616 Phil. 449

THIRD DIVISION

[G.R. No. 169364, September 18, 2009]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. EVANGELINE SITON Y SACIL AND KRYSTEL KATE SAGARANO Y MEFANIA, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

> If a man is called to be a street sweeper, he should sweep streets even as Michelangelo painted, or Beethoven composed music, or Shakespeare wrote poetry. He should sweep streets so well that all the hosts of Heaven and Earth will pause to say, here lived a great street sweeper who did his job well.
>
> - Martin Luther King, Jr.

Assailed in this petition for review on certiorari is the July 29, 2005 Order[1] of Branch 11, Davao City Regional Trial Court in Special Civil Case No. 30-500-2004 granting respondents' Petition for Certiorari and declaring paragraph 2 of Article 202 of the Revised Penal Code unconstitutional.

Respondents Evangeline Siton and Krystel Kate Sagarano were charged with vagrancy pursuant to Article 202 (2) of the Revised Penal Code in two separate Informations dated November 18, 2003, docketed as Criminal Case Nos. 115,716-C-2003 and 115,717-C-2003 and raffled to Branch 3 of the Municipal Trial Court in Cities, Davao City. The Informations, read:

> That on or about November 14, 2003, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, willfully, unlawfully and feloniously wandered and loitered around San Pedro and Legaspi Streets, this City, without any visible means to support herself nor lawful and justifiable purpose.[2]

Article 202 of the Revised Penal Code provides:

> Art. 202. *Vagrants and prostitutes; penalty.* -- The following are vagrants:
>
> 1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;

2. Any person found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support;

3. Any idle or dissolute person who lodges in houses of ill fame; ruffians or pimps and those who habitually associate with prostitutes;

4. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose;

5. Prostitutes.

For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

Any person found guilty of any of the offenses covered by this articles shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

Instead of submitting their counter-affidavits as directed, respondents filed separate Motions to Quash[3] on the ground that Article 202 (2) is unconstitutional for being vague and overbroad.

In an Order[4] dated April 28, 2004, the municipal trial court denied the motions and directed respondents anew to file their respective counter-affidavits. The municipal trial court also declared that the law on vagrancy was enacted pursuant to the State's police power and justified by the Latin maxim "*salus populi est suprem(a) lex*," which calls for the subordination of individual benefit to the interest of the greater number, thus:

Our law on vagrancy was enacted pursuant to the police power of the State. An authority on police power, Professor Freund describes laconically police power "as the power of promoting public welfare by restraining and regulating the use of liberty and property." (Citations omitted). In fact the person's acts and acquisitions are hemmed in by the police power of the state. The justification found in the Latin maxim, salus populi est supreme (sic) lex" (the god of the people is the Supreme Law). This calls for the subordination of individual benefit to the interests of the greater number.In the case at bar the affidavit of the arresting police officer, SPO1 JAY PLAZA with Annex "A" lucidly shows that there was a prior surveillance conducted in view of the reports that vagrants and prostitutes proliferate in the place where the two accused (among other women) were wandering and in the wee hours of night and soliciting male customer. Thus, on that basis the prosecution should be given a leeway to prove its case. Thus, in the interest of substantial

> justice, both prosecution and defense must be given their day in Court: the prosecution proof of the crime, and the author thereof; the defense, to show that the acts of the accused in the indictment can't be categorized as a crime.[5]

The municipal trial court also noted that in the affidavit of the arresting police officer, SPO1 Jay Plaza, it was stated that there was a prior surveillance conducted on the two accused in an area reported to be frequented by vagrants and prostitutes who solicited sexual favors. Hence, the prosecution should be given the opportunity to prove the crime, and the defense to rebut the evidence.

Respondents thus filed an original petition for certiorari and prohibition with the Regional Trial Court of Davao City,[6] directly challenging the constitutionality of the anti-vagrancy law, claiming that the definition of the crime of vagrancy under Article 202 (2), apart from being vague, results as well in an arbitrary identification of violators, since the definition of the crime includes in its coverage persons who are otherwise performing ordinary peaceful acts. They likewise claimed that Article 202 (2) violated the equal protection clause under the Constitution because it discriminates against the poor and unemployed, thus permitting an arbitrary and unreasonable classification.

The State, through the Office of the Solicitor General, argued that pursuant to the Court's ruling in *Estrada v. Sandiganbayan*,[7] the overbreadth and vagueness doctrines apply only to free speech cases and not to penal statutes. It also asserted that Article 202 (2) must be presumed valid and constitutional, since the respondents failed to overcome this presumption.

On July 29, 2005, the Regional Trial Court issued the assailed Order granting the petition, the dispositive portion of which reads:

> WHEREFORE, PRESCINDING FROM THE FOREGOING, the instant Petition is hereby GRANTED. Paragraph 2 of Article 202 of the Revised Penal Code is hereby declared unconstitutional and the Order of the court a quo, dated April 28, 2004, denying the petitioners' Motion to Quash is set aside and the said court is ordered to dismiss the subject criminal cases against the petitioners pending before it.
>
> SO ORDERED.[8]

In declaring Article 202 (2) unconstitutional, the trial court opined that the law is vague and it violated the equal protection clause. It held that the "void for vagueness" doctrine is equally applicable in testing the validity of penal statutes. Citing *Papachristou v. City of Jacksonville*,[9] where an anti vagrancy ordinance was struck down as unconstitutional by the Supreme Court of the United States, the trial court ruled:

> The U.S. Supreme Court's justifications for striking down the Jacksonville Vagrancy Ordinance are equally applicable to paragraph 2 of Article 202

of the Revised Penal Code.

Indeed, to authorize a police officer to arrest a person for being "found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support" offers too wide a latitude for arbitrary determinations as to who should be arrested and who should not.

Loitering about and wandering have become national pastimes particularly in these times of recession when there are many who are "without visible means of support" not by reason of choice but by force of circumstance as borne out by the high unemployment rate in the entire country.

To authorize law enforcement authorities to arrest someone for nearly no other reason than the fact that he cannot find gainful employment would indeed be adding insult to injury.[10]

On its pronouncement that Article 202 (2) violated the equal protection clause of the Constitution, the trial court declared:

The application of the Anti-Vagrancy Law, crafted in the 1930s, to our situation at present runs afoul of the equal protection clause of the constitution as it offers no reasonable classification between those covered by the law and those who are not.

Class legislation is such legislation which denies rights to one which are accorded to others, or inflicts upon one individual a more severe penalty than is imposed upon another in like case offending.

Applying this to the case at bar, since the definition of Vagrancy under Article 202 of the Revised Penal Code offers no guidelines or any other reasonable indicators to differentiate those who have no visible means of support by force of circumstance and those who choose to loiter about and bum around, who are the proper subjects of vagrancy legislation, it cannot pass a judicial scrutiny of its constitutionality.[11]

Hence, this petition for review on certiorari raising the sole issue of:

WHETHER THE REGIONAL TRIAL COURT COMMITTED A REVERSIBLE ERROR IN DECLARING UNCONSTITUTIONAL ARTICLE 202 (2) OF THE REVISED PENAL CODE[12]

Petitioner argues that every statute is presumed valid and all reasonable doubts should be resolved in favor of its constitutionality; that, citing *Romualdez v. Sandiganbayan*,[13] the overbreadth and vagueness doctrines have special application to free-speech cases only and are not appropriate for testing the validity

of penal statutes; that respondents failed to overcome the presumed validity of the statute, failing to prove that it was vague under the standards set out by the Courts; and that the State may regulate individual conduct for the promotion of public welfare in the exercise of its police power.

On the other hand, respondents argue against the limited application of the overbreadth and vagueness doctrines. They insist that Article 202 (2) on its face violates the constitutionally-guaranteed rights to due process and the equal protection of the laws; that the due process vagueness standard, as distinguished from the free speech vagueness doctrine, is adequate to declare Article 202 (2) unconstitutional and void on its face; and that the presumption of constitutionality was adequately overthrown.

The Court finds for petitioner.

The power to define crimes and prescribe their corresponding penalties is legislative in nature and inherent in the sovereign power of the state to maintain social order as an aspect of police power. The legislature may even forbid and penalize acts formerly considered innocent and lawful provided that no constitutional rights have been abridged.[14] However, in exercising its power to declare what acts constitute a crime, the legislature must inform the citizen with reasonable precision what acts it intends to prohibit so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid.[15] This requirement has come to be known as the **void-for-vagueness doctrine** which states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."[16]

In *Spouses Romualdez v. COMELEC*,[17] the Court recognized the application of the void-for-vagueness doctrine to criminal statutes in appropriate cases. The Court therein held:

> At the outset, we declare that under these terms, the opinions of the dissent which seek to bring to the fore the purported ambiguities of a long list of provisions in Republic Act No. 8189 can be deemed as a facial challenge. An appropriate "as applied" challenge in the instant Petition should be limited only to Section 45 (j) in relation to Sections 10 (g) and (j) of Republic Act No. 8189 - the provisions upon which petitioners are charged. An expanded examination of the law covering provisions which are alien to petitioners' case would be antagonistic to the rudiment that for judicial review to be exercised, there must be an existing case or controversy that is appropriate or ripe for determination, and not conjectural or anticipatory.[18]

The first statute punishing vagrancy - Act No. 519 - was modeled after American vagrancy statutes and passed by the Philippine Commission in 1902. The Penal Code of Spain of 1870 which was in force in this country up to December 31, 1931 did not contain a provision on vagrancy.[19] While historically an Anglo-American concept of crime prevention, the law on vagrancy was included by the Philippine legislature as