

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LEONCIO LIM, DEFENDANT AND APPELLANT.

G.R. No. L-14432. July 26, 1960

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal from the decision of the Court of First Instance of Samar in Criminal Case No. 4032, the dispositive part of which reads as follows:

"In view of the above findings, the Court declares the accused Leoncio Lim guilty beyond reasonable doubt of the offense charged, and, considering his being a recidivist as an aggravating circumstance, convicts him to an imprisonment of six (6) Months, pay a fine of Two Hundred Pesos, with subsidiary imprisonment in case of insolvency, and the costs."

On March 13, 1954, the Secretary of Agriculture and Natural Resources, under authority granted him by Sections 3 and 4 of Act No. 4003 (Fisheries Act), issued Fishery Administrative Order (FAO) No. 37, Section 2 of which reads:

"Sec. 2. Prohibition.—It shall be unlawful for all kinds of trawl to operate in Maqueda and Carigara Bays, including Zumarraga Channel, from December 1st to May 31st, inclusive of each year, except as provided for in Section 3 of this Administrative Order."

On June 7, 1954, the same Secretary promulgated FAO 37-1, amending Section 2 of FAO No. 37 above quoted, so as to read as follows:

"Sec. 2. Prohibition.—It shall be unlawful for all kinds of trawl to operate in Maqueda, Villareal and Carigara Bays, including Zumarraga Channel except as provided for in Section three of this Fisheries Administrative Order."

On November 19, 1955, between five and six o'clock in the morning, Chief of Police Pamfilo Hilvano of Sumarraga, Samar, and two of his policemen named Agustin Albesa and Apolinario Nacional, were on board a motor boat, engaged on sea patrol in Maqueda Bay, between Basiao and Puro Islands, for the purpose of enforcing the provisions of FAO No. 37-1, regarding trawl fishing. While cruising over said area, they observed two fishing boats about 300 meters away, moving "to and fro * * * dragging their fish nets", obviously engaged in trawl fishing. After observing the two boats for some time and convinced that they were engaged in trawl fishing, the three policemen immediately gave chase to apprehend them. After going half the distance that separated them from the two boats, the three police officers found that said boats were the Helen (Ellen) II and the Florantor; and that Helen II was lifting its nets. The policemen continued in pursuit and when only about 20 meters from Helen II, they saw its nets already up. On board there was fish. Lim, owner of the boat, immediately hurried from the astern or rear of the vessel toward the bow where the steering wheel was located and gave the signal for full speed ahead. Because Helen II could outrun the boat of the peace officers, the latter could not catch up with it and they gave up the chase. However, they returned to the other boat, Florantor, and apprehended it.

On November 22, 1955, the Chief of Police of Zumarraga, Samar, filed with the Justice of the Peace Court of said town a criminal complaint against appellant for violation of Section 2, FAO No. 37-1. At the hearing, Lim presented no evidence. On April 16, 1956, the Justice of the Peace Court rendered judgment finding appellant guilty as charged and sentenced him. On appeal to the Court of First Instance of Samar, appellant was again found guilty and sentenced as aforementioned. The trial court also recommended the confiscation of the fishing license issued to him by the Bureau of Fisheries.

Appellant contends that Section 2 of FAO No. 37-1 is void because it is not only inconsistent with but is contrary to the provisions and spirit of Act No. 4003 as amended, because whereas the prohibition prescribed in said Fisheries Act was for any single period of time not exceeding five years duration, FAO No. 37-1 fixed no period, that is to say, it establishes an absolute ban for all time. This discrepancy between Act No. 4003 and FAO No. 37-1 was probably due to an oversight on the part of the Secretary of Agriculture and Natural Resources. Of course, in case of discrepancy, the basic Act prevails, for the reason that the regulation or rule issued to implement a law cannot go beyond the terms and provisions of the latter. It is possible that the Secretary contemplated the ban for the same period prescribed in Act No. 4003, but failed to state it in Section 2 of FAO No. 37-1. But should he have intended to make the ban for all time, then said FAO No. 37-1 would be inoperative in so far as it exceeds the period of five years for any single period of time; but it does not necessarily render void FAO No. 37-1. In this connection, the attention of the technical men in the offices of Department Heads who draft rules and regulations, is called to the importance and necessity of closely following the terms and provisions of the law which they intended to implement, this to avoid any possible misunderstanding or confusion as in the present case.

Appellant also claims that FAO No. 37-1 is discriminatory in that the prohibition is made applicable only to trawl fishermen and not to other persons engaged in fishing. This contention is untenable. The prohibition is not against a class of fishermen, but only against a method of fishing, such as trawl fishing. And it is only as regards certain areas. The reason behind the prohibition of this kind of fishing is well explained by the trial court in its decision, the pertinent portion of which we reproduce below with favor:

"Fisheries Administrative Order No. 37 is an implementation of Act No. 4003 for the preservation of our aquatic wealth. Considering the ways and means for catching: fish by trawling—the net being dragged in the bottom of the sea for hours—it is a fact that it is more destructive than fishing with dynamite. For while the latter destroys the aquatic animals within a certain area where the impact of the explosion is felt, the former destroys not only the fish but also its breeding places, its shelter and its food because the trawl plows and harrows the bottom of the sea where the net is dragged; and the area so harrowed is far more extensive because the dragging is for hours and even for days. And considering the size of the areas mentioned in the Fisheries Administrative Order No. 37-1 and the number of fishing boats trawling therein, the total destruction of their beds is but a question of months."

As to the guilt of appellant, we entertain no doubt. The evidence fully establishes the same. We can do no better than reproduce the pertinent portion of the appealed decision of trial Judge Fidel Fernandez who saw the witnesses testify and was in a position to gauge their credibility.

"The Court finds no cause for Chief of Police Pamfilo D. Hilvano to lie; no reason not to believe him. 'Ellen 2' was found inside the restricted area; and Leoncio Lim, the owner was on board. That she was not then fishing but only effecting the delivery of some net to 'Florantor 1', as claimed by Leoncio Lim, is indeed a clear fabricated excuse for his illegal fishing; the only one he thought more acceptable, considering the following facts which he could not deny: (1) that 'Ellen 2' was in the restricted area, (2) that she was moving slowly while her net was down, (3) that she was lifting her net from the sea when the motorboat where the policemen were boarded was speeding towards her, (4) that she had fish on board, and (5) that she made haste in pulling up her net and speeded away from the fast approaching raiders.

"Leoncio Lim resides in Mualbual. If it were true that 'Ellen 2' had to deliver some net to 'Florantor 1', there was no reason for her to proceed to Mahacob (Tarañgan) before delivering the said net to the 'Florantor 1' which was in the waters about Basiao Island; for these waters is on the way from Mualbual to Mahacob, and is nearer to the former. That he (Leoncio Lim) did not know where the 'Florantor 1' was at the time he left Mualbual, would not appear to be an acceptable excuse. From Mahacob he proceeded directly to the waters between Puro and Basiao where he found the 'Florantor V' without being informed of the said place while he was in Mahacob. Leoncio Lim could not argue either that there was no hurry in the delivery of the net, hence his going fishing first in Mahacob, because she went directly to the 'Florantor 1' for the alleged delivery without first dropping at Catbalogan for the disposal of the fish he alleged he caught in the waters of Mahacob. Catbalogan is on the way from Mahacob to about the waters between Puro and Basiao. Not to dispose of his catch (fish) as early as conveniently possible, is not the ordinary conduct of fishermen. In this case we have no explanation for such an extraordinary behaviour.

"The evidence is conclusive that the accused Leoncio Lim was, in the early hours of November 19, 1955, on board his fishing boat 'Ellen 2' which was then fishing with trawl in the jurisdictional waters of Zumarraga, Samar, between the islands of Puro and Basiao, inside the Maqueda Bay where it is unlawful for all kinds of trawl to operate in violation of and as penalized by Fisheries Administrative Order No. 37-1 in connection with Fisheries Administrative Order No. 37."

Appellant was caught red-handed by peace officers detailed to enforce the provisions of FAO No. 37-1; and this is not the first time that he was caught trawl fishing within the prohibited area. He was previously charged with and convicted of trawl fishing in the Justice of the Peace Court and was fined P50.00, plus costs. On two other occasions, his fishing boat was caught engaged in trawl fishing and he could and should have been charged with the offense, but it would appear that because of his pleas with the authorities that he be not included in the complaint, the men employed by him were instead charged, found guilty, and convicted.

Finally appellant contends that FAO No. 37-1 is invalid for the reason that FAO No. 37 which it amended was not shown to have been approved by the President; at least it does not bear and state the date of said approval. Under the rule that official duty has been regularly performed, we may well presume that said FAO No. 37 was duly approved by the President as required. FAO No. 37-1 amending it is admitted by the appellant to have been duly approved by the President, and it also is to be presumed that the order, FAO-37, that it amended had been duly approved because it is not to be assumed that an order which is invalid because of lack of approval could or should be amended. If an order or law sought to be amended is invalid, then it does not legally exist. There would be no occasion or need to amend it; and FAO-37-1 which was intended to effect the change or amendment should have been promulgated as an original or independent order. But it was not so. The inference is that FAO-37 was valid, and so it was necessary to amend it as was done.

We deem it unnecessary to discuss the other points raised in the appeal.

In view of the foregoing, and finding no error in the appealed decision, the same is hereby affirmed with costs.

Paras, C. J., Padilla, Bautista Angelo, Labrador Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

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