

6 Phil. 376

[ G.R. No. 2358. August 22, 1906 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. THE CHINAMAN ANG KAN KO, DEFENDANT AND APPELLANT.**

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

**WILLARD, J.:**

The Chinese firm of Hieng Cheong Shing was organized for the, purpose of fraudulently importing goods into the Philippine Islands without payment of the lawful duties thereon. The defendant was a member of that firm from the date of its organization. On the 25th of August, 1903, he made the declaration required by law at the custom-house for the entry of certain goods imported by the firm of which he was a member. The invoice which he presented with the declaration stated that three packages contained imitation butter. This statement was false, the packages in question containing aniseed oil and pearl buttons. The entry was allowed, the duties were paid on the goods as imitation butter, and they were delivered to the defendant's firm. The duties on aniseed oil and buttons were much higher at that time than on imitation butter. The principal claim of the defendant is that he did not know that the declaration which he signed and the invoice which he presented were false, and that he supposed that the invoice and declaration correctly stated the character Of the goods. The evidence upon this point is in our opinion, sufficient to sustain the conviction. That the firm was engaged in the business of fraudulently importing goods in violation of the customs laws was conclusively proved, and it was also proved that the defendant, when arrested, pointed out to the officers the place where the buttons were to be found.

The defendant was prosecuted for a violation of section 017 of Act No. 355. That section is in part as follows:

“If any owner, importer, consignee, agent, or other person shall make or attempt to make any entry, of imported \* \* \* merchandise by means of any false or

fraudulent invoice, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall be guilty of any willful act or omission by means whereof the Government of the Philippine Islands shall be deprived of the lawful duties, or any portion thereof, embraced or referred to in such invoice, affidavit, letter, paper, or statement, or affected by such act or omission, \* \* \* such person shall, upon conviction, be fined for each offense a sum not exceeding five thousand dollars, or be, imprisoned for a time not exceeding two years, or both, in the discretion of the court.”

The complaint in this case charged the defendant with the crime of making an entry of imported dutiable merchandise by means of a false and fraudulent invoice. It then alleged that the defendant imported from Hongkong certain merchandise, a part of which was declared as imitation butter, and that the said declaration was false and fraudulent. It is claimed by the defendant that the crime of which the defendant is accused is that of the importation of goods by means of a false invoice, whereas the complaint itself declares that the declaration was false and fraudulent. There was evidence in the case to show that the invoice always accompanied the declaration; that the declaration would not be received without the invoice, and that they were parts of one document. This claim of the defendant can not, therefore, be sustained.

The court below sentenced the defendant to confinement in the prison of Bilibid for six months and to pay a fine of 1,000 pesos, it being provided in the judgment that if the fine was not paid the defendant should suffer corresponding additional imprisonment until the fine was satisfied at the rate of one day for each 1½ pesos.

The Solicitor-General in his brief suggests that the subsidiary imprisonment is not justified by the law. The Customs Administrative Act, No. 355, took effect in Manila on February 7, 1902. Section 291 of that act authorized subsidiary imprisonment on nonpayment of fines imposed in criminal prosecutions under the act, such imprisonment to be regulated by the provisions of the Penal Code. Act No. 653 took effect on March 4, 1903. This act provided for subsidiary imprisonment on the nonpayment of fines at the rate of not less than 20 cents, United States money, per day, the rate to be fixed in the judgment. This act was in force when the offense in this case was committed on the 25th of August, 1903. As we construe this act, it related exclusively to fines imposed by the administrative officers, either by the collectors of the various ports throughout the Islands or by the Insular Collector, and did not

in any way relate to fines imposed by the courts for violation of the criminal features of the law. It did not repeal section 291 of Act No. 355, expressly, and we hold that it was not repealed by implication ; so that at the time the criminal act in this case was committed the subsidiary imprisonment which could be imposed for nonpayment of a fine was regulated by the Penal Code.

Article 50 of the Penal Code provides, in part, as follows;

“ART. 50. If the person sentenced should not have property to satisfy the pecuniary liabilities included in numbers one, three, and five of the preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for every twelve and one-half pesetas, according to the following rules:

“(1) If the principal penalty imposed is to be undergone by the criminal confined in a penal institution, he shall continue therein, although said detention can not exceed one-third of the term of the sentence, and in no case can it exceed one year.”

Act No. 864 took effect on September 2, 1903, after the offense in this case had been committed. This act expressly repealed section 291 of Act No. 355 and in other parts of the act subsidiary imprisonment was provided for in case of the nonpayment of fines, at the rate of not less than 40 centavos a day, the exact rate to be fixed in the decision of the court.

It is not necessary to decide, and we do not decide, whether the fines referred to in this act are administrative fines or whether they include also fines like the one in question in this case imposed by the court as a punishment for a crime, for in no event can the act be made applicable to this offense which was committed before its passage. The imprisonment imposed by this act as is seen is much more severe than that provided for in the Penal Code. In accordance with the provisions of the Penal Code, and section 291, above quoted, the rate must have been 2₰ pesos per day while under Act No. 864 it might be as low as 40 centavos. Under the Penal Code in no event could the subsidiary imprisonment exceed one-third of the principal penalty. In this case if the penalty were imposed in accordance with section 291 the defendant could not be imprisoned for more than four months for nonpayment of the fine, but under Act No. 864 there is no limitation of that character and at the rate of 1₰ pesos a day he could be imprisoned for nearly two years.

Section 5 of the act of Congress of July 1, 1902, provides, "that no *ex post facto* law or bill of attainder shall be enacted." This provision relates exclusively to criminal cases. Act No. 864 is, so far as the offense in this case is concerned, an *ex post facto* law and therefore null and void in relation thereto. The defendant can not be punished in accordance with this law.

When section 291, above referred to, was repealed by Act No. 864, no clause was inserted therein relating to offenses theretofore committed and as to which no final judgment had been rendered. It was nowhere provided in the law that as to those offenses the prior law should continue in force, but section 291 was repealed absolutely.

The judgment was entered in this case in February, 1904. At that time said section 291 was not in force, nor was there then in force any valid law by which subsidiary imprisonment could be imposed upon this defendant for nonpayment of the fine. The part of the judgment imposing such subsidiary imprisonment was not warranted by the law and the judgment is modified by striking it out. In all other respects the judgment of the court below is affirmed, with the costs of this instance against the appellant. At the expiration of ten days after the date of final judgment the case will be remanded to the lower court for proper action. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.*

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