

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FELIX KHO, ALIAS CO CAM, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-7529. October 31, 1955*

Ponente: PARAS, C.J.

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In criminal case No. 4253 of the Court of First Instance of Rizal, Felix Kho alias Co Cam, Sun Leo, Choa Eng Kuan and Amado M. Apostol were charged with having allowed or procured the removal from the Felix Cigar and Cigarettes Factory of cigaretters which were subject to specific tax in the amount of P2,014.05 without paying said tax, because the stamps affixed to said cigarettes were fake, false and counterfeit. After trial, Felix Kho, Sun Leo and Amado M. Apostol were acquitted upon the theory that Choa Eng Kuan, the factory manager, had exclusive control of the Felix Cigar & Cigarettes Factory and, if any offense was committed, said factory manager was responsible therefor; and upon the finding that "there is not iota of evidence to show that the President and members of the Board of Directors conspired with the factory manager in the commission of the alleged offense, much less was evidence presented to show that the President and directors had knowledge of the commission of the act complained.

Subsequently, in criminal case No. 4264 of the Court of First Instance of Rizal, Felix Kho, Sun Leo, Choa Eng Kuan and Amado M. Apostol were charged with having had in their possession and control in the Felix Cigar & Cigarettes Factory false and counterfeit internal revenue stamps for the purpose of using them to evade the payment of specific taxes amounting to P24,312.25, in violation of section 170 of the National Internal Revenue Code. Felix Kho, Sun Leo and Amado M. Apostol filed a motion to quash, alleging that in criminal case No. 4253, it was already shown that the factory manager Choa Eng Kuan had full supervision and control of the operations of the Felix Cigar & Cigarettes Factory, without any knowledge or participation on the part of movants; and that if there was any responsibility for any offense in connection with said operations, it was solely in the factory manager, the accused Choa Eng Kuan. The court issued an order dated October 27, 1953, dismissing the case against Felix Kho, Sun Leo and Amado M. Apostol, with their proportionate shares of the costs de oficio. From this order the prosecution has appealed.

In the appealed order the lower court stated that "Although the ground for the motion to quash in this case is not couched exactly in the language of the second clause of Section 10 of Rules 113 of the Rules of Court, yet, after a careful scrutiny of all the allegations contained in said motion it is apparent that the same is the ground relied upon by the defense." Inasmuch as section 10 of Rule 113 speaks of previous acquittal or jeopardy, there can be no doubt that the lower court in essence and effect had ruled that the acquittal of Felix Kho, Sun Leo and Amado M. Apostol in criminal case No. 4253, is a bar to the present prosecution.

It is elementary that the plea of previous conviction will prosper only if the former prosecution is for the same offense, or for an attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information (section 9, Rule 113, Rules of Court).

It is quite clear that the offense charged in the present case, namely, possession of counterfeit internal revenue stamps for the purpose of using them, punished under section 170 of the National Internal Revenue Code, is distinct and different from the offense charged in the information in criminal case No. 4253, namely, allowing or procuring the removal of cigarettes subject to specific tax without paying said tax, punished under section 174 of the National Internal Revenue Code.

But it is contended that if anybody is responsible for or guilty of the possession of the counterfeit internal revenue stamps in question, it is solely the factory manager Choa Eng Kuan who, upon his plea of guilty, was already convicted by the lower court in this case and sentenced to pay a fine of P1,000, with subsidiary imprisonment in case of insolvency, plus one-fourth of the costs. This would be good as a matter of defense on the part of the defendants-appellees, Felix Kho, Sun Leo and Amado M. Apostol, on which, however, they are necessarily required to present corresponding proof. It should be remembered that the acquittal of said appellees in criminal case No. 4253 was based on the very finding of the lower court that there was not an iota of evidence to show that they conspired with the factory manager in the commission of the offense charged therein, namely, allowing or procuring the removal of cigarettes with fake or counterfeit internal revenue stamps, and that there was no evidence to show that they had knowledge of the commission of said offense. Without the appellees having presented any evidence in the present case as to their lack of participation in or knowledge of the possession of the counterfeit internal revenue stamps, it cannot be assumed that, as in the other criminal case, No. 4253, they did not conspire with the factory manager or had no knowledge of the existence in the Felix Cigar & Cigarettes Factory of the counterfeit internal revenue stamps in question.

Appellees' argument that the appeal taken by the prosecution in this case would place the appellees in jeopardy for a second time is clearly untenable, because an amended information was filed by the fiscal and there is nothing in the record to show that arraignment has been made thereunder. It is noteworthy that it was said amended information which the appellees moved to quash.

Wherefore, the appealed order is hereby reversed, and the case remanded to the Court of First Instance of Rizal for further proceedings. So ordered without costs.

Bengzon, Padilla, Montemayor, Jugo, Reyes, A., Bautista Angelo, and Labrador, JJ., concur.

Concepcion, J., concurs in the result.

CONCURRING OPINION

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

I concur, but wish to stress the fact that, from the allegations of both informations, it is manifest that the counterfeit stamps involved in the present charge are different from the false stamps allegedly used by the accused for the purpose of evading payment of specific taxes under the first information. This is shown by the fact that while the counterfeit stamps involved in the present information amounts to P24,312.25 in value, the stamps involved in the first case were only P2,014.05 worth. Even if the stamps referred to in the first case form part of the stamps now involved in the present information, the accused are entitled only to a reduction of the quantity of stamps, and their corresponding value, allegedly possessed by them under the present charge, but not to a dismissal of the charge.

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