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SO ORDERED.

Aquino (Chairman), Concepcion Jr., Escolin, Cuevas, and *Alampay, JJ.*, concur.

Abad Santos, J., is on leave.

SECOND DIVISION

[G.R. No. L-45749. August 16, 1985]

THE PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **FELICIDAD C. VILLALON, as DISTRICT JUDGE, COURT OF FIRST INSTANCE, BRANCH II, DAGUPAN CITY, ALFREDO DE VERA, as MUNICIPAL JUDGE of the MUNICIPAL COURT OF CALASIAO, FRANCISCO SENDAYEN *y* DE VERA, NICOLAS DOMALANTA *y* ROSARIO, ROLANDO GONZALES *y* MACCALAY, EPIFANIO MAMARADLO *y* DORIA, DANNY MAMARADLO *y* UMAGTANG, and MARCELO ROY *y* DE GUZMAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; JURISDICTION; MUNICIPAL COURTS HAVE ORIGINAL JURISDICTION WITH RESPECT TO THE BETTORS IN GAMBLING AND CONCURRENT JURISDICTION WITH COURTS OF FIRST INSTANCE WITH RESPECT TO THE MAINTAINERS AND BANKERS.**— Gambling is one of the offenses included in Section 87 (b) of the Judiciary Act of 1948, as amended. It is this Act — Rep. Act 296, as amended, which at that time governed and determined the jurisdiction of the various courts. Under said section, municipal courts would have original jurisdiction with respect to the bettors in view of the imposable penalty and concurrent jurisdiction with Courts of First Instance with respect

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to the Maintainers and Bankers considering the higher penalty prescribed by law for them.

2. **ID.; ID.; ID.; COURT FIRST ACQUIRING JURISDICTION EXCLUDES THE OTHER COURTS; CASE AT BAR.**— As it is axiomatic that the court first acquiring jurisdiction excludes the other courts then in the instant case, it would be the Municipal Court of Calasiao, Pangasinan where the criminal complaint was initially filed that should hear and decide the gambling case, excluding any other court from obtaining jurisdiction over said case and regardless of the varying penalties that may be imposed on the different accused.

RESOLUTION

ALAMPAY, *J.*:

This case was originally instituted in this Tribunal by the petitioner, Alicia G. Decano, as Assistant Provincial Fiscal of Pangasinan, asking Us to settle the question as to which court has jurisdiction to try a case for violation of gambling laws where there are several accused involved, one of whom is alleged to be the Banker, another a Maintainer and the rest mere bettors in the prohibited game. In the Resolution of this Court, dated March 14, 1977, the title of this case was ordered changed so as to have the People of the Philippines correctly appear as the petitioner.

On March 15, 1976, the Station Commander of Calasiao, Pangasinan charged the private respondents herein before the Municipal Court of said town for Violation of Article 195 of the Revised Penal Code. The complaint against the accused was later amended on June 3, 1976, to rectify an inadvertent omission as to the date of the commission of said offense. (Amended Complaint, Annex "A" of Petition, *Rollo*, p. 21).

The amended complaint points to Francisco Sendayen *y* de Vera as the Maintainer-operator, Roland Gonzales *y* Macaalay as the Banker, and the rest of the accused as bettors in the prohibited game of "Lucky 9."

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On June 26, 1976, the accused, who are now the private respondents in the case at bar, filed a motion to quash the criminal case lodged against them, contending that more than one offense is charged in the complaint, one of which would fall within the original exclusive jurisdiction of the Municipal Court while the other falls within the exclusive original jurisdiction of the then Court of First Instance, on account of the penalties that may be imposed on the respective accused. It was thus averred that two separate criminal complaints should have been filed, one in the Municipal Court and the other in the then Court of First Instance.

The Assistant Provincial Fiscal opposed said motion to quash on the ground that the complaint actually charges but one offense and that is the Violation of Article 195 of the Revised Penal Code. And on the fact that the highest imposable penalty is within the exclusive jurisdiction of the Court of First Instance, it was the submission of the prosecution that the Municipal Court should only conduct a preliminary investigation and thereafter remand the case to the Court of First Instance for further proceedings.

In an order dated July 21, 1976, respondent Municipal Judge directed the prosecution to either file an amended information excluding the alleged Banker and Maintainer or to proceed with the trial of the case with respect to the accused bettors but excluding the alleged Banker and Maintainer from the formal charges, as the penalties for which the latter two may be held liable can be imposed only by a Court of First Instance. Petitioner filed a motion for reconsideration of the said Order which was, however, denied by respondent Municipal Judge on August 9, 1976.

Assistant Provincial Fiscal Alicia G. Decano thereupon filed a petition for *certiorari* and *mandamus* in the Court of First Instance of Pangasinan, Branch II, presided over by respondent District Judge Felicidad C. Villalon. In said petition, she prays that the questioned Order of the Municipal Court dated July 21, 1976 be vacated and that the respondent Municipal Judge be ordered to conduct a preliminary investigation and, thereafter,

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remand the gambling case to the Court of First Instance should the evidence received so warrant.

Resolving the case, the respondent Judge of the Court of First Instance dismissed the petition for *certiorari* and *mandamus* on December 29, 1976, stating as reasons therefor, the following:

"This Court finds nothing wrong with the Order as the Municipal Judge has acted within his jurisdiction considering that under the Judiciary Act of 1948 violation of the Gambling Laws falls within the original jurisdiction of the Municipal Court and considering that the penalty for a banker or maintainer set forth under Art. 195 of the RPC exceeds the jurisdiction of the Municipal Court, preliminary investigation can be had as the Municipal Court has to proceed, as directed, with the trial of the case on the merits over the bettors.

"The Municipal Court then has not abused its judicial discretion. There could not be splitting the causes of action because the trial of the case with regards to the alleged bettors clearly pertains to the Municipal Court, whereas with regards to the alleged banker or maintainer, with the Court of First Instance and, as directed, considering the different imposable penalties, the complaints could be separated if the evidence of the prosecution warrants.

"WHEREFORE, premises considered, this Court hereby orders the petition dismissed and hereby orders the criminal case of which the Municipal Judge voluntarily suspended to proceed as directed." (Annex "C" of Petition, *Rollo*, pp. 39-41).

Gambling is one of the offenses included in Section 87 (b) of the Judiciary Act of 1948, as amended. It is this Act — Rep. Act 296, as amended, which at that time governed and determined the jurisdiction of the various courts. Under said section, municipal courts would have original jurisdiction with respect to the bettors in view of the imposable penalty and concurrent jurisdiction with Courts of First Instance with respect to the Maintainers and Bankers considering the higher penalty prescribed by law for them.

In the case of *People vs. Nazareno*, 70 SCRA 531, it has been clearly stated that —

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"(1) There is the concurrent jurisdiction over the eleven offenses (gambling, assaults, larceny, etc.) enumerated in paragraph (b) formerly (c) of Section 87 as long as the penalty exceeds six months' imprisonment or a fine of ₱200.00 (*People vs. Pamon, infra; People vs. Laba, infra; People vs. Valencia*, L-29396, August 29, 1969, 29 SCRA 252; *People vs. Tapayan*, L-26885, November 28, 1969, 30 SCRA 529).

"There is no maximum limit as to the penalty to which the concurrent jurisdiction extends in those eleven crimes. The inferior court's jurisdiction over these offenses is independent of the penalty. "(*Natividad vs. Roblen*, 87 Phil. 834).

As it is axiomatic that the court first acquiring jurisdiction excludes the other courts (*Laguian vs. Baltazar*, 31 SCRA 551) then in the instant case, it would be the Municipal Court of Calasiao, Pangasinan where the criminal complaint was initially filed that should hear and decide the gambling case, excluding any other court from obtaining jurisdiction over said case and regardless of the varying penalties that may be imposed on the different accused.

The contention of the Assistant Provincial Fiscal that the Municipal Court should only conduct a preliminary investigation and remand the case to the Court of First Instance for further proceedings is clearly untenable for lack of any legal basis whatsoever.

WHEREFORE, the Court resolved to SET ASIDE the Resolution of the Respondent District Judge, dated December 29, 1976 rendered in Civil Case No. 3757 insofar as it declares that the case against the accused Francisco Sendayen *y* de Vera and Rolando Gonzales *y* Macaalay, alleged Maintainer-operator and Banker, respectively, in the stated gambling case — Criminal Case No. 062-76, be the subject of a preliminary investigation by the Municipal Court and for remand of the case to the Court of First Instance should his investigation so warrants. The Municipal Court of Calasiao, Pangasinan, is hereby directed to proceed with the trial of Criminal Case No. 062-76 against all the accused named in the complaint and thereafter decide said case on the merits.

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No costs.

SO ORDERED.

Aquino (Chairman), Concepcion Jr., Escolin, and *Cuevas, JJ.*, concur.

Abad Santos, J., is on leave.

FIRST DIVISION

[G.R. No. L-41605. August 19, 1985]

ROGELIO PRING and ALBERTO (ROBERTO) ROXAS, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CONSPIRACY; PRESENT IN CASE AT BAR.**— The evidence pointed out to this Court, however, indicate that the acts and behavior of the accused reveal their common purpose to assault and inflict harm upon Loreto Navarro and the latter's group. There was a concerted execution of that common purpose from which the element of conspiracy can be reasonably deduced. The evidence of a common agreement to assault Loreto Navarro and his group can be clearly inferred from the fact that when the herein petitioners and his co-accused saw the group of Loreto Navarro at the Abucay Canteen, some of the accused entered the canteen, while the others stayed outside.

2. **CRIMINAL LAW; CONSPIRACY; LIABILITY OF CONSPIRATORS; CASE AT BAR.**— While the acts done by the petitioners herein vary from those of their co-accused, there