Asa had effected the surrender of HUK commander Bayani, and in view moreover of the distance of his home in Barrio Puting Kahoy from the poblacion, Councilor Asa secured from the PC provincial commander a permit for these arms he had already sold to the government; that he entrusted one of them to Isabelo Asa, and the rest to the members of the Civilian Guard Organization of his barrio because he could not personally handle all said firearms and because, after all, he relied upon his barrio-mates to help him protect their homes from the dissidents; that Councilor Asa had authority from the Constabulary authorities to collect loose firearms; that pursuant to such authority as well as in his capacity as an MIS agent, Councilor Asa ordered Balbastro on December 17, 1951, to get the garand rifle from a certain Eulogio Decepeda, who had no permit for the same and who was not a member of the Civilian Guard Organization, so that the same could be surrendered to the Constabulary authorities, but that before Balbastro could deliver it to him, Sgt. Viernes and his men came and confiscated it.

"With particular reference to Isabelo Asa it can be said that there is no claim or pretense on the part of the prosecution that he is a citizen of doubtful character, that he had ever used the firearm entrusted to him by Councilor Asa for illegal purposes or for any purpose other than the protection of the community from dissident elements." People v. Asa, (CA) 50 O.G. 5853, 5855 (1954).

[26] 16 Phil. 323 (1910).

[27] People v. Asa, (CA) 50 O.G. 5853, 5856 (1954).

Illegal possession of firearms is a *malum prohibitum*.[28] R.A. No. 4 which penalizes illegal possession of firearms does not make the crime depend on intent to commit the offense.[29] Intent to perform the act prohibited is enough, in this case intent to possess the firearms.[30] And possession, according to the Supreme Court, means more than a mere holding. There must be an intent to use the weapon; dominion and control of the use being from the very nature of the subject-matter of the prohibition, of necessity the essential factor.[31]

The facts in *U.S. v. Samson*[32] would well be worth our while reviewing. In that case it was proven:

> . . . . that the defendant, while traveling on foot, was carrying a shotgun that belonged to Pablo Padilla. It was also shown that Pablo Padilla had a proper permit to possess the arm, and that the defendant was carrying the gun at the time because Pablo Padilla had sent him on ahead on foot with it, as the latter was to follow on horseback.[33]

The defendant Samson was acquitted of the charge of illegal possession of firearms, but not because no intent to commit the offense was proved, but because no *animus possidendi* was shown.[34] Samson carried the gun without the least intention of using it.[35]

Can the ruling in *U.S. v. Samson* properly support the conclusion reached in *People v. Asa?*

The other accused, Balbastro, falls squarely under the said ruling. He was on his way to deliver the rifle found in his hands to the authorities. He never had the intention of using it.[36] Therefore he never was "in possession" of the weapon as that term has been defined by the Supreme Court.[37]

But the same cannot be said for Asa. He had every intention of using the rifle. In truth it was the very reason for his having it. In the words of the appellate court itself, he was " . . . given the rifle as a civilian guard, as such he was ready to use it against the enemies of peace and order."[38]

[28] People v. Paras, (CA) 45 O.G. 3936 (1949); People v. Conosa, (CA) 45 O.G. 3953 (1949).

[29] "Any person who manufactures, deals in, acquires, disposes, or possesses any firearm, parts of firearms or ammunition... shall upon conviction be punished by . . . '" R.A. NO. 4 § 1.

[30] Cases cited note 28 *supra.*

[31] People v. Estoista, 49 O.G. 3330, 3333 (1953).

[32] 16 Phil. 323 (1910).

[33] *Ibid.*

[34] "Samson carried the gun in obedience to its owner's order or request without any inferable intention to use it as a weapon." *Ibid. People v. Estoista,* 49 O.G. 3330, 3334 (1953), was distinguished from the case of *U.S. v. Samson,* 16 Phil. 323 (1910).

[35] *U.S. v. Samson,* 16 Phil. 323 (1910).

[36] See note 25 *supra.*

[37] People v. Estoista, 49 O.G. 3330, 3333 (1953).

[38] People v. Asa, (CA) 50 O.G. 5853, 5855 (1954).

The purpose of the legislature in penalizing illegal possession of firearms and in providing stiff penalties therefor[39] should be borne in mind. It is "to regulate the possession thereof, to prevent their falling into the hands of irresponsible and dangerous individuals."[40] The reason lies in the fact that the "rampant lawlessness against property, persons, and even the very security of the government is directly traceable, in large measure, to promiscuous carrying and use of powerful weapons."[41] The policy behind such legislation would, therefore, be to encourage, the populace to register or surrender their firearms, and to discourage, through heavy penalties, the possession of such firearms without the requisite permit. To require, therefore, that wilful intent and purpose be shown in every case would be to deny to the law[42] the very cause for its existence.

The good faith of Asa should not have been considered.[43] Intent to commit the offense is not an essential element of the offense charged.

A month after the *Asa* decision the Court of Appeals decided the case of *People v. Sunico.*[44] Sunico was a poll clerk who while transfering the names of excess voters of one precinct to the registry list of a new precinct omitted six names. He was charged and convicted under sections 101 and 103 of the Revised Election Code.[45] On appeal he was acquitted on two grounds: first, that his duties were quasi-judicial in nature, therefore a mistake in good faith did not render him liable; and second, that the offense charged was a *malum in se* and not a *malum prohibitum,* therefore his good faith was material. For authority for the first ground the appellate court relied on the decision in *U.S. v. Concepcion.*[46]

Concepcion was an election inspector. He refused to register a person who did not appear to have the necessary qualifications. Under the law

[39] R.A. No. 4 § 1.

[40] People v. Villanueva, 8 App. Ct. 61, 64 (1947).

[41] People v. Estoista, 49 O.G. 3330, 3334 (1953).

[42] R.A. No. 4.

[43] "A judgment of conviction, . . . especially in the case of Asa, . . . could perhaps be defended on the ground that in his case the facts proven show 'animus possidendi', but such a view could be maintained only by giving the law on the subject a rigid and literal interpretation. We do not believe it should be done in the case before us. A man of the condition and circumstances of the appellant Asa would not be able to understand why he should be sent to a long term of imprisonment for having agreed to serve as an armed civilian guard under the command of a municipal councilor and at the same time an MIS agent, to whom the government had granted a permit to possess several firearms needed in the protection of the community in which they lived: in other words he would forever be wondering why he had been punished for having responded to the call of public duty even at the risk of his life." People v. Asa, (CA) 50 O.G. 5853, 5856 (1954).

[44] (CA) 50 O.G. 5880 (1954).

[45] R.A. No. 180.

[46] 13 Phil. 21 (1909).

then[47] he had the power to challenge an applicant for registration and in... quire into his qualifications. For that purpose the board of which he was a member had the power to summon and examine witnesses and other evi... dence. Also, only a knowing or wilful violation was penalized.[48] Accord... ingly, the Supreme Court there held that the authority granted thereunder was in the nature of a judicial power, and that Concepcion was not there... fore liable.[49]

On the other hand, the provisions of law under which Sunico was charged did not require that violations thereof be done "knowingly" or "wilfully". Indeed it is significant that section 183 of the Revised Election Code, which penalizes, among others, violations of sections 101 and 103 of the same code, omitted the word "malicious" which qualified the provisions of its precursor, section 177 of C.A. No. 357.[51] And again, Sunico was a mere poll clerk discharging purely ministerial functions. In truth, the statute expressly specifies that the act of transfering names from one list to an... other was a ministerial duty.[52]

[47] "Sec. 17 of Act No. 1582, as amended by section 4 of Act No. 170... provides that any person who applies for registration at any of the four meetings of the board may be challenged by any of the inspectors or by any qualified elector of the precinct. In case of challenge, the board shall examine such person and shall hear such other evidence as to them seem necessary with respect to the qualifications or disqualifications of the applicant for registration. If the board finds that such applicant for registration is entitled to be registered they shall enter his name upon the list of voters. If they find that he is not qualified, they have a right to refuse to allow such person to register, and if his name had already been entered upon the list of voters, the board has a right to strike the same therefrom.

"In the investigation of this question of qualifications of the applicant for registration, the election board has authority to call witnesses and to compel their attendance." U.S. v. Concepcion, 13 Phil. 21, 23-24 (1909).

[48] "Sec. 29 provides that any inspector or poll clerk who *knowingly* enters upon any registry or poll list or causes or allows to be entered thereon the name of any person as a voter in a district who is not a voter thereof, and any inspector of election who refuses or *wilfully* neglects to enter the name of a qualified applicant for registration upon the registry list, or who *knowingly* prevents or seeks to prevent the registration of any qualified voter, . . . " *Ibid.* (Italization ours.)

[49] U.S. v. Concepcion, 13 Phil. 21, 26 (1909).

[50] R.A. No. 180 §§ 101, 103.

[51] See Ngo Po v. People, G.R. No. L-1375, Feb. 24, 1950. The Supreme Court there acquitted a chinaman who was caught drinking beer during registration day and who was prosecuted for violation of §§ 46 (a) and 177 C.A. No. 357, the old Election Code. Intent to commit the offense was established. However the aforesaid provisions of C.A. No. 357 required that malice be shown. Therefore the part of the decision treating of the good faith of the accused was *obiter*.

[52] " . . . . At these meetings, the board shall prepare and certify clear copies of the list of voters of the corresponding precinct transfering thereto the names of the voters appearing in the list used in the preceding election and including therein such qualified new voters as may apply for registration." R.A. No. 180 § 101.

"The transfer of the names of the voters of the precinct already registered in the list used in the preceding election to the list to be made as provided in the two preceding sections is a *ministerial duty* of the board, and any omission or error shall be corrected motu propio, or upon petition of the interested party, without delay, and in no case beyond three days from the time such error is noticed; . . . " R.A. No. 180 § 103. (Italization ours.)

The Court of Appeals further declared that the offense for which Sunico was accused was a *malum in se* and not merely a *malum prohibitum* because such an offense was violative of a fundamental right of a citizen, his right to vote.[53] The inquiry is: Does the violation or deprivation of a fundamental right make an act or omission a *malum prohibitum*, or immoral per se?

Well known is the classification of crimes according to their nature, into crimes *mala in se* and crimes *mala prohibita*. The former class comprises those acts which are immoral or wrong in themselves, such as murder, rape, arson, robbery and the like, while the latter class comprises those acts to which, in the absence of statute, no moral turpitude attaches, and which are crimes only because they have been prohibited by statute.[54]

Can an act or omission resulting in the disfranchisement of a voter be regarded in the same light as murder, or robbery? The right to vote, though a fundamental one, is not regarded by the great weight of authority as a natural or absolute right, of which a person cannot be deprived except by due process of law. Rather it is a political right, as distinguished from a civil or property right.[55] It is a right granted a person by positive law; a right not available to all persons indiscriminately, but only to those whom the law decrees, if not arbitrarily, to possess the necessary qualifications. It is unlike a natural right, such as the right of a person to his life or property, which a person has irrespective of any law granting him such right. To deprive a person of his life or of his property would still be wrong even if there is no law defining and punishing such an act.

The offense for which Sunico was accused could not, therefore, be a *malum in se* because the act complained of was not immoral per se. It is admitted that the omission of the six names was not due to the fault or negligence of Sunico but due primarily to the defective lists supplied him and to the failure of the voters affected to appear and contest their exclusion in due time.[56] But the offense charged was a *malum prohibitum* and Sunico's good faith could not alter his liability.

Early this year the case of *People v. Navarro*[57] came up for decision in the Court of Appeals. Luisa Navarro was a thirteen year old girl in the sixth grade. While substituting for an older sister at their family stand she sold a tin of Hershey's Cocoa for ₱1.20, eleven centavos more than the ceiling price, to a pair of men who later turned out to be PRISCO agents. She was immediately arrested and prosecuted for violation of Executive Or-

[53] People v. Sunico, (CA) 50 O.G. 5880, 5883 (1954).
[54] 16 C.J., *Criminal Law* § 8 (1918).
[55] 18 AM. JUR., *Elections* § 44 (1938).
[56] People v. Sunico, (CA) 50 O.G. 5880, 5882 (1954).
[57] 51 O.G. 4062 (1955).

der No. 447 in connection with section 12 of R.A. No. 509,[58] otherwise known as the Anti-Profiteering Law. She was sentenced to be committed to the care and custody of the Philippine Training School for Girls until she reached the age of majority, unless sooner released by order of the court.

On appeal, her counsel and the Solicitor General sought for her the benefits of article 12, paragraph 3, of the Revised Penal Code.[59] The Court of Appeals, invoking the provisions of article 10 of the same code extended to her the benefits sought for and acquitted her[60] though it acknowledged that the offense charged was *mala prohibita*.[61] According to the Court, if the provisions of article 12 of the Revised Penal Code are applicable to a *malum in se* crime, like homicide, with more reason should they be applied to a *mala prohibita* offense like a violation of the Anti-Profiteering Law.[62]

Article 10 of the Revised Penal Code provides:

> Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

The two sentences of the above provision are apparently conflicting. One states categorically that the provisions of the Revised Penal Code are not applicable to special laws. The second sentence then provides that if the special laws do not specially provide that the provisions of the Revised Penal Code are not to be applied to them, then such provisions shall be supplementary to such laws. When then and in what cases will the provisions of the Revised Penal Code be extended to special laws?

[58] The maximum selling price for retailers of one 24/8 oz. tin of Hershey's Cocoa is ₱1.09. EXEC. ORDER No. 477 (1950). The Executive Order was passed in pursuance to R.A. No. 509, entitled: "An Act Declaring National Policy, Authorizing The President Of The Philippines For A Limited Period To Fix Ceiling Prices Of Commodities And To Promulgate Rules And Regulations Regarding Prices Of Commodities To Effectuate Such Policy, And Authorizing The Appropriation Of A Certain Sum For The Purpose."

[59] "The following are exempt from criminal liability:

. . . . .

3. A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Article 80 of this Code." Art 12 (3) REVISED PENAL CODE.

[60] People v. Navarro, (CA) 51 O.G. 4062, 4067 (1955).

[61] *Id.* at 4065.

[62] "If the provisions of the Revised Penal Code were held applicable, in a supplementary way, to the Motor Vehicle Law and section 2722 of the Revised Administrative Code, in order to enforce the penal provisions of said laws, a minor, who is over 9 years old and under 15 years, who commits, for instance, homicide, without discernment, is exempt from criminal responsibility by the Code by reason of his age, with more reason should the same exempting circumstance be invoked in favor of an accused who has acted without discernment in the violation of an offense punishable by a special law, because a *malum in se*, like homicide, is undoubtedly more intensely evil than a *malum prohibitum*, like violation of the Anti-Profiteering Law (Bishop on Criminal Law, S. 668). *Ibid.*

Article 7 of the Spanish Penal Code of 1870 on which article 10 was based[63] did not offer any such problem. It simply provided:

> No quedan sujetos a las disposiciones de este Codigo los delitos que se hallen penados por leyes especiales.

The late Justice Albert was properly troubled by the implications presented by the addition of the second sentence to article 10.[64] Our commentators do not offer us any clear or absolute formula.[65] The courts themselves are not in accord as to their interpretations of article 10 though there seems to be a preponderance of decisions refusing to apply the provisions of the Revised Penal Code to special laws.[66]

A solution has been advanced by the then Justice Abad Santos in his dissenting opinion in the case of *People v. Moreno*. The Spanish text of article 10, which is controlling,[67] uses the word "suppletorio". According to him "Dices de lo que suple la falta de otra cosa," literally, to supply what is lacking. If the law is in itself complete there is nothing to supply, nothing to supplement. His dissenting opinion was later adopted by the Supreme Court.[68]

It would seem therefore that before the provisions of the Revised Penal Code could be supplementary to special laws two conditions must first be complied with, namely:

First: The special law in question should not specially provide that the provisions of the Revised Penal Code are not to be given suppletory effect; and

Second: The special law in question should be incomplete or be lacking in some particular as to need supplementing.

But the question is raised: When is a law considered incomplete for the purposes of article 10?

[63] ALBERT, REVISED PENAL CODE ANNOTATED 60 (1932).

[64] *Id.* at 61.

[65] Professor Kapunan offers the opinion that unless the special law expressly provides the contrary, the provisions of the Revised Penal Code shall act as supplementary to special laws, provided that the provision of the Revised Penal Code sought to be applied does not conflict with the provisions of the special law. I KAPUNAN, REVISED PENAL CODE ANNOTATED 70 (1951). Professor Padilla states that when the ends of justice require that the provisions of the Revised Penal Code be given suppletory effect, the courts will not hesitate to apply them. PADILLA, CRIMINAL LAW 84 (1953 ed.). Other commentators are silent on the question.

[66] Cases where the courts refused to apply the provisions of the Revised Penal Code to offenses falling under special laws: People v. Gonzales, 46 O.G. 1583 (1948); People v. Ramos, 44 O.G. 3288 (1947); People v. Noble, 43 O.G. 2010 (1946); U.S. v. Basa, 8 Phil. 89 (1907); People v. Santos, (CA) 44 O.G. 1289 (1947); People v. Villaruz, (CA) 44 O.G. 2283 (1947). *Contra*: People v. Tamayo, 40 O.G. 2313 (1939); Copiaco v. Luzon Brokerage Co., 66 Phil. 184 (1938); People v. Moreno, 60 Phil. 712 (1934); U.S. v. Ponte, 20 Phil. 379 (1911).

[67] People v. Manaba, 58 Phil. 665 (1933).

[68] People v. Ramos, 44 O.G. 3288 (1947).

To be sure the answer does not lie in the solution offered by the Court of Appeals.[69] For if it were to be accepted, then in every case the provisions of the Revised Penal Code would be applied to special laws. That would render article 10 a surplusage, which the legislature could not have intended.

If a more cogent reason for such an application exists, then it would seem to be in the cases where the accused pleads guilty to *mala prohibita* offenses. But the courts were uniform, on this point at least, that such a plea could not be considered as a mitigating circumstance, refusing to apply the provisions of article 13 of the Revised Penal Code.[70] But it would seem that in no other case could an application of the provisions of the Code better serve the ends of justice.[71]

The Anti-Profiteering Law is a special law within the meaning of article 10. The term "special laws" means laws other than the Revised Penal Code which punish crimes.[72] From this definition authorities would exclude laws amendatory to the Revised Penal Code.[73]

The Anti-Profiteering Law does not contain any "falta". The mere fact that it fails to provide for offenders who may be minors does not make it any the less complete. If the conclusion were otherwise the majority of our special laws, if not all, would be considered incomplete. Then the provisions of the Revised Penal Code would always be applicable. And as has already been stated, the benefits of article 12 (3) of the Revised Penal Code cannot be extended to Luisa Navarro for the reasons advanced by the Court of Appeals.[74] The effect of the Court's decision was not to cure any defect in the law but to add something to it. So even if the accused acted without discernment, as the Court found,[75] it could not have extended

[69] See note 62 *supra*.

[70] People v. Gonzales, 46 O.G. 1583 (1948); People v. Ramos, 44 O.G. 3288 (1947); People v. Noble, 43 O.G. 2010 (1946); People v. Villaruz, (CA) 44 O.G. 2283 (1947).

[71] See note 65 *supra*.

[72] U.S. v. Serapio, 23 Phil. 584, 592 (1912).

[73] I KAPUNAN, REVISED PENAL CODE ANNOTATED 68 (1951); PADILLA, CRIMINAL LAW 79 (1953 ed.).

[74] See note 62 *supra*.

[75] "In the case at bar, an inference of discernment might be drawn from the result of the investigation of the appellant (Exhibit C):

'Q. What happened on that day? —A. On that day, a man came and asked the price of Hershey's cocoa, when I said it was ₱1.20 he bought without bargaining for the price. I used to sell cocoa at ₱1.10 but the man who bought from me did not ask for the reduction so I gave him at ₱1.20.

'Q. Do you know the ceiling price of commodities? —A. Yes sir.'

"The manner in which the appellant frankly and unhesitatingly answered her investigators would tend to show that she was unaware that the price of one tin of cocoa, which she quoted for ₱1.20 was above the regulation price for the same. Furthermore, young as she is and being then only a sixth grade pupil, we do not believe that she understood what the word 'ceiling" really means. Perhaps she thought that her investigators were asking for the selling prices of the commodities displayed in the store of her sister." People v. Navarro (CA) 51 O.G. 4062, 4066 (1955).

to her the benefits asked for.

The Court admitted that intent is immaterial in offenses *mala prohibita*, but refused to follow the principle because to do so, according to it, would be to give the Anti-Profiteering Law a rigid interpretation, which the legislature did not intend.[76] But the legislature did have in mind offenders like Luisa Navarro when it passed the law and provided the penalties therefor.

During the deliberations in the House of Representatives on section 12 of House Bill No. 550 (R.A. No. 509 § 12 as approved), Congressman Cinco of Leyte objected to the penalty imposed in said section 12. He declared that imprisonment of not less than 2 years nor more than 12 years is too harsh. At first he proposed a maximum of 10 years with no minimum.

> The intention is to fix only the maximum imprisonment and the maximum fine or both imprisonment and fine. I refer, Mr. Speaker, to our ignorant merchants who may be selling a dozen cans of milk or a dozen boxes of matches, and who under the principle of "ignorance of the law excuses no one," may be imprisoned for two years. So by fixing only the maximum, we will avoid imposing on an old woman who sells a can of milk, for example, in excess of the ceiling price, two years imprisonment, as the maximum provided herein.[77]

Congressman Marcos, one of the sponsors of the bill, objected to the proposed amendment.

> Mr. Speaker, the penalties provided for in this particular section were studied by authorities as well as by the members of the Committee. And the Committee believes that the maximum of twelve years and the minimum of two years, would be sufficient to coerce anybody into following the law. We believe, Mr. Speaker, that any leniency that can be or should be granted to any poor merchant found in an unfavorable position of violating this law should come not from the law but from the ones who are enforcing the law. We believe, Mr. Speaker, that we have granted the investigators as well as the judicial branch of our Government sufficient discretion, sufficient leeway with respect to the penalties. And we beg the gentleman from Leyte to understand that our position here is not to be harsh but to cut a compromise between harshness and softness. You see, we have put teeth into the law, Mr. Speaker; and to allow a penalty of one day or a fine of one peso, surely will not give teeth to the law.[78]

Later on Congressman Cinco proposed that the minimum imprisonment be lowered to two months.

> As I was saying, the bulk of our Filipino merchants, especially in the barrios, are the small capitalists who barely have ₱100. capital for their little stores. And I am sure that there will be occasions when these people, not knowing the harshness of the law, or not knowing that there are ceiling prices for articles, will sell a tin can of milk at five centavos in excess of the ceiling price; and because of that violation, the Court will have no leeway but to impose two years imprisonment on that small merchant.[79]

[76] 51 O.G. 4065.

[77] 1 H. CONG. REC. 514 (1950).

[78] 1 *id.* at 514-15.

[79] 1 *id.* at 515.

Congressman Marcos again objected to the new proposed amendment:

> Mr. Speaker, we should be willing to lower the minimum penalty to not less than six months. But, Mr. Speaker, we shall open the gap again to many escapees from the law, if we put here from two months to six months. If there should be any attempt to cast aspersions upon the law enforcement agencies, I say there has been reasonable ground to believe that in the past there had been an unusual alliance between the law-enforcement agencies and the culprits or violators. To allow a low minimum sentence would be practically to destroy the entire law. Precisely, the purpose is to coerce, to compel obedience to price control. But the moment you place, say two months or even six months, I say Mr. Speaker, it would be very easy for the culprit or violator to assign the penalty or blame to the person who is less guilty in the entire proceedings.[80]

But the proposed amendment was passed by a majority of the House of Representatives and section 12 of R.A. No. 509 now provides for imprisonment for a period of not less than two months nor more than twelve years.[81] All these show that Congress when it made provision for the penalties had in mind small merchants, light transgressors or those who do not even know about the existence of ceiling prices; that it did not intend to exempt anyone from its provisions; that the intention of Congress in making provision for the penalties was to coerce and compel obedience to the law and at the same time not to make it too harsh on small offenders; that the only discretion granted the courts was in the imposition of the penalties.

Conclusion

The doctrine that intent is immaterial in crimes *mala prohibita* is well-settled in this jurisdiction. Our courts have recognized and accepted it, at times reluctantly.[82] For its application oftentimes results in undue severity or apparent injustice. This is especially true in cases where at most only a technical violation of the law has been committed. But it should be borne in mind that the doctrine was evolved out of necessity. An arbitrary rule must have to be established if the purposes of the legislature are to be attained at all. Intent is hard, often impossible, to prove under the circumstances. It is all a question of sacrificing the rights of a few for the greater good.

We can but repeat the words of the Supreme Court: "Courts have always

[80] 1 *id.* at 515.

[81] 1 *id.* at 515. "Imprisonment for a period of not less than two months nor more than twelve years of a fine of not less than two thousand pesos nor more ten thousand pesos, or both, shall be imposed upon any person who sells any article, goods, or commodity in excess of the maximum selling price fixed by the President; . . ." R.A. No. 509 § 12.

[82] The trial court in the case of People v. Asa convicted the accused but at the same time recommended executive clemency for both Asa and his co-accused Balbastro. People v. Asa, (CA) 50 O.G. 5853, 5856 (1954). The Supreme Court also convicted an accused of illegal possession of firearms but because of the attendant circumstances also recommended executive clemency. People v. Estoista, 49 O.G. 3330, 3335 (1953).

recognized the power of the legislature to forbid, on grounds of public policy, and compelled by necessity, 'the great master of things,' the doing of certain acts and to make their commission criminal without regard to the intent of the doer."[83] And aagin, "In such cases no judicial authority has the power to require, in the enforcement of the law, such knowledge or motive to be shown."[84] And in the instances where the accused, under ordinary circumstances, should be acquitted, the Supreme Court has this final say:

> Small transgressors for which the heavy net was not spread are bound to be caught, and it is to meet such a situation as this that Courts are advised to make a recommendation to the Chief Executive for clemency or reduction of the penalty.[85]

[83] U.S. v. Ah Chong, 15 Phil. 488 (1910).

[84] U.S. v. Siy Cong Bieng, 30 Phil. 577 (1915).

[85] People v. Estoista, 49 O.G. 3330, 3334 (1953).