

102 Phil. 1025

[ G. R. No. L-12724. January 31, 1958 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. CARIDAD  
CAPISTRANO, DEFENDANT AND APPELLANT.**

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

**BAUTISTA ANGELO, J.:**

Caridad Capistrano was charged in the Court of First Instance of Rizal with the violation of Circular No. 37, as implemented by Circular No. 60, Section 1 (b) of the Central Bank, in relation to Section 34 of Republic Act No. 265, committed as follows:

“The undersigned City Attorney accuses Caridad Capistrano of Violation of Circular No. 37, as implemented by Circular No. 60, Section 1 (b) of the Central Bank, in relation to section 34 of Republic Act No. 265, committed as follows:

“That on or about the 31st day of March, 1955, in the Manila International Airport, Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Caridad Capistrano, and outgoing Philippine resident who had booked passage and ready to leave the Philippines for Hongkong through Philippine Air Lines plane, did then and there wilfully, unlawfully and feloniously have in her possession and control, concealed in her person, in a sanitary pad (Kotex brand) the following, to wit:

“100 pcs at P50.00 each  
.....P5,000.00  
“Contrary to Law.”

A motion to quash having been denied, the accused entered a plea of not guilty. When the case was called for trial, however, she admitted the act alleged in the information but averred that said act did not constitute a public offense. Thereafter, without either the

prosecution or the defense adducing any evidence, the lower court rendered judgment finding the accused guilty and sentencing her to suffer one month imprisonment and to pay a fine of P200.00, with subsidiary imprisonment in case of insolvency, and to pay the costs. She appealed from this decision directly to this Court on purely questions of law.

In this appeal the accused reiterated her plea that the act alleged in the information does not constitute a public offense because Circular No. 60 of the Central Bank, the violation of which she is charged, is null and void, predicating her contention on the following grounds: (a) that it was not approved by the President of the Philippines as required by the Central Bank Act (Republic Act No. 265); (b) that the exercise of the powers by the Monetary Board of the Central Bank under Section 74 of said Act is authorized only during exchange crisis; (c) that the delegation by Congress to the Monetary Board of the power to declare the existence of an exchange crisis is unconstitutional; (d) that Circular No. 60 is *ultra vires* in that it treats of the licensee of the importation and exportation of Philippine currency which is alien to foreign exchange, the only subject of the authority of the Monetary Board to license under Section 74; and (e) that Circular No. 37 (now Circular No. 60) amends and enlarges the scope of Sections 2710 and 2711 of the Revised Administrative Code.

While there are good reasons for upholding the validity of Circular No. 60 of the Central Bank under the authority given to the Monetary Board by Section 14 of Republic Act No. 265 as interpreted by this Court in *People vs. Exconde*, 101 Phil., 1125 we don't deem it necessary however to go into a meticulous discussion of the issues raised by appellant, it being sufficient to state that, on the hypothesis that such circular is valid, the information suffers from a fatal defect in that it does not allege an important element which is considered indispensable to constitute a violation of the circular in question.

As expressly recited in the information, appellant is accused of violating Section 1 (b) of Circular No. 60 of the Central Bank the pertinent portions of which we quote:

“Section 1. The import and export of Philippine coins and notes including but not limited to drafts checks, money orders and/or other bills of exchange in Philippine pesos drawn on banks operating in the Philippines, or any order for payment in Philippine pesos, is prohibited without the necessary license issued by the Central Bank, except in the following cases;

\* \* \* \* \*

“(b) Outgoing Philippine residents and transient visitors leaving the Philippines may take with them Philippine coins and notes in an amount not exceeding P100, provided the coins do not exceed P5.” (Italics supplied)

From the above it is manifest that in order that the pertinent portion of the circular may be infringed, it is necessary to allege that the outgoing Philippine resident or transient visitor has taken or is about to take out of the Philippines Philippine coins and notes in excess of the exempted amounts *without the necessary license issued by the Central Bank*. An examination of the information does not show any averment of this element. This omission makes the charge alleged in the information insufficient to constitute an offense for which appellant may be convicted and rendered amenable to the penalty prescribed by law.

“\* \* \* The complaint, in a criminal case, must state every fact necessary to make out an offense. (U. S. vs. Cook, 17 Wall. (U.S.), 168.) The complaint must show, on its face that, if the facts alleged are true, an offense has been committed. It must state explicitly and directly every fact and circumstance necessary to constitute an offense.” (U. S., vs. Pompeya, 31 Phil., 245, 256-257)

“Where the information is not merely defective but it does not charge any offense at all, technically speaking that information does not exist in contemplation of law.” (People vs. Austria, 50 Off. Gaz., No. 5, p. 1967; 94 Phil., 897.)

Wherefore, the decision appealed from is hereby reversed. The appellant is acquitted and the sum of P5,000 confiscated from her ordered returned to her, with costs de oficio.

*Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.*

*Reyes, A., J., concurs in the result.*

