

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. FRANCISCO DE LA ROSA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH VII, PASAY CITY; AND BERTI HILDEGARD EDERY, RE...

G.R. No. L-34112. June 25, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

The People of the Philippines, through the Solicitor General, appeals from the order[1] of the Hon. Francisco de la Rosa, Judge of the Court of First Instance of Rizal (Pasay Branch VII) dated June 14, 1971, which rules adversely on the People's Motion for Reconsideration[2] dated February 14, 1969, of the judge's first Order[3] of February 12, 1969, quashing the information[4] of December 23, 1968 and the Amended Information[5] of January 20, 1969, against Berti Hildegard Edery, who was accused of violation of Section 3602 of the Tariff and Customs Code, Republic Act No. 1937.

The charge is that she brought into this country 28 pieces of gold bars with their corresponding markings at the Manila International Airport, Pasay City, sometime on the 8th of October, 1968 by means of false statements, both oral and written and other omissions, having managed such entry by placing the gold bars in pockets of a vest cleverly concealed within her person, without lawfully passing them through the Customhouse of the airport for the purpose of avoiding declaration of the same to the customs authorities in order that the said gold bars may be appraised and duties and taxes thereon may be imposed, as said gold bars are subject to duties, taxes and other charges of which the government was, accordingly, deprived.

In the amended information of January 20, 1969, the following alleged facts were added:[6]

"(a) Said gold bars amounted to approximately P209,126.40, Philippine Currency (224,000 Deutsch Marks);

"(b) The accused has denied carrying with her valuable and taxable items in her possession; and

"(c) She did not indicate in her Baggage Declaration and Entry Form that she had with her said 28 pieces of gold bars. (p. 3, II, p. 514, Rollo).

On January 10, 1969, the accused Edery, through counsel, filed a motion to quash on the ground that the facts contained in the information did not constitute the offense charged. An opposition was filed by the People, hereinafter to be referred to as Petitioner, to the motion on February 3, 1969, to which a Reply was filed by the accused also on February 3, 1969.

On February 12, 1969, respondent judge issued an order questioning both the Information and the Amended Information, stating, among others, as follows:[7]

"It is the conclusion of this Court that the 28 gold bars are not 'imported articles and the conduct of accused consistently indicated the absence of any intention to import, and that this conduct harmonizes completely with

her act of merely writing the word: 'TOURIST' instead of giving the description of the articles she was carrying, on her 'Baggage Declaration And Entry'.

"In view of the disclosure of pertinent facts in this incident of motion to quash, facts which in justice to accused Edery should have been alleged in the Information and Amended as these facts, constituting legal defense and justification, cannot but be admitted by the Prosecution, as it has done so in this incident, this Court finds that the charge contained in said Amended Information, considered with the facts herein so disclosed and discussed above, does not constitute an offense and that accused Edery has a legal defense and justification.

"WHEREFORE, as prayed for the Motion To Quash is hereby granted." (p. 4, II, p. 514, Rollo).

On February 14, 1969, petitioner filed a Motion for Reconsideration which was opposed by respondent Edery on February 26, 1969. On March 21, 1969, petitioner filed a Motion to Reopen Consideration of Motion to Quash,[8] praying that the prosecution be allowed to present additional evidence in the interest of justice.

On June 14, 1971, respondent judge issued an order granting in part petitioner's Motion to Reopen Consideration of the Motion to Quash, but confirming his order of February 12, 1969 in that the Information and Amended Information filed in Criminal Case No. 8174-P did not state facts constituting the offense charged. It is this order of June 14, 1971 which is brought here for review on this petition for certiorari, petitioner assigning the following errors:[9]

I

"THE RESPONDENT COURT ERRED IN RULING THAT THE FACTS CHARGED DO NOT CONSTITUTE AN OFFENSE.

II

THE RESPONDENT COURT ERRED IN QUASHING THE CRIMINAL CASE FILED AGAINST RESPONDENT EDERY." (p. 1, II, p. 514, Rollo).

The thrust of petitioner's contention under the foregoing assignments of error is that a motion to quash on the ground that the facts charged do not constitute an offense under Section 2(a) of Rule 117, Rules of Court, must be decided on the strength of the allegations of the information, and the court may not go beyond said allegations to inquire into the merits of the case to determine the sufficiency or insufficiency of the information, which, according to petitioner, contains, in the instant case, allegations clearly charging an offense.

At bottom of the charge is that respondent Edery did not declare the gold bars before the customs authorities in order to avoid duties and taxes which would otherwise have been imposed and collected from respondent Edery for bringing into this country the said gold bars.

It is true that on the basis of the allegations of the amended information, standing alone, an offense is charged. But from admissions made by the prosecution, and the evidence presented, as even the prosecution asked the court to be permitted to present such evidence in its Motion to Reopen Consideration of the Motion to Quash of March 21, 1969, the respondent court found justification in quashing the information, as he issued the order complained of on June 14, 1971.

The question to be resolved is whether the respondent court committed a reversible error in issuing the afore-mentioned order.

As a general proposition, a motion to quash on the ground that the allegations of the information do not constitute the offense charged, or any offense for that matter, should be resolved on the basis alone of said allegations whose

truth and veracity are hypothetically admitted. However, as held in the case of *People vs. Navarro*, 75 Phil. 516,[10] additional facts not alleged in the information, but admitted or not denied by the prosecution may be invoked in support of the motion to quash. Former Chief Justice Moran supports this theory.[11]

As disclosed by the records, and so recited in the questioned order, the State Prosecutor admitted certain facts and participated in the hearings where both parties presented documentary and testimonial evidence. Thereafter, the respondent court made a finding that the allegation in the Amended Information, in the light of the admitted facts as they emerged after the hearing, did not constitute an offense. Thus, We quote from the well-reasoned out order of the respondent court:[12]

"The pertinent rule that applies is Rule 117. Section 6 of this Rule provides as follows:

'Sec. 6. Trial of issues arising on a motion to quash. - The motion to quash shall be heard immediately on its being made unless, for good cause, the court postpones the hearing. All issues, whether of law or fact, which arise on a motion to quash shall be tried by the court.'

"In the Motion to Quash of January 10, 1969, counsel for the accused squarely put in issue the fact that the non-immigrant status in the Philippines of accused placed her beyond the operation of Section 3602 of the Tariff and Customs Code and Central Bank Circular No. 21 as amended in relation to Sec. 2530 f and m (3) and (5) and Section 102 of the same Code. To support this contention, said counsel for accused made certain annexes to his Motion to Quash: Annex '4', the 'Resolution' of the incumbent City Fiscal of October 24, 1968, dismissing the case against herein accused; Annex '8', Circular Letter No. 3593 of the Bureau of Customs of December 7, 1960, circularizing Executive Order No. 408 of President Carlos P. Garcia, 'Providing A More Expeditious System and Simpler Forms For The Encouragement And Facilitation of Foreign Tourist Travel To The Philippines;' Annex '9', Customs Memorandum Circular No. 130-67 of July 21, 1967, regarding 'Integrated Standard Operational Procedure on Clearance of Tourists;' Annex '10', pages of the passport of accused, showing her visa for the Philippines, her non-immigrant visa status of entry, and her tourist entry visa for Taipeh, and the air ticket of accused, confirming her booking for her flight from Manila to Taipeh; Annex '11', Memorandum Circular of the Bureau of Immigration, implementing Executive Order No. 408 of President Carlos P. Garcia.

"On the part of the State Prosecutor, in his Opposition to Motion to Quash of January 30, 1969, he met squarely the issue raised by counsel for accused concerning whether or not, by the non-immigrant status of accused, she could avail herself of the provisions of Executive Order No. 408 of President Carlos P. Garcia, and made as his Annex 'A' the 'Baggage Declaration and Entry' of herein accused. Furthermore, the State Prosecutor, in his said Opposition to Motion to Quash of January 30, 1969, made, in his 'Prefactory Statement', certain admissions pertinent to the issue raised, whether accused, in view of her non-immigrant entry status could invoke the provisions of Executive Order No. 408 of President Carlos P. Garcia and other implementing circulars and memoranda issued by the implementing agencies of the Government.

"A reading of the Order of this Court of February 12, 1969, granting the Motion to Quash of accused, will show that upon the issue raised and upon the evidence, admission, and arguments of both parties, the Court resolved the issue. As already stated elsewhere, even in the hearing of the instant Motion for Reconsideration of February 14, 1969, Motion to Reopen Consideration On Motion To Quash of March 18, 1969, and the Supplemental To The Motion To Reopen Consideration Of Motion To Quash, the State Prosecutor and counsel for the accused presented not only documentary pieces of evidence, but even testimonial evidence."

Rejecting the State Prosecutor's position which he supported with cases, the more pertinent among which is that of *People vs. Segovia*, 102 Phil. 1162, the respondent court noted that in said case, the Supreme Court made the passing remark that "Prima facie, the facts charged are those described in the complaint, but they may be amplified or qualified by others appearing to be additional circumstances, upon admission made by the People's

representative, which admission could anyway be submitted by him as amendment to the same information." This statement is but a reiteration of what has been said in *People vs. Navarro, et al.*, supra, where the rationale for the rule laid down therein may be found in the following passages in the decision:[13]

"It would seem to be pure technicality to hold that in the consideration of the motion the parties and the judge were precluded from considering facts which the fiscal admitted to be true, simply because they were not described in the complaint. Of course, it may be added that upon similar motions the court and the fiscal are not required to go beyond the averments of the information, nor is the latter to be inveigled into a premature and risky revelation of his evidence. But we see no reason to prohibit the fiscal from making, in all candor, admissions of undeniable facts, because the principle can never be sufficiently reiterated that such official's role is to see that justice is done: not that all accused are convicted, but that the guilty are justly punished. Less reason can there be to prohibit the court from considering those admissions, and deciding accordingly, in the interest of a speedy administration of justice."

In his concurring opinion in the same case, Justice Perfecto came up with his characteristically picturesque language, which we quote:[14]

"We concur. To attain the substantial ends of justice, procedural technicalities must be dispensed with, and the court rules must be interpreted so as to give them the resiliency demanded by the circumstances of the case. Court rules must give way to judicial liberalism and legal progress. The law embodied in them must grow and develop. Even the calcareous shells of the large phylum of mollusks, notwithstanding their rocky hardness and apparent fixity, grow in answer to the evolutionary requirements of biological laws.

"Prosecution's statements belong to a class of evidence of the highest order in behalf of the accused. It is based on the same principle upon which estoppel is established, and from which the ad hominem argument in logic derives its force."

Indeed, where in the hearing on a motion to quash predicated on the ground that the allegations of the information do not charge an offense, facts have been brought out by evidence presented by both parties which destroy the prima facie truth accorded to the allegations of the information on the hypothetical admission thereof, as is implicit in the nature of the ground of the motion to quash, it would be pure technicality for the court to close its eyes to said facts and still give due course to the prosecution of the case already shown to be weak even to support possible conviction, and hold the accused to what would clearly appear to be a merely vexatious and expensive trial, on her part, and a wasteful expense of precious time on the part of the court, as well as of the prosecution. At this point, the observation of this Court in *People vs. Rodriguez*[15] comes in with complete relevance. Thus:

"The claim of the prosecution that the trial court erred in not holding that the ground on which the motion to quash is based is a matter of defense which the appellee should establish at the trial of the case on the merits is also of no avail, it appearing that the fact concerning the inclusion of the same firearm in the crime of rebellion as well as its presentation as evidence therein has been brought out by the defense in his petition to quash and that fact was not disputed by the prosecution."

Significantly, the facts and admission as brought out through the presentation of evidence by the parties which the respondent court considered in reaching its conclusion that the motion to quash may be granted, as was done in its questioned order, could no longer be disputed at this late hour, as the petitioner would try vainly to dispute in the instant petition for certiorari, which petition implies a waiver of the right to question the findings of facts of the respondent court. What are these facts?

(a)

That under Executive Order No. 408 (56 O.G. 28, November 1960), international tourism is sought to be encouraged to enhance our prestige abroad and strengthen our economy.

(b)

To accomplish this purpose, all government offices and agencies are ordered to suspend their forms which are required of foreign tourists to accomplish upon applying for admission to or upon entering the country, who will then not be required to file a customs declaration form and their luggage shall "be exempt from customs examination if an oral examination proves satisfactory."

(c)

In Customs Memorandum Circular No. 130-67 of July 21, 1967 (Annex J to Petition) implementing Executive Order No. 408, the foreign tourist "shall not be subject to customs examination."

(d)

The accused had a confirmed booking from Manila (MIA) to Taipeh, Republic of China with scheduled departure the day following her arrival at MIA, as shown by her passport and her air ticket, documents which were not attached to the petition, but should have been, for a fair disclosure to this Court of all pertinent and relevant facts. These documents were supplied in respondents' Answer.

(e)

As shown by the stamped notation of the examining immigration inspector on the passport of the accused, the latter was admitted as a tourist under Executive Order No. 408, and pursuant to Memorandum Circular of the Commissioner of Immigration on December 28, 1960,[16] accused was admitted under Section 9(b) of the Philippine Immigration Act of 1940, as amended, in relation to Executive Order No. 408, without the need of being required to apply, or to hold a Philippine transit visa, since she was allowed to debark and to re-embark after a stay in the Philippine territory not longer than 72 hours, by virtue of which, accused was exempted from both customs declaration and examination.

From the foregoing facts, the allegations in the Amended Information as to the alleged falsity of the customs declaration, the alleged omission and other supposedly false statements become immaterial for being not required to be made under Executive Order No. 408 and the implementing rules. The declaration, statements and omissions are therefore, mere superfluous insofar as accused is concerned. As adverted to earlier, the "forms" were suspended and need not be accomplished by the said accused. The forms so suspended, would of necessity, include whatever form would be required to be accomplished or to be issued by the Central Bank by way of a license or written permission as mentioned in the "Certification of Declarant," on the reverse side of which is an enumeration where "written permission from proper authority" is required. The enumeration, it may be noted, does not include gold bars.

Petitioner, likewise, contends that accused should have left the gold bars at MIA under customs custody, if she had no intention of leaving them here, to be picked up by accused upon the departure from this country. But it does not appear that accused was advised of the availability of the deposit at MIA, and neither the information has an allegation that she was so advised and offered the facility, but that she refused to comply.

Petitioner further contends that accused is not a bona fide tourist entitled to exemptions and facilitations under Executive Order No. 408, but a transiting tourist, thereby making a distinction between a "bona fide tourist" and a "transiting tourist." We agree with the respondent court that a distinction finds no warrant in the context of Executive Order No. 408. If a distinction is to be made, the transiting tourist should be more entitled to the exemptions and facilitations, for the transiting tourist is not even required to obtain a visa which the ordinary tourist must have to obtain. In any case, both are tourists and bona fides must be considered, even if only

impliedly, as always required of all tourists of whatever kind.

It is to be noted that the essence of the charge against accused Edery is for failing to declare the 28 gold bars which she carried in her person in landing here and going to spend the night in Manila Hilton Hotel, which petitioner would consider an illegal importation resulting in the loss of duties accruing to the Philippine Government.

Here again is where the facts as established in the hearing and admitted by the prosecution should have to be considered in resolving the motion to quash. This is what the respondent court did, and We cannot fault it in this regard. For as said court soundly and reasonably observed:[17]

"There is one important and vital circumstance in the instant case that establishes conclusively that the 28 gold bars are not 'imported' articles, and that their entry into the Philippines for a number of hours did not convert them into 'imported' articles such that their entry resulted in the loss of Customs duties. This circumstance is the stubborn fact that accused Edery brought in 28 gold bars and in matters of hours she was taking the same 28 gold bars out of the country. It was at the time she was taking these gold bars out of the country, only hours after her arrival, that she was arrested by the Customs authorities at the Manila International Airport. There can be no doubt whatsoever that she was at the airport, definitely to leave the Philippines with the 28 gold bars. As already stated above, she had an advance booking for Taipeh on a plane leaving the next day, she had a valid 'TOURIST VISA' for a single journey to Taipeh, and the plane she was about to board when she was arrested was a Japan Airlines plane bound for Taipeh.

"Section 1202 of the Philippine Tariff and Customs Laws (Republic Act 1937, as amended) states, in part, that importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines 'with the intention to unlade therein.' This can only mean that there must be the intention to unlade the articles being imported. In the instant case, that there was no such intention is patently clear. Accused Edery arrived in Manila, without visa, but nevertheless was admitted by the Philippine immigration authorities as a transient. By this, it is already clear that she had no intention to stay in the Philippines, but was, by force of circumstance, passing through the Philippines. Under ordinary commercial aircraft travels, had there been a connecting flight for Taipeh at the time of her arrival, the Philippine immigration authorities would not have allowed her to enter but, instead, would have told her to board the aircraft bound for Taipeh. But since there was no such connecting flight, accused Edery stayed OVERNIGHT in the Manila Hilton Hotel, With her were the 28 gold bars. Had her intention been to import these gold bars illegally for local and domestic sale, then she could have disposed of them while she was at the Manila Hilton Hotel. And had she done that, and had she been caught doing it, very clearly she would have been subject to criminal liability and prosecution.

"Certainly, the fact that accused Edery brought the 28 gold bars with her in the security of the Manila Hilton Hotel, not having violated any law regarding her 'Baggage Declaration and Entry', did not convert these 28 gold bars into 'imported' articles. Had she arrived by boat and had she left these 28 gold bars aboard and spent an over-night in Manila, these same gold bars could not have been converted into 'imported' articles. It would be without any legal basis to say that the classification of articles to 'imported' articles and to 'not imported' articles could depend on the kind of transportation employed."

That the gold bars were never imported, nor intended to be imported, as the respondent court observed, cannot but meet with Our approval in the light of the undeniable fact that the accused carried them with her in exactly the same way when she debarked from the air carrier, when she was to board the plane that would bring her to her real destination, Taipeh, after spending only a night at the Manila Hilton Hotel. There being no importation to speak of, it cannot be said that, as is the essence of the charge against the accused, the latter defrauded the government of the duties and charges due the articles, if imported.

It is of relevance to note that the City Fiscal of Pasay, after proper preliminary investigation resolved to dismiss the complaint against the accused. It must be safe to assume that the City Fiscal found no probable cause to hold the accused for trial. When the State Prosecutor took over from the City Fiscal and filed the information, and later an amended information, he must have thought that trial on the merits would follow, as a matter of course. He did not reckon of the filing of a motion to quash on the ground that the allegations in the amended information do not charge an offense. But such a motion was filed, and not only was a hearing had thereon, but the prosecution asked the court to be allowed to present evidence, as did the other party, the accused. The State Prosecutor presented evidence and made certain admissions. This could have proved to be their tactical mistake. For with all the evidence pre-sented before the court, the respondent judge cannot discard the same in resolving the motion to quash, on the mere techni-cality that the motion should be resolved solely on the basis of the allegations of the informations, closing its eyes to evidence aliunde duly presented at the instance of the prosecution itself, followed by the defense presenting its own evidence. The result was, in effect, a trial on the merits, and an insis-tence on the part of the petitioner to restore the informations already quashed in order that trial on the merits could proceed, as prayed for in this petition fails to find support upon consi-deration of substantial justice. It is a resort to mere techni-cality so strongly frowned upon by the courts and expressly discouraged by our own rules of procedure. It would not also seem in keeping with the true role of the prosecutor to see that justice is done.[18]

WHEREFORE, the instant petition is dismissed, and the order of the respondent judge dated February 12, 1969, quashing the amended information is affirmed, together with the order dated June 14, 1971 denying the People's Motion for Reconsideration of the former order. No costs.

SO ORDERED.

Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and Melencio-Herrera, JJ., concur.
Fernando, C.J., Teehankee, and Aquino, JJ., took no part.

[1] Record, Volume 1, p. 457.

[2] Id., p. 177.

[3] Id., p. 133.

[4] Id., p. 1.

[5] Id., p. 68.

[6] Petitioner-Appellant's Brief, p. 3.

[7] Record, Vol. 1, p. 169.

[8] Id., p. 215.

[9] Petitioner-Appellant's Brief, p. 1.

[10] Cited in Martin's Rules of Court, Vol. 3, 1964 Ed., p. 287 together with People vs. Cadahis, 51 O.G. 6240.

[11] Moran, Comments on the Rules of Court (1963 Ed.), p. 139.

[12] Record, Vol. 1, pp. 475-477.

[13] at pp. 518-519.

[14] at pp. 519-520.

[15] 107 Phil. 659.

[16] Annex 3 to Answer to Amended Petition.

[17] Record, Vol. 1, pp. 167-169.

[18] See *People vs. Navarro*, *supra*.

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