103 Phil. 271

[G. R. No. L-11324. March 29, 1958]

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. YU BAO, DEFENDANT AND APPELLANT.

D E C I S I O N

REYES, J.B.L., J.:

Charged in the Court of First Instance of Rizal with having violated Republic Act No. 1180, otherwise known as "An Act to Regulate the Retail Business," under the following information of October 2, 1954:

> "That on or about the 22nd day of May, 1954, in Quezon City, Philippines, the above-named accused, a person not a citizen of the Philippines, who prior to May 15, 1954, was not actually engaged in the retail business, obtained Permit No. 4345 to operate such retail business, and who after being required by the City Treasurer of Quezon City to surrender said permit No. 4345 and to desist from actually engaging in the retail business, did, then and there wilfully, unlawfully, and feloniously refuse to surrender said Permit No. 4345 and continues and actually engages in the retail business, contrary to the provisions of Republic Act No 1180." (Appellant's Brief, p. 72).

Appellant Yu Bao, upon arraignment, pleaded not guilty to the charge.

At the trial, the prosecution presented three witnesses; namely: Francisco Basa, assistant chief of the License Division of the Office of the Treasurer of Quezon City, who identified the license application of appellant Yu Bao, Exhibit "A", wherein appellant stated that he is the holder of Alien Certificate of Registration No. 32560, and affirmed that said application was signed by Yu Bao in his presence; Pedro S. Bolano, chief of the License and Taxes Division of the Office of the Treasurer of Quezon City, who testified that upon order of the City Mayor

to check up the remaining aliens affected by Republic Act No. 1180, he repaired to the store of appellant at No. 90, K-10th and Anonas Streets, Kamias, Quezon City, first on August 8, 1954, when he informed appellant to close his store and surrender his license, and again on October 12, 1954, when he found appellant's store still open for business, and that he reduced his findings into the memorandum, Exhibit "B"; and patrolman Leonardo San Jose, who asserted that he accompanied Bolano during the latter's inspection of aliens' stores on October 12, 1954, and identified his signature as witness on Bolano's memorandum, Exhibit "B".

After the prosecution had rested its case, the defense, instead of presenting its evidence, moved for the dismissal of the case on the grounds that (1) the law allegedly violated by the accused is unconstitutional, and (2) the evidence for the prosecution is allegedly insufficient to sustain the charge that accused Yu Bao is an alien, and that he had continued to engage in the retail business after he was asked to surrender his license. The defense asked that it be allowed to support said motion by memorandum. The court, however, denied this motion because counsel had already argued it orally, and forthwith pronounced sentence on the accused in open court, finding him guilty as charged and sentencing him to three years of *prision correccional*, to pay a fine of P3,000 and to suffer the corresponding subsidiary imprisonment in case of insolvency, and, after service of this sentence, to be deported to his country of origin. Later, the court rendered a written decision in the case. From the conviction, accused Yu Bao appealed to the Court of Appeals, which certified the case to us because it raises a constitutional question.

The appeal poses the following questions:

(1) The alleged unconstitutionally of the whole of Republic Act No. 1180;

(2) The alleged insufficiency of the prosecution's evidence to establish the elements of the crime charged; and

(3) The alleged unconstitutionality of the penal provisions of Republic Act No. 1180 when applied to appellant's case.

On the first question, we have already declared Republic Act No. 1180 constitutional in the recent case of Ichong *vs*. Hernandez, et al., (101 Phil., 115), promulgated May People *vs*. Yu Bao 31, 1957, wherein the same arguments now raised by appellant to challenge the constitutionality of said law were raised and rejected by us. Summarizing our reasons for declaring the law constitutional, we said in the Ichong case:

> "Resuming what we have set forth above we hold that the disputed law was enacted to remedy a real actual threat and danger to national economy posed by alien dominance and control of the retail business and free citizens and country from such dominance and control; that the enactment clearly falls within the scope of the police power of the state, through which and by which it protects its own personality and insures its security and future; that the law does not violate the equal protection clause of the Constitution because sufficient grounds exist for the distinction between alien and citizen in the exercise of occupation regulated, nor the due process of the law clause; because the law is prospective in operation and recognizes the privilege of aliens already engaged in the occupation and reasonably protects their privilege; that the wisdonm and efficacy of the law to carry out its objectives appear to us to be piainly evident—as a matter of fact it seems not only appropriate but actually necessary—and that in any case such matter falls within the prerogative of the legislature, with whose power and discretion the judicial department of the Government may not interfere; that the provisions of the law are clearly embraced in the title, and this suffers from no duplicity and has not misled the legislature of the segment of the population affected; and that it cannot be said to be void for supposed conflict with treaty obligations because no treaty has actually been entered into on the subject and the police power may not be curtailed or surrendered by any treaty or any other conventional agreement."

Appellant's next contention is that the prosecution had failed to establish the elements of the crime charged, namely, that he is an alien, and that he had engaged in the retail business prior to the filing of the information on October 12, 1953.

The fact of appellant's being an alien has been, we believe, sufficiently established by the prosecution. Francisco Basa, assistant chief of the license division of the Office of the Treasurer of Quezon City, testified that appellant personally applied for a license to open a retail People *vs.* Yu Bao store and signed his application in Basa's presence, and that in said application, appellant furnished the information that he is the holder of Alien Certificate of Registration No. 32580. Such information, supplied by appellant himself, amounts to an admission by appellant that he is an alien and has registered as such in accordance with law. Basa's categorical testimony that appellant made such admission in his application is not contradicted or overcome by any evidence for appellant, and is therefore, sufficient proof that appellant actually and in fact made said admission, which is receivable in

evidence, and binds appellant, who made it (sec. 7, Rule 123, Rules of Court).

What is more, appellant, in his motion for continuance of October 11, 1954 in the court below (Original Records, pp. 12-13), stated:

> "That if the Supreme Court should hold said Republic Act No. 1180 unconstitutional, the above-entitled case would have to be dismissed. On the other hand, *should the Court uphold said Act*, there would be no need to try the above-entitled case *for the accused would have to plead guilty:"*

The foregoing statement, which is in the nature of a judicial admission spread on the records of the case, is confirmatory proof of appellant's alienage.

Similarly, there is no merit in the claim that no violation of Republic Act No. 1180 on the part of appellant was proved by the prosecution under the present information filed on October 2, 1954.

Prosecution witness Pedro S. Bolano testified that on August 8, 1954, upon order of the Mayor of Quezon City requiring all aliens affected by Republic Act No. 1180 to surrender their licenses and discontinue their business, he (Bolano) and his men repaired, to appellant's store and notified appellant to surrender his license and close his store, with the warning that failure to do so would be a violation of Republic Act No. 1180 (t.s.n. pp. 18-20). This testimony shows that as of August 8, 1954, two months after the approval of Republic Act No. 1180, appellant was engaged in the retail business in violation of said law, and that act is enough to support his conviction under the information of October 2, 1954. Assuming, however, that prior to August 8, 1954, appellant did not know that such act became unlawful, he certainly became fully aware of it on that day, for he was then ordered by Bolano to surrender his license and close his store, otherwise he would be guilty of violating Republic Act No. 1180. Notwithstanding this notice, appellant was found to have his store still open for business on October 12, 1954, which proves that from August 8 to October 2, 1954 (the filing of the information), appellant had defied Bolano's order and persisted in his violation of Republic Act No. 1180. It is for this violation that appellant was charged and correctly found guilty.

Lastly, appellant would have us declare the penal provisions of Republic Act No. 1180 in the nature of an *ex post facto* law and, therefore, unconstitutional, if applied to his case, upon

the argument that although he was not yet engaged in the retail business on May 15, 1954,[1] he was issued a license to engage therein and had entered the retail business on May 22, 1954, prior to the approval of the Act on June 19, 1954; and yet his having so engaged, although legal at its inception, has been penalized and made criminal by the law. We also find this argument untenable. An *ex post facto* law is one that "makes an act done before the passage of a law, innocent when done, criminal and punish (es) such act * * *" (Mekin *vs.* Wolfe, 2 Phil., 74). Applied to appellant's case, Republic Act No. 1180 does not penalize this alien appellant for having engaged in the retail business prior to its approval; what the law penalizes is his having done so thereafter.

That appellant was, on May 22, 1954, before the approval of the law, licensed to engage in the retail business is no defense to his violation of the law *after* it had been approved and had taken effect, for the law operated to revoke all existing licenses to aliens, except those issued on or before May 15, 1954. The latter date was obviously selected in order to forestall any possibility of the law being rendered ineffective through a last-minute rush by aliens to engage in the retail trade.

We note that neither to the Quezon City authorities, nor to the court below, has the accused pleaded or proved that his staying in business after Republic Act No. 1180 was due to the exigencies of the liquidation of his commercial affairs. Manifestly, accused-appellant chose to defy the order of closure, speculating on the possibility that Republic Act No. 1180 would be declared unconstitutional, for the action to that effect was still pending when the appellant's case was tried. He must now abide by the result of his gamble and suffer the corresponding penalty.

Wherefore, the decision appealed from is affirmed with costs against the appellant. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Endencia, and *Felix, JJ.,* concur.

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[1] The law allows aliens who are actually engaged in the retail business on May 15, 1954 to continue to engage thereat, unless their license is forfeited, until their death or voluntary retirement from business.

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