

SUY SUI, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G. R. No. L-5278. February 17, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

The petitioner was charged in the Court of First Instance of Manila with a violation of Executive Order No. 331 in relation to Republic Act No. 509, in the following information:

"That on or about the 17th day of July, 1950, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously sell and offer for sale to the public at 312 Quezon Boulevard, in the said city, one bag of refined suger, 10 lbs. at P2, which price is in excess of P0.20 than that authorized by law as the maximum ceiling price of said commodity, to wit P1.80."

After trial the court found the petitioner guilty and sentenced him to pay a fine of P5,000, with subsidiary imprisonment in case of insolvency, and to be barred from engaging in the wholesale and retail business in the Philippines for a period of five years, with a recommendation to the President for the immediate deportation of the petitioner. From this judgment the petitioner appealed, but the same was affirmed by the Court of Appeals. The case is now before us on certiorari from the Court of Appeals.

The petitioner, the owner of a grocery store located at Quezon Boulevard, Manila, was found by the Court of Appeals to have sold on July 17, 1950 a 10-pound bag of refined sugar to Faustino Caraan for the price of P2, allegedly in excess by twenty centavos of the ceiling price fixed in Executive Order No. 331.

In his first assignment of error, the petitioner contends that the classification of refined sugar into two groups contained in Executive Order No. 331 is ambiguous, as may be seen from the following,—an ambiguity which should be resolved in favor of the petitioner:

Sugar

Unit

Importer's or
producer's
price

Wholesale
price

Retail
ceiling
price

Refined, packed

in cellophane..

.....

P16.00/100

P17.20/100

P0.40/k

Refined, packed
in cellophane...

.....

5.25/15k

6.00/15k

0.45/k

In other words, the petitioner claims that, for the same refined sugar, two ceiling prices for one kilo are fixed, namely, P0.40 and P0.45, with the result that, if P0.45 is adopted as a criterion, 10 pounds of sugar would cost approximately P2.02, or P0.02 less than the amount for which the petitioner sold the 10-pound bag of refined sugar to Faustino Caraan. Petitioner's contention is tenable, considering that penal statutes are to be construed strictly. It is, however, argued on the part of the respondent that the petitioner failed to raise the point not only in the Court of First Instance by a motion to quash but also in the Court of Appeals, as a consequence of which he must be deemed to have waived the objection. In the first place, under section 10, Rule 113, of the Rules of Court, failure to move to quash amounts to a waiver of all objections which are grounds for a motion to quash, except when the complaint or information does not charge an offense, or the court is without jurisdiction of the same. It is apparent that the point now raised by the petitioner is in effect that the information does not charge an offense. In the second place, as an appeal in a criminal proceedings throws the whole case open for review, it should have been the duty of the Court of Appeals to correct such errors as might be found in the appealed judgment, whether they are assigned or not. (People vs. Borbano,[1] 43 Off. Gaz., 478.) On the other hand, in Villareal vs. People,[2] (47 Off. Gaz., 191), we held that notwithstanding the absence of assignments of error, the appellate court will review the record and reverse or modify the appealed judgment, not only on grounds that the court had no jurisdiction or that the acts proved do not constitute the offense charged, but also on prejudicial errors to the right of accused which are plain, fundamental, vital, or serious, or on errors which go to the sufficiency of the evidence to convict; although the rule doing away with formal assignments of error does not dispense with the necessity of pointing out technical and non-fundamental errors which do not affect the substantial rights of an accused to a fair trial, and are not patent.

It becomes unnecessary for us to discuss the petitioner's other assignments of error regarding the alleged unconstitutionality of section 12 of Republic Act No. 509.

Wherefore, the appealed decision is reversed and the petitioner is hereby acquitted with costs de oficio. So ordered.

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

CONCURRING**TUASON, J.,**

I concur and may state as additional ground for reversing the appealed judgment the elementary principle that no one can be convicted for an act which is not punishable by law, whether a motion to quash has or has not been filed, or whether the point has or has not been raised on appeal. In fact, even with the defendant's express consent, he cannot be fined or sent to jail for a supposed criminal offense that does not exist. The appealed decision was absolutely void and unexecutable.

[1] 76 Phil., 702.

[2] 84 Phil., 264.

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