

ERLINDA TALAN AND YAP O. TECK ALIAS ANTONIO YAP, PETITIONERS, VS. THE PEOPLE OF THE PHILIP-PINES AND THE HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. L-37704. January 30, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for review of the Court of Appeals' decision dated September 7, 1973 in CA-G.R. No. 11863, affirming the conviction of the petitioners Erlinda Talan and Yap O. Teck, alias Antonio Yap, who are common-law spouses, for violation of the Retail Trade Nationalization Law (Section 2-A, Commonwealth Act 108, as amended by Section 1, Republic Act 1180).

On February 16, 1955, Erlinda Talan was granted a permit by the Office of the Mayor of Basilan City, to engage in the sari-sari store business, with a capital of P500, principally to sell cigarettes at Balobo, Lamitan, Basilan City.

Yap O. Teck, alias Antonio Yap, is a permanent immigrant in the Philippines. He arrived here in 1947, and resided at Davao City. Later, he moved to Zamboanga and still later to Lamitan, Basilan City. He holds an I.C.R. No. 22406 issued at Davao on December 19, 1947, and an A.C.R. No. 52653 which was issued in Zamboanga City on December 21, 1950. He appears to have returned briefly to China in 1951 and married a Chinese woman named Ang Siok Chin in Amoy, China. However, on February 20, 1955, or only five (5) days after Erlinda Talan obtained a mayor's permit to open her sari-sari store, she and Yap O. Teck began living as husband and wife without the benefit of marriage.

On January 14, 1969, Erlinda Talan applied for, and was granted, a permit to engage in business as a general merchant, with a capital of P2,000, in the public market of Lamitan.

Shortly after it opened in 1957, Erlinda's store and other stores in Lamitan were placed under surveillance by the police of Basilan on suspicion of being operated in violation of the Retail Trade Nationalization Law.

During the investigation of Erlinda Talan on February 2, 1957, she signed an affidavit or sworn statement (Exh. B) admitting:

1. That Antonio Yap, a Chinese national, is her common-law husband;
2. That they had been living together since February 20, 1955, and that they have one child named Norma Yap, and another on the way, she being pregnant at the time;
3. That she had a license for her store: Permit No. 33; O.R. No. 5537308 for Mpl. License; O.R. No. 0966081 for G.R.; O.R. No. 0966083 for B-9 (a) 1957; O.R. 0553709 for Mpl. license, salted fish; Medical Certificate No. 18, all in the name of MISS ERLINDA TALAN;
4. That she had been occupying a stall in the public market of Lamitan since February 1955, before she became

the common-law wife of ANTONIO YAP;

5. That when she was single, her store (a sari-sari store) was at Campo Tres (Bolingan), Lamitan District, this city. Later she transferred her store to the public market; and

6. That her sari-sari store became a general merchandise store because "my common-law husband helped already in putting more goods in this store" (p. 29, Appellants' Brief; p. 28, Rollo). Her original capital of P500 increased to "more or less two thousand (P2,000.00) pesos." (Ibid.)

Based on the report of the Secret Service, the affidavit of the accused Erlinda Talan, and the evidence gathered by the field investigator, the Prosecutor of the Anti-Dummy Board filed an information against the petitioners alleging:

"x x x between January 20, 1959, up to the present in the District of Lamitan, Basilan City and within the jurisdiction of this Honorable Court, the above-named accused ERLINDA TALAN, a Filipino citizen, and having in her name a license for a retail store in Lamitan Market Site, did then and there willfully, unlawfully, and feloniously allowed and permitted and still allows and permits her common-law husband and co-accused YAP O. TECK alias ANTONIO YAP, a Chinese citizen, and therefore disqualified under Section 1 of Republic Act 1180, to engage directly or indirectly in the retail business; as in fact said accused YAP O. TECK, without falling within the exception provided in Section 2-A of Commonwealth Act 108, willfully, feloniously, unlawfully, and knowingly aided, assisted or abetted in the planning, consummation or perpetration of the act of his co-accused ERLINDA TALAN, by then and there managing or otherwise taking part in the management, operation or control of the retail business." (pp. 13-14, Rollo.)

After trial, the court rendered judgment on October 20, 1970 finding the petitioners guilty beyond reasonable doubt of the crime charged and sentencing each of them to suffer the penalty of imprisonment for five (5) years, with the accessory penalties of the law, and each to pay a fine of P5,000. It also ordered the deportation of the accused Yap O. Teck immediately after the service of his sentence.

The decision was appealed by the petitioners to the Court of Appeals which on September 7, 1973 affirmed it. The accused filed a petition for review in this Court.

After deliberating on the petition, We find no reversible error in the finding of the Court of Appeals that:

"x x x There is enough evidence of record showing that Erlinda Talan allowed Yap O. Teck to engage, at least indirectly, in the retail business, and that Yap O. Teck took part in its operation.

"It appears from his own evidence that Yap O. Teck has been jobless; and that although he was only 38 years old in 1958, he never exerted effort to look for a job. These and the fact that the sari-sari store of Erlinda Talan became a General Merchant store soon after she and Yap O. Teck had started living together, lend weight to the theory of the prosecution that he did engage directly or indirectly in the retail business for the main support of his family." (p. 25, Rollo.)

Section 2(c) of RA 1180, as amended by RA 6084, August 4, 1969 provides that "the exercise, possession or control by a Filipino citizen having a common-law relationship with an alien, of a right, privilege, property or business, the exercise or enjoyment of which is expressly reserved by the Constitution or the laws to citizens of the Philippines, constitutes a prima facie evidence of violation of the provisions of Sec. 2-A of the Act."

While the Filipino common-law wife of a Chinese national is not barred from engaging in the retail business provided she uses capital exclusively derived from her paraphernal property (Opinion No. 201, Series of 1961, Secretary of Justice), it was, however, shown in this case that the capital used in the sari-sari store was not exclusively derived from petitioner Talan's paraphernal property. It was shown that petitioner Yap O. Teck

contributed much to the retail business of Talan, by not only providing more capital but also actively managing the business, all in violation of the Retail Trade Nationalization Act.

On the basis of all the foregoing considerations, the Court of Appeals correctly found petitioner Erlinda Talan guilty of having unlawfully permitted her non-Filipino common-law husband Yap O. Teck to engage directly or indirectly in the retail trade business, and the latter, of having unlawfully aided, assisted or abetted the planning, consummation and perpetration of the act of his co-accused Erlinda Talan by managing or taking part in the management, operation and control of her retail trade business, contrary to Section 2-A of RA No. 1180.

WHEREFORE, the petition for review is denied. The appealed decision of the Court of Appeals in CA-G.R. No. 11863 is affirmed. Costs against the petitioners.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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