

Republic of the Philippines  
Supreme Court  
Manila

## SECOND DIVISION

**ROBERT PLAN y BELONCIO and MARK OLIVER D. ENOLVA,**  
Petitioners, **G.R. No. 248583**  
**Members:**

-versus-

LEONEN, *J.*, *Chairperson*,  
LAZARO-JAVIER,  
LOPEZ, M.,  
LOPEZ, J., and  
KHO, JR., *JJ.*

**Promulgated:**

PEOPLE OF THE PHILIPPINES,  
Respondent.

FEB 03 2025

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## DECISION

**LAZARO-JAVIER, J.:**

## The Case

This Petition for Review on *Certiorari*<sup>1</sup> assails the following dispositions of the Court of Appeals in CA-G.R. CR No. 42211:

<sup>1</sup> *Rollo*, pp. 11–24.

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1. Decision<sup>2</sup> dated March 27, 2019 affirming the conviction of petitioners Robert Plan y Beloncio (Plan) and Mark Oliver Enolva (Enolva) for illegal gambling under Presidential Decree No. 1602; and
2. Resolution<sup>3</sup> dated July 23, 2019 denying Plan and Enolva's Motion for Reconsideration.

### **Antecedents**

#### ***The Charge***

In Criminal Case No. M-QZN-17-03369-C,<sup>4</sup> Plan and Enolva were charged with illegal gambling under Presidential Decree No. 1602, viz.:

That on or about the 31<sup>st</sup> day of March 2017, in Quezon City, Philippines, the above-named accused, conspiring, confederating with and mutually helping one another, did then and there willfully, unlawfully and knowingly, without any authority of law, take active and in part in the game of "CARA y CRUZ," a game of chance, wherein wagers consisting of money, articles of value or representative of value are at stake or made.

CONTRARY TO LAW.<sup>5</sup>

On arraignment, both Plan and Enolva pleaded not guilty.<sup>6</sup>

#### ***Version of the Prosecution***

On March 31, 2017, around 11:30 p.m., Police Officer I Stanley De Guzman (PO1 De Guzman), Police Officer I Sammy Putan (PO1 Putan), Police Officer III (PO3) Roland Aumentado, and PO3 Espartacus Pareja of the Quezon City Police District conducted *Oplan Galugad* at Barangay San Roque, Quezon City after their Station Commander received information from a concerned citizen regarding alleged illegal gambling activities in the area.<sup>7</sup>

<sup>2</sup> *Id.* at 30–37. Penned by Associate Justice Danton Q. Bueser with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Rafael Antonio M. Santos, Sixth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 39–40. Penned by Associate Justice Danton Q. Bueser with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Rafael Antonio M. Santos, Former Sixth Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 62, 68.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 31.

<sup>7</sup> *Id.* at 31, 62–63.

*A*

When the team reached the place, the police officers saw a group of men huddling over a game of *cara y cruz*. The police officers approached and caught petitioners in the act of placing their bets. PO1 De Guzman grabbed the money on the pavement totaling PHP 3,750.00.<sup>8</sup> Thereafter, the police officers frisked Plan and Enolva and recovered two plastic sachets containing white crystalline substance.<sup>9</sup>

### *Version of the Defense*

Plan and Enolva interposed denial. Enolva asserted that while he was traversing Aurora Boulevard on his way home to Bulacan, something went wrong with his motorcycle. He stopped and messaged Plan asking if he had tools for repair. After receiving Plan's affirmative response, he went to Plan's house in Quezon City.<sup>10</sup>

While they were working on the motorcycle, armed men in civilian clothes suddenly barged into the compound where they were and pointed guns at them. Plan corroborated Enolva's testimony.<sup>11</sup>

### **Ruling of the Metropolitan Trial Court**

By Decision<sup>12</sup> dated January 12, 2018, the Metropolitan Trial Court (MeTC) found Plan and Enolva guilty of illegal gambling, viz.:

**WHEREFORE**, premises considered, judgment is hereby rendered **CONVICTING** accuseds [sic] Robert Plan y Beloncio and Mark Oliver y Enolva [sic] for [v]iolation of Presidential Decree No. 1602, in Criminal Case No. 17-03369.

Accordingly, they are sentenced to suffer imprisonment of **two (2) years eleven (11) months and eleven (11) days** of *prision correccional*.

**SO ORDERED.**<sup>13</sup> (Emphasis in the original)

The MeTC found that the prosecution established all the elements of illegal gambling. PO1 De Guzman and PO1 Putan testified that Plan and Enolva placed bets on a game of *cara y cruz*.<sup>14</sup> Neither witness

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<sup>8</sup> *Id.* at 31, 63.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 62-67. By Presiding Judge Maria Ella Cecilia D. Dumlao-Escalante.

<sup>13</sup> *Id.* at 67.

<sup>14</sup> *Id.* at 65.

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had improper motive to falsely testify against Plan and Enolva. Hence, their testimonies are worthy of full faith and credit.<sup>15</sup>

### **Ruling of the Regional Trial Court**

By Joint Decision<sup>16</sup> dated June 11, 2018, the Regional Trial Court (RTC) affirmed the conviction of Plan and Enolva but modified the penalty. It held that since Republic Act No. 9287 imposes a penalty favorable to both Plan and Enolva, the length of their imprisonment should be reduced to 30 days.<sup>17</sup>

### **Ruling of the Court of Appeals**

By Decision<sup>18</sup> dated March 27, 2019, the Court of Appeals affirmed in full. It found no reason to depart from the doctrine that the trial court's assessment of witnesses' credibility is entitled to great weight and respect absent any showing of glaring errors.<sup>19</sup> Plan and Enolva's Motion for Reconsideration was denied under Resolution<sup>20</sup> dated July 23, 2019.

### **Proceedings before the Court**

Plan and Enolva now plead anew their purported innocence and pray that a verdict of acquittal be rendered in their favor. They assert that the prosecution witnesses could not categorically describe their participation in the game of *cara y cruz*.<sup>21</sup> Though police officers testified that they saw petitioners "in a huddle position actually engaged in a game of [*cara y cruz*]"<sup>22</sup> they failed to show that petitioners actually placed bets thereon. They only saw the pot money on the floor and "merely assumed that [petitioners] placed a part thereof as bets."<sup>23</sup>

In compliance with the Court's Resolution<sup>24</sup> dated February 3, 2020, the Office of the Solicitor General (OSG) filed its Comment.<sup>25</sup> It maintains that the prosecution proved the illegal gambling charge beyond

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<sup>15</sup> *Id.* at 66.

<sup>16</sup> *Id.* at 56–61. By Presiding Judge Madonna C. Echiverri.

<sup>17</sup> *Id.* at 61.

<sup>18</sup> *Id.* at 30–37.

<sup>19</sup> *Id.* at 33.

<sup>20</sup> *Id.* at 39–40.

<sup>21</sup> *Id.* at 18.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 20.

<sup>24</sup> *Rollo*, p. 199.

<sup>25</sup> *Id.* at 213–219. By Assistant Solicitor General Eric Remegio O. Panga and Associate Solicitor Victor Napoleon D. Valeriano.

reasonable doubt. Police officers testified that petitioners were playing *cara y cruz* by putting money on the pavement.<sup>26</sup> More important, Presidential Decree No. 1602 does not require that the amount and denomination of the money wagered be proven to hold an accused liable.<sup>27</sup>

### Our Ruling

We acquit.

Generally, a petition for review under Rule 45 is limited to questions of law.<sup>28</sup> The Court is not a trier of facts, which undertakes the re-examination and re-assessment of the evidence presented during trial.<sup>29</sup> Appreciation and resolution of factual issues are functions of the trial court, whose findings are accorded great respect, if not finality, especially when affirmed by the Court of Appeals.<sup>30</sup> This rule nonetheless admits of several exceptions, such as:

- (a) **When the findings are grounded entirely on speculation, surmises, or conjectures;**
- (b) When the inference made is manifestly mistaken, absurd, or impossible;
- (c) When there is grave abuse of discretion;
- (d) **When the judgment is based on a misapprehension of facts;**
- (e) When the findings of facts are conflicting;
- (f) When in making its findings the [Court of Appeals] went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
- (g) When the [Court of Appeal's] findings are contrary to those by the trial court;
- (h) **When the findings are conclusions without citation of specific evidence on which they are based;**
- (i) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
- (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or

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<sup>26</sup> *Id.* at 217.

<sup>27</sup> *Id.* at 217–218.

<sup>28</sup> RULES OF COURT, Rule 45, Sec. 1.

<sup>29</sup> *Cacho v. Manahan*, 823 Phil. 1011, 1021 (2018) [Per J. Martires, Third Division], citing *Maglana Rice and Corn Mill, Inc. v. Tan*, 673 Phil. 532, 539 (2011) [Per J. Bersamin, First Division].

<sup>30</sup> *Abalos v. Heirs of Torio*, 678 Phil. 691 (2011) [Per J. Peralta, Fourth Division]; *Chanelay Development Corporation v. GSIS*, 906 Phil. 620, 637 (2021) [Per J. Lazaro-Javier, Second Division].

- (k) When the [Court of Appeals] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.<sup>31</sup> (Emphasis supplied)

The Court finds that the 1<sup>st</sup>, 4<sup>th</sup>, 8<sup>th</sup>, and 11<sup>th</sup> exceptions are present here. As such, the Court is not precluded from reviewing the factual findings of the lower courts because their decisions contain conclusions that are bereft of evidentiary support or factual basis.<sup>32</sup> In particular, the lower courts found petitioners guilty of illegal gambling despite the prosecution's failure to establish their actual participation in a game of *cara y cruz*.

Playing *cara y cruz* is punishable under Presidential Decree No. 1602 which provides:

Section 1. Penalties. The following penalties are hereby imposed:

- (a) The penalty of prison correccional in its medium period [or] a fine ranging from one thousand to six thousand pesos, and in case of recidivism, the penalty of prision mayor in its medium period or a fine ranging from five thousand to ten thousand pesos shall be imposed upon:

1. Any person other than those referred to in the succeeding sub-sections who in any manner, shall **directly or indirectly take part** in any illegal or unauthorized activities or games of cockfighting, jueteng, jai alai or horse racing to include bookie operations and game fixing, numbers, bingo and other forms of lotteries; **cara y cruz**, pompiang and the like; 7-11 and any game using dice; black jack, lucky nine, poker and its derivatives, monte, baccarat, cuajao, panguingue and other card games; paik que, high and low, mahjong, domino and other games using plastic tiles and the like; slot machines, roulette, pinball and other mechanical contraptions and devices; dog racing, boat racing, car racing and other forms of races, basketball, boxing, volleyball, bowling, pingpong and other forms of individual or team contests to include game fixing, point shaving and other machinations; banking or percentage game, or any other game scheme, whether upon chance or skill, wherein wagers consisting of money, articles of value or representative of value are at stake or made[.] (Emphasis supplied)

<sup>31</sup> *Abalos v. Heirs of Torio*, 678 Phil. 691, 699–700 (2011) [Per J. Peralta, Fourth Division]; citing *Sps. Andrada v. Pilhino Sales Corporation*, 659 Phil. 70, 78–79 (2011) [Per J. Bersamin, Third Division].

<sup>32</sup> *See Republic v. Ong*, 688 Phil. 136, 154 (2012) [Per J. Del Castillo, First Division].

The phrase “[d]irectly or indirectly take part” does not have a precise definition in law or in jurisprudence. Nevertheless, the arresting officers must witness the accused directly or indirectly participating in the game to be found guilty of the illegal gambling. For a successful prosecution of illegal gambling, the arresting officers must not only have seen the suspected bettors place their bets. They must testify with certainty on the details of the entire gambling operation, including but not limited to the alleged game being played, the identification of the person administering the bets as well as the identification of the bettors, and the denomination of money being bet. Any vagueness on the details clouds the offense with reasonable doubt.

Here, petitioners claim that the police officers’ failure to state with accuracy the actual denomination of their alleged bets amounts to reasonable doubt.<sup>33</sup>

We agree.

Although police officers testified that petitioners were at the *locus criminis*, they were unable to testify on the actual denomination of the bets that each of the petitioners supposedly made. PO1 De Guzman testified:

Q: [W]hat [else] were you able to immediately recover[ ] from accused Robert Plan before [ ] frisking him?

A: Ma’am wala na po.

Q: You were not able to recover anything from him?

A: Yung bet money sa lapag nalang [sic].

Q: Where [was] the bet money placed?

A: Sa gitna po nila kasi in a huddle position po sila.<sup>34</sup>

On cross-examination, he further stated:

Q: Were you the one who recovered the bet money?

A: Yes, sir.

Q: And where did you recover the bet money?

A: Sa may lapag lang sir.

Q: How much did you recover Mr. Witness?

A: [PHP 3,750.00] in different denomination[s].

Q: How did you know that these are the money of the accused in this case?

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<sup>33</sup> *Rollo*, p. 21.

<sup>34</sup> TSN, PO1 Stanley De Guzman, July 11, 2017, pp. 7-8; *rollo*, pp. 76-77.

A: More or less 2 to 3 meters, kita na po namin yung pagtatayo [sic], betting nila.

....

Q: Did you actually see Robert Plan put the money on the pavement?

A: Nagbebet po sila. In a huddle position.

....

Q: And what bill [did Plan put on the pavement]?

A: Tabi tabi kasi sila sir eh. Paglagay po kasi ng...

Q: So you are not sure Mr. Witness of what denomination?

A: Opo[.] [K]asi split seconds lang po yung pag[lapag].<sup>35</sup>

As for Enolva's involvement, PO1 Putan testified:

Q: Sinabi mo nakita mo na nagbe-bet. Anong binebet niya?

A: Pera po.

Q: Anong pera Mr. Witness?

A: Nakalagay po dun sa may sahig po.

Q: Anong denomination ng pera Mr. Witness?

A: Hindi na po namin maano ma'am eh kasi marami na pong nakalagay na pera sa sahig.

Q: Sinabi mo nakita mo siyang nagtataya. Kung nakita mo siyang nagtataya makikita mo Mr. Witness kung ano ang tinataya niya at sinabi mo ito ay pera pero hindi mo natatandaan kung anong kulay itong pera na ito.

A: Yes po ma'am.

Q: Pero malapit ka?

A: Yes po.

....

Q: [Pero] yung pera, [hindi mo nakita] kung anong denomination[?]

A: Nakita ko po yung pera ma'am, yung tinaya pero hindi ko po alam kung magkano po.<sup>36</sup>

Considering the proximity of the arresting officers to the *locus criminis* in this case, i.e., two to three meters away, their failure to provide details regarding the illegal gambling incident militates against their credibility. Indeed, it is interesting that they claimed to have witnessed petitioners placing money bets yet were unable to answer when asked for further details. They even clearly stated that the money bets were placed on the floor. But if they

<sup>35</sup> TSN, PO1 Stanley De Guzman, July 11, 2017, pp. 17-18; *rollo*, pp. 86-87.

<sup>36</sup> TSN, PO1 Sammy Putan, November 21, 2017, pp. 10-12; *rollo*, pp. 104-106.



had really seen the same, then it is inconceivable why they could not identify *any* denomination of the same, which would have been readily identifiable based on the color of the bills.

Since the evidence on record fails to establish the extent of petitioners *actual* participation in the *cara y cruz* game, We reckon with the exhortation in *Macayan v. People*.<sup>37</sup>

In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt. Where there is no moral certainty as to their guilt, they must be acquitted even though their innocence may be questionable. The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt.<sup>38</sup>

So must it be.

**ACCORDINGLY**, the Petition is **GRANTED**. The Decision dated March 27, 2019 and Resolution dated July 23, 2019 of the Court of Appeals in CA-G.R. CR No. 42211 are **SET ASIDE**. Petitioners Robert Plan y Beloncio and Mark Oliver D. Enolva are **ACQUITTED** of violation of Presidential Decree No. 1602. They are **ORDERED IMMEDIATELY RELEASED** from detention unless they are being lawfully held for other lawful cause.

Let entry of judgment be issued immediately.

Let a copy of this Decision be furnished to the Director General of the Bureau of Corrections, for immediate implementation. The Director General is ordered to **REPORT** to this Court within five days from receipt of the Decision on the action taken.

**SO ORDERED.**

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

<sup>37</sup> 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

<sup>38</sup> *Id.* at 228.


**WE CONCUR:**

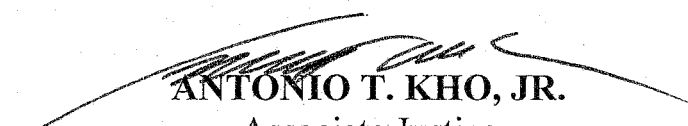
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**MARVIC M.V.F. LEONEN**

Senior Associate Justice  
Chairperson

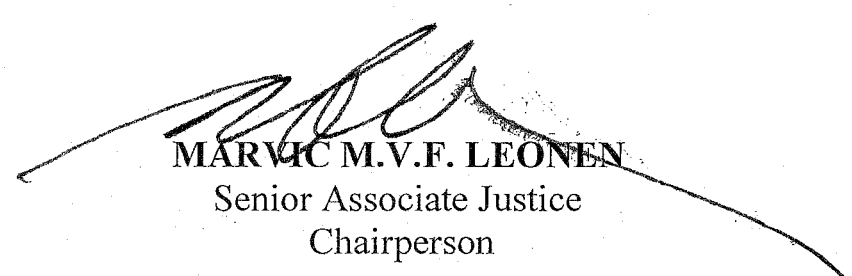
  
**MARIO V. LOPEZ**  
Associate Justice

  
**JHOSEP V. LOPEZ**  
Associate Justice

  
**ANTONIO T. KHO, JR.**  
Associate Justice

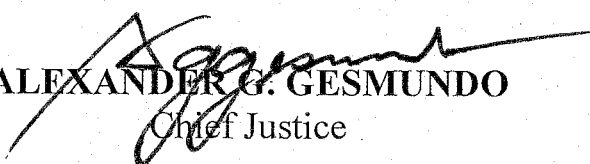
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**ALEXANDER G. GESMUNDO**  
Chief Justice

## SECOND DIVISION

**G.R. No. 248583 – ROBERT PLAN y BELONCIO and MARK OLIVER D. ENOLVA**, Petitioners, **v. PEOPLE OF THE PHILIPPINES**, Respondent.

Promulgated:  
FEB 03 2025

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## CONCURRING OPINION

**LEONEN, J.:**

I concur. However, I cannot, with a clear conscience, merely offer my concurrence without explaining the entirety of my position.

Petitioners must be acquitted, not only because the factual findings failed to establish guilt beyond reasonable doubt. They must be acquitted because out of the many authorized casinos under the State's direct control and supervision, it is baffling why the playing of *cara y cruz*, a popular game of chance commonly played on street corners, remains punishable under Presidential Decree No. 1602.<sup>1</sup>

The case involves a Petition for Review on *Certiorari*<sup>2</sup> assailing the Decision<sup>3</sup> and Resolution<sup>4</sup> of the Court of Appeals, which upheld that Robert Plan y Beloncio (Plan) and Mark Oliver D. Enolva (Enolva) are guilty beyond reasonable doubt of violation of Presidential Decree No. 1602, or illegal gambling.

In an Information<sup>5</sup> dated April 3, 2017, Plan and Enolva, among others, were charged with violation of Presidential Decree No. 1602. The accusatory portion of it reads:

That on or about the 31<sup>st</sup> day of March 2017, in Quezon City, Philippines, the above-named accused, conspiring, confederating with and

<sup>1</sup> Presidential Decree No. 1602 (1978), Prescribing Stiffer Penalties on Illegal Gambling.

<sup>2</sup> *Rollo*, pp. 41–55.

<sup>3</sup> *Id.* at 30–37. The March 27, 2019 Decision in CA-G.R. CR No. 42211 was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Rafael Antonio M. Santos of the Sixth Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 39–40. The July 23, 2019 Resolution in CA-G.R. CR No. 42211 was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Rafael Antonio M. Santos of the Former Sixth Division, Court of Appeals, Manila.

<sup>5</sup> *Id.* at 68.

mutually helping one another, did then and there willfully, unlawfully and knowingly, without any authority of law, take active and direct part in the game of “CARA y CRUZ”, a game of chance, wherein wagers consisting of money, articles of value or representative of value are at stake or made.

CONTRARY

TO

LAW.<sup>6</sup>

On arraignment, Plan and Enolva entered pleas of not guilty. Trial on the merits ensued.<sup>7</sup> On January 12, 2018, the Metropolitan Trial Court rendered a Decision<sup>8</sup> finding Plan and Enolva guilty beyond reasonable doubt of violation of Presidential Decree No. 1602. On June 11, 2018, the Regional Trial Court rendered a Joint Decision<sup>9</sup> affirming the conviction but modifying the penalty imposed. The trial court took into account Republic Act No. 9287,<sup>10</sup> which prescribed a lower penalty for bettors in illegal numbers games.<sup>11</sup> On March 27, 2019, the Court of Appeals rendered a Decision<sup>12</sup> denying the Petition. Hence, this Petition<sup>13</sup> was filed.

The sole issue before this Court is whether the Court of Appeals erred in affirming petitioners’ guilt beyond reasonable doubt of violation of Presidential Decree No. 1602.

The *ponencia* granted the Petition and found that the evidence on record failed to establish petitioners’ actual participation in the game; thus, they must be acquitted.<sup>14</sup>

I concur with the *ponencia*. However, it is unclear to me why this offense still exists. It is baffling why the playing of *cara y cruz*, a game popular among the masses, remains illegal while those in the middle and upper classes can freely waste away their money in government-franchised casinos without being arrested for it.

I explain further.

## I

The name *cara y cruz* was derived from old Spanish coins which

<sup>6</sup> *Id.* at 62.

<sup>7</sup> *Id.* at 31.

<sup>8</sup> *Id.* at 62–67. The January 12, 2018 Decision in Criminal Case No. 17-03369 was penned by Presiding Judge Maria Ella Cecilia D. Dumlao-Escalante of Branch 35, Metropolitan Trial Court, Quezon City.

<sup>9</sup> *Id.* at 56–61. The June 11, 2018 Joint Decision in Criminal Case No. R-QZN-18-02191-CR was penned by Presiding Judge Madonna C. Echiverri of Branch 81, Regional Trial Court, Quezon City.

<sup>10</sup> Republic Act No. 9287 (2004), An Act Increasing the Penalties for Illegal Numbers Games, Amending Certain Provisions of Presidential Decree No. 1602, and for Other Purposes.

<sup>11</sup> Republic Act No. 9287 (2004), sec. 3.

<sup>12</sup> *Rollo*, pp. 30–37.

<sup>13</sup> *Id.* at 41–55.

<sup>14</sup> *Ponencia*, p. 9.

showed a face on one side and a cross on the other. The game is played with a piece of cardboard, two coins, and a small clay disk. The cardboard, controlled by the dealer, has a division line in the center, demarcating “cara” on one side and “cruz” on the other, or “heads” and “tails.” The bettor places their bet on either side. The dealer will throw two coins in the air, and they will rebound on a small clay disk. If the two coins fall on “cara,” the bettors who placed their bets on “cara” win double the amount of their bet. The same goes if both coins fall on “cruz.” However, if one coin falls on “cara” and the other coin on “cruz,” the dealer takes all the money on the board.<sup>15</sup>

The playing of *cara y cruz* is punishable under Presidential Decree No. 1602, which provides:

Section 1. *Penalties.* The following penalties are hereby imposed:

(a) The penalty of *prison correccional* in its medium period of a fine ranging from one thousand to six thousand pesos, and in case of recidivism, the penalty of *prison mayor* in its medium period or a fine ranging from five thousand to ten thousand pesos shall be imposed upon:

1. Any person other than those referred to in the succeeding subsections who in any manner, shall directly or indirectly take part in any illegal or unauthorized activities or games of cockfighting, jueteng, jai alai or horse racing to include bookie operations and game fixing, numbers, bingo and other forms of lotteries; **cara y cruz**, pompiang and the like; 7-11 and any game using dice; black jack, lucky nine, poker and its derivatives, monte, baccarat, cuajao, pangguingue and other card games; paik que, high and low, mahjong, domino and other games using plastic tiles and the likes; slot machines, roulette, pinball and other mechanical contraptions and devices; dog racing, boat racing, car racing and other forms of races, basketball, boxing, volleyball, bowling, pingpong and other forms of individual or team contests to include game fixing, point shaving and other machinations; banking or percentage game, or any other game scheme, whether upon chance or skill, wherein wagers consisting of money, articles of value or representative of value are at stake or made[.] (Emphasis supplied)

Here, petitioners were caught allegedly *in flagrante* by police officers for illegal gambling. In the course of their arrest, two sachets of white crystalline substance, later identified as *shabu*, were recovered from their persons. This became the subject of another case before this Court, *Plan, Jr. v. People*,<sup>16</sup> where petitioners were found guilty of possession of illegal drugs under Section 13 of Republic Act No. 9165.<sup>17</sup>

<sup>15</sup> See Stewart Culin, *Philippine Games*, AMERICAN ANTHROPOLOGIST NEW SERIES, 643–656 (1990), available at <https://healthy.uwaterloo.ca/museum/Archives/Culin/Philippine1900/index.html> (last accessed on March 17, 2023).

<sup>16</sup> 879 Phil. 453 (2020) [Per J. Perlas-Bernabe, Second Division].

<sup>17</sup> Republic Act No. 9165 (2002), sec. 13 provides:

SECTION 13. Possession of Dangerous Drugs during Parties, Social Gatherings or Meetings. — Any person found possessing any dangerous drug during a party, or at a social gathering or meeting, or in

In *Valencia v. People*,<sup>18</sup> a buy-bust team approached a group of persons in a game of *cara y cruz*. One of the buy-bust team members, Police Officer III Ferdinand Modina, posed as a bettor. One of the bettors, later identified as Carlito Valencia, placed a sachet of white crystalline substance, later identified as shabu, as a bet. When Modina introduced himself as a police officer, the other bettors scampered away. Valencia was arrested and later charged with possession of illegal drugs.

In *People v. Villasquez*,<sup>19</sup> police officers received information that there was illegal gambling being conducted in Old Balara, Quezon City. When the police arrived at the area, they observed that there was a group of people playing *cara y cruz*. The police approached them, causing the group to scamper and run away. They chased after one of the players, Jesmon Villasquez, and when they caught up with him, they directed him to empty his pockets. A sachet of white crystalline substance, later identified as shabu, was recovered from him. He was charged with possession of illegal drugs but was later acquitted upon the failure of the police officers to comply with the strict requirements of Section 21 of Republic Act No. 9165.

In *Pasay v. People*,<sup>20</sup> police officers received reports that certain individuals were playing *cara y cruz* in Barangay San Roque, Cardona, Rizal. When the police arrived at the area and approached the group of players, one of them recognized the officers and shouted, “*may mga pulis!*” causing the players to scamper and run away. The police caught up to one of the players, J-Ar Pasay, and in the course of his arrest, one plastic sachet of white crystalline substance, later identified as shabu, was recovered from him. He was charged with possession of illegal drugs but was later acquitted, also due to the police officers’ failure to comply with the strict requirements of Section 21 of Republic Act No. 9165. This Court, however, noted that “[m]ere receipt of a tip of the conduct of *cara y cruz* does not justify petitioner’s arrest.”<sup>21</sup>

This phenomenon seems to be confined to *cara y cruz*, since a search of cases involving *tong-its* only yields *People v. Monte*,<sup>22</sup> where police officers, acting on a tip that several persons along Boni Serrano Street, Quezon City were engaged in illegal gambling, descended upon a group playing *tong-its*. The group was arrested for illegal gambling. When one of the players, Henry Monte, was searched, police officers recovered six sachets of white crystalline substance, later identified as shabu. The accused was charged with possession of illegal drugs but was later acquitted due to

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the proximate company of at least two (2) persons, shall suffer the maximum penalties provided for in Section 11 of this Act, regardless of the quantity and purity of such dangerous drugs.

<sup>18</sup> 725 Phil. 268 (2014) [Per J. Reyes, First Division].

<sup>19</sup> G.R. No. 247630, July 28, 2020 [Notice, First Division].

<sup>20</sup> G.R. No. 248965, October 6, 2021 [Notice, Third Division].

<sup>21</sup> *Id.*

<sup>22</sup> G.R. No. 248876, November 10, 2021 [Notice, Second Division].

the police officers' failure to comply with the strict requirements of Section 21 of Republic Act No. 9165.

In other cases before this Court, a common defense for the accused in drugs cases was that they had been involved in *cara y cruz* when the police officers arrested and searched them.

In *People v. Roque*,<sup>23</sup> the accused, a barber, testified that police had come after persons who were found playing *cara y cruz* in front of his barbershop. He ran away with the players since police pointed a gun at them and alleged that he had been arrested for no apparent reason. He was later charged with possession of illegal drugs when police recovered a sachet of white crystalline substance, later identified as *shabu*, upon his arrest. He was eventually convicted of the charge.

In *People v. Dela Cruz*,<sup>24</sup> the accused testified that he was with a friend who was playing *cara y cruz* when police officers suddenly arrived. They ran but were later caught and arrested. The accused thought he was being charged with illegal gambling but was later surprised to learn he was being charged with the sale of illegal drugs. He was eventually convicted of the charge.

In *People v. Goyena*,<sup>25</sup> the accused testified that he had been playing *cara y cruz* with several other persons. When he went to relieve himself, he was accosted by persons later identified as police officers, handcuffed. He alleged that he felt items were being inserted in his pocket. When he was searched, they retrieved a plastic sachet of what looked like *tawas*, but was later identified as *shabu*. He denied the accusation against him and believed he was merely arrested for illegal gambling. He was eventually convicted for the sale of illegal drugs.

In *Villasana v. People*,<sup>26</sup> the accused testified that he was in his jeepney parked nearby several persons playing *cara y cruz* when police officers arrived and started accosting the players. He alleged that one of the officers told him to alight his jeepney, and when he did, he was forced to board their car. He was later brought to the barangay hall and was told that he would be charged with a drug-related offense. He was eventually acquitted due to the police officers' failure to comply with the strict requirements of Section 21 of Republic Act No. 9165.

In *People v. Colabres*,<sup>27</sup> the accused testified that he was betting in a

<sup>23</sup> G.R. No. 200791, October 8, 2014 [Notice, First Division].

<sup>24</sup> 783 Phil. 620 (2016) [Per J. Peralta, Third Division].

<sup>25</sup> 852 Phil. 725 (2019) [Per J. Del Castillo, First Division].

<sup>26</sup> 861 Phil. 789 (2019) [Per J. Leonen, Third Division].

<sup>27</sup> G.R. No. 240752, January 19, 2021 [Notice, First Division].



*cara y cruz* game when he was apprehended and taken to Camp Karingal. He alleged that the police were trying to extort money from him, and failing to do so, they took a picture of him with some money and a small plastic sachet of white crystalline substance. He was later charged with the sale of illegal drugs, but was eventually acquitted due to the police officers' failure to comply with the strict requirements of Section 21 of Republic Act No. 9165.

In *People v. Katada*,<sup>28</sup> the accused testified that he was playing *cara y cruz* with several others when they were warned about police presence in the area. The players scampered away, but he was the only one caught. He alleged that he was searched and that nothing was recovered from him, but when the police searched the ground, they found a sachet of *shabu*. He was later charged with the sale and possession of illegal drugs, of which he was subsequently convicted.

In *CICL XXX v. People*,<sup>29</sup> the minor accused testified that he was told by a police officer to go with him to a nearby basketball court where he sat with other individuals who were arrested for playing *cara y cruz*, and while a video recording of them was being taken, they were shown a sachet of marijuana and a glass tube pipe. They were then ordered to board a patrol car and were transported to the police station. All accused were eventually acquitted due to the police officers' failure to comply with the strict requirements of Section 21 of Republic Act No. 9165.

These are, however, merely a listing of cases showing the defenses of the accused. In the earlier set of cases, the common pattern appears to be that the arrest for the playing of *cara y cruz* (or *tong-its*) was the prelude to a seemingly valid warrantless search, where illegal drugs were later recovered from the accused. This is the precise factual situation in this case.

It should be pointed out that there is a dearth of Supreme Court cases on the violation of Presidential Decree No. 1602 for the playing of *cara y cruz*, showing that either the cases prosecuted so far were too insignificant for this Court to publish or that there is a questionable lack of vigor in its prosecution. Should petitioners be found guilty, this case would remain the only precedent for it. Thus, we must take a second hard look at the offense itself, and why it remains punishable under the law.

## II

This Court has stated that "[a]s a rule, all forms of gambling are

<sup>28</sup> G.R. No. 252162, September 15, 2021 [Notice, Third Division].

<sup>29</sup> 920 Phil. 418 (2022) [Per J. Hernando, Second Division].

illegal.”<sup>30</sup> Gambling was seen by this Court as “an evil that . . . undermines the social, moral, and economic growth of the nation”<sup>31</sup> or a moral wrong that should be eradicated:

More important still, the courts cannot but realize that gambling, in its larger sense as well as in its restricted sense, is an act beyond the pale of good morals, which, for the welfare of the Filipino people, should be exterminated. The suppression of the evil does not interfere with any of the inherent rights of citizenship. The pernicious practice is rightfully regarded as the offspring of idleness and the prolific parent of vice and immorality, demoralizing in its association and tendencies, detrimental to the best interests of society, and encouraging wastefulness, thriftlessness, and a belief that a livelihood may be earned by other means than honest industry. To be condemned in itself, it has the further effect of causing poverty, dishonesty, fraud, and deceit. Many a man has neglected his business and mortgaged his integrity to follow the fickle Goddess of the cards. Many a woman has wasted her hours and squandered her substance at the gambling board while home and children were forgotten. It is highly proper that this pastime should be subject to the control of restraints imposed by the ordinances of local governments peculiarly afflicted by the evil.<sup>32</sup> (Citations omitted)

Gambling was considered a crime against public morals and was prohibited under Articles 195 to 199 of the Revised Penal Code. Acts considered as illegal gambling were “monte, jueteng or any other form of lottery, policy, banking, or percentage game, dog races, or any other game of scheme the result of which depends wholly or chiefly upon chance or hazard,”<sup>33</sup> “importation, sale and possession of lottery tickets or advertisements,”<sup>34</sup> “betting in sports contests,”<sup>35</sup> illegal betting in horse races,<sup>36</sup> and illegal cockfighting.<sup>37</sup>

In 1975, former President Ferdinand E. Marcos (Marcos) enacted Presidential Decree No. 771, which revoked the authority of local governments “to issue licenses, permits or any form of franchise to operate, maintain and establish horse and dog race tracks, jai-alai or other forms of gambling.”<sup>38</sup> The transfer of authority to the national government was in response to the “need to consolidate all the efforts of the government to eradicate and minimize vices and other forms of social ills in pursuance of the social and economic development program under the new society.”<sup>39</sup>

<sup>30</sup> *Yun Kwan Byung v. Philippine Amusement and Gaming Corp.*, 623 Phil. 23, 39 (2009) [Per J. Carpio, Second Division].

<sup>31</sup> *People v. Punto*, 68 Phil. 481, 482 (1939) [Per J. Laurel, First Division].

<sup>32</sup> *U.S. v. Salaveria*, 39 Phil. 102, 112 (1918) [Per J. Malcolm, *En Banc*].

<sup>33</sup> REV. PEN. CODE, art. 195.

<sup>34</sup> REV. PEN. CODE, art. 196.

<sup>35</sup> REV. PEN. CODE, art. 197.

<sup>36</sup> REV. PEN. CODE, art. 198.

<sup>37</sup> REV. PEN. CODE, art. 199.

<sup>38</sup> Presidential Decree No. 771 (1975), sec. 1.

<sup>39</sup> Presidential Decree No. 771 (1975), Second Whereas Clause.

In 1976, Marcos created the National Gaming Commission under Presidential Decree No. 956, which shall, among others, “[s]upervise and regulate all gaming authorized by law such as casino gambling, horse racing, jai alai and cockfighting.”<sup>40</sup>

In 1977, Marcos created the Philippine Amusement and Gaming Corporation (PAGCOR) under Presidential Decree No. 1067-A, “[t]o centralize and integrate the right and authority to operate and conduct games of chance into one corporate entity to be controlled, administered and supervised by the government.”<sup>41</sup> The subsequent Presidential Decree No. 1602-B stressed that management and supervision “can only be effectively exercised if the operation and conduct of games of chance is operated by or thru a government owned/controlled corporation.”<sup>42</sup>

PAGCOR was created in the advent of the New Society “to tap potential resources from which funds can be generated to finance its many infrastructure and socio-civic development projects,”<sup>43</sup> “to provide for more amusement and recreation places that can serve as additional tourist attractions for foreign visitors,”<sup>44</sup> and “to prevent the proliferation of illegal casino/s or club/s conducting games of chance in the rampant manner they were being undertaken.”<sup>45</sup>

By June 2, 1978, Presidential Decree No. 1399 declared that “it is now the desire of the government to fully develop and exploit casino operations as a source of revenue to finance important infra-structure and socio-civic projects”<sup>46</sup> following the apparent success of PAGCOR’s floating casino “Philippine Tourist I.”<sup>47</sup> A percentage of revenues from casino franchises were allocated for “(a) Flood Control; (b) Sewerage and Sewage; (c) Nutritional Programs; (d) Population Control; (d) ‘*Tulungan ng Bayan*’ Centers, [and] (e) Beautification”<sup>48</sup> projects in Metro Manila. During this period, management of these projects fell to former First Lady Imelda R. Marcos, who had been appointed governor of Metro Manila from 1975 to 1986.<sup>49</sup> Laws relating to PAGCOR were eventually consolidated in Presidential Decree No. 1869,<sup>50</sup> which serves as PAGCOR’s charter.

<sup>40</sup> Presidential Decree No. 956 (1976), sec. 2(c).

<sup>41</sup> Presidential Decree No. 1067-A (1977), sec. 1(1).

<sup>42</sup> Presidential Decree No. 1067-B (1977), Third Whereas Clause.

<sup>43</sup> Presidential Decree No. 1067-A (1977), First Whereas Clause.

<sup>44</sup> Presidential Decree No. 1067-A (1977), Second Whereas Clause.

<sup>45</sup> Presidential Decree No. 1067-A (1977), Third Whereas Clause.

<sup>46</sup> Presidential Decree No. 1399 (1978), First Whereas Clause.

<sup>47</sup> Presidential Decree No. 1399 (1978), Second Whereas Clause. An innocuous search into the Philippine Tourist I casino leads to a Washington Post news article “*Marcos’ Friends Said to Profit From Casinos*” by Jay Mathews and Bernard Wideman, September 17, 1978, available at <https://www.washingtonpost.com/archive/politics/1978/09/18/marcos-friends-said-to-profit-from-casinos/e0b897b5-559a-4ab3-b74d-8fa20dae4ca3/> (last accessed on [date]).

<sup>48</sup> Presidential Decree No. 1399 (1978), sec. 2.

<sup>49</sup> See Presidential Decree No. 824 (1975), Creating the Metropolitan Manila and the Metropolitan Manila Commission and for Other Purposes.

<sup>50</sup> Presidential Decree No. 1869 (1983), Consolidating and Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement

Just nine days from the creation of PAGCOR, or on June 11, 1978, Marcos enacted Presidential Decree No. 1602, repealing Article 195 to 199 of the Revised Penal Code and providing stricter penalties for:

[A]ny illegal or unauthorized activities or games of cockfighting, jueteng, jai alai or horse racing to include bookie operations and game fixing, numbers, bingo and other forms of lotteries; cara y cruz, pompiang and the like; 7-11 and any game using dice; black jack, lucky nine, poker and its derivatives, monte, baccarat, cuajao, pangguingue and other card games; paik que, high and low, mahjong, domino and other games using plastic tiles and the likes; slot machines, roulette, pinball and other mechanical contraptions and devices; dog racing, boat racing, car racing and other forms of races, basketball, boxing, volleyball, bowling, pingpong and other forms of individual or team contests to include game fixing, point shaving and other machinations; banking or percentage game, or any other game scheme, whether upon chance or skill, wherein wagers consisting of money, articles of value or representative of value are at stake or made[.]<sup>51</sup>

The increase of penalties was for the purpose of making them “more effective in combating this social menace which dissipate the energy and resources of our people.”<sup>52</sup>

The penalties were again increased in 2004 with the enactment of Republic Act No. 9287,<sup>53</sup> which condemned illegal gambling “as . . . an influential factor in an individual’s disregard for the value of dignified work, perseverance and thrift since instant monetary gains from it are being equated to success, thereby becoming a widespread social menace and a source of corruption.”<sup>54</sup>

PAGCOR, in the meantime, was “granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five years, the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e. basketball, football, bingo, etc. except jai-alai, whether on land or sea”<sup>55</sup> with the enactment of Republic Act No. 9487<sup>56</sup> on June 20, 2007.

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and Gaming Corporation (PAGCOR).

<sup>51</sup> Presidential Decree No. 1602 (1978), sec. 1(a)(1).

<sup>52</sup> Presidential Decree No. 1602 (1978), Second Whereas Clause. Letter of Instruction No. 816 (1979) excluded “games of domino, bingo, poker when not played with five cards stud, cuajo, pangguingue and mahjong” “provided that they are played as parlor games or for home entertainment” and “they are not played in places habitually used for gambling and the betting is not disguised to defeat the intent of Presidential Decree No. 1602.”

<sup>53</sup> Republic Act No. 9287 (2004), An Act Increasing the Penalties for Illegal Numbers Games, Amending Certain Provisions of Presidential Decree No. 1602, and for Other Purposes.

<sup>54</sup> Republic Act No. 9287 (2004), sec. 1.

<sup>55</sup> Presidential Decree No. 1869 (1983), sec. 10.

<sup>56</sup> Republic Act No. 9487 (2007), An Act Further Amending Presidential Decree No. 1869, Otherwise Known as PAGCOR Charter.

PAGCOR operates 10 major casinos all over the country, as well as mini-casinos, slot machine arcades and its PAGCOR clubs.<sup>57</sup> As of December 31, 2021, income remitted by PAGCOR from table games, electronic gaming machines, bingo operations, eSabong operations, licensed casinos, and offshore gaming operations amounted to PHP 32,631,536,964.00,<sup>58</sup> with PHP 2,971,237,597.55 remaining uncollected from Philippine Offshore Gaming Operations.<sup>59</sup>

The message from this is clear: the State will condone a social menace for so long as profit can be had from it but will not hesitate to punish its citizens if there is none.

It is this discomfoting thought that guides the resolution of the present case before us. Billions of revenues from Philippine Offshore Gaming Operations remained uncollected for the past five years<sup>60</sup> and yet the State must exhaust its executive and judicial resources to prosecute small-time offenders such as petitioners in this case.

The very purpose of the law, that is, to combat “this social menace which dissipate the energy and resources of our people,”<sup>61</sup> has lost its meaning, since gambling is regularly done in casinos and is condoned by the government mandated to eradicate it.

It has also not escaped my attention that there are no exemptions for *cara y cruz* unlike games played in casinos. As it is structured, the law targets only the poor, or those who do not have enough resources to play in the government’s casinos. This unequal treatment of offenders on the basis

<sup>57</sup> Management Letter on the Audit of Philippine Amusement and Gaming Corporation For the year ended December 31, 2021, page 2, *Annual Audit Reports*, COMMISSION ON AUDIT website, available at <https://www.coa.gov.ph/reports/annual-audit-reports/aar-government-owned-and-or-controlled-corporations/#199-5359-philippine-amusement-and-gaming-corporation-1655769395> (last accessed on March 17, 2023).

<sup>58</sup> Management Letter on the Audit of Philippine Amusement and Gaming Corporation For the year ended December 31, 2021, page 3, *Annual Audit Reports*, COMMISSION ON AUDIT website, available at <https://www.coa.gov.ph/reports/annual-audit-reports/aar-government-owned-and-or-controlled-corporations/#199-5359-philippine-amusement-and-gaming-corporation-1655769395> (last accessed on March 17, 2023).

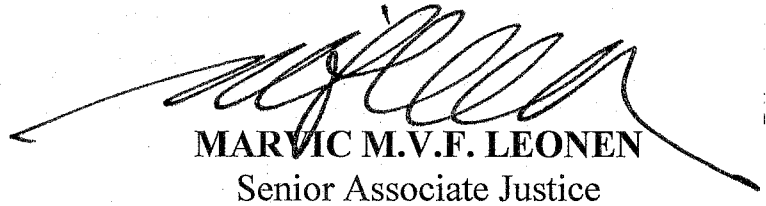
<sup>59</sup> Management Letter on the Audit of Philippine Amusement and Gaming Corporation For the year ended December 31, 2021, page 6, *Annual Audit Reports*, COMMISSION ON AUDIT website, available at <https://www.coa.gov.ph/reports/annual-audit-reports/aar-government-owned-and-or-controlled-corporations/#199-5359-philippine-amusement-and-gaming-corporation-1655769395> (last accessed on March 17, 2023).

<sup>60</sup> Management Letter on the Audit of Philippine Amusement and Gaming Corporation For the year ended December 31, 2021, page 6, *Annual Audit Reports*, COMMISSION ON AUDIT website, available at <https://www.coa.gov.ph/reports/annual-audit-reports/aar-government-owned-and-or-controlled-corporations/#199-5359-philippine-amusement-and-gaming-corporation-1655769395> (last accessed on March 17, 2023).

<sup>61</sup> Presidential Decree No. 1602 (1978), Second Whereas Clause. Letter of Instruction No. 816 (1979) excluded “games of domino, bingo, poker when not played with five cards stud, cuajo, pangguinge and mahjong” “provided that they are played as parlor games or for home entertainment” and “they are not played in places habitually used for gambling and the betting is not disguised to defeat the intent of Presidential Decree No. 1602.”

of wealth is a blatant violation of the social justice clause.

**ACCORDINGLY**, I vote to **GRANT** the Petition. The March 27, 2019 Decision and July 23, 2019 Resolution in CA-G.R. CR No. 42211 should be **REVERSED** and **SET ASIDE**. Petitioners Robert Plan y Beloncio and Mark Oliver D. Enolva should be **ACQUITTED** for violation of Presidential Decree No. 1602.



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice