

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. TIU UA, DEFENDANT AND APPELLANT.

G.R. No. L-6793. March 31, 1955

Ponente: JUGO, J.

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JUGO, J.:

Tiu Ua was accused before the Court of First Instance of Rizal (Pasay Branch) of the offense of profiteering in an information of the following tenor:

"That on or about the 1st day of November, 1950, in Pasay City, Philippines, the above named accused, Tiu Ua, did then and there willfully, unlawfully and feloniously violate the provisions of Republic Act No. 509 by selling a can of powdered Klim milk for P2.20, to Eusebio Perez, when the ceiling price for that commodity was P1.80 only."

After trial the accused was found guilty and sentenced to pay a fine of P5,000, or, in case of insolvency, to suffer the corresponding subsidiary imprisonment, and to pay the costs. In addition to this penalty the trial court declared that the accused, being an alien, "shall be, upon final conviction, subject to immediate deportation without the necessity of any further proceedings on the part of the Deportation Board."

Upon appeal the case was forwarded to the Court of Appeals but the latter certified it to this court on the ground that the appellant raises the question of the constitutionality of the statute under which he was convicted.

The appellant, in his brief, makes the following assignments of errors:

"I. The trial court erred in not holding that the present case is one of entrapment the prosecution of which should not have been sustained on grounds of public policy, and that it was not established beyond reasonable doubt by credible evidence, and consequently, erred in not acquitting the accused.

"II. The trial court erred in imposing a penalty wholly disproportionate to the offense, and therefore unconstitutional as cruel and unusual and shocking to the conscience.

"III. The trial court erred in not declaring Republic Act No. 509 unconstitutional in so far as it imposes penalties wholly disproportionate to the offenses sought to be punished, and consequently violative of the due process and equal protection clauses and of the prohibition against cruel and unusual punishments in the Constitution."

The facts established by the evidence may be briefly stated as follows: At about 7:00 o'clock in the morning of November 1, 1950, one Mrs. Villa ordered her houseboy Eusebio Perez to buy powdered milk known as Klim milk at the store of the accused Tiu Ua, on F. B. Harrison Street, Pasay City. Mrs. Villa told the houseboy that the price was P1.80 per can. The defendant informed the houseboy at the store the price was P2.20. The boy tried to have it reduced to P1.80 but the accused refused, insisting on the price of P2.20. Eusebio returned home and told Mrs. Villa about it. Mrs. Villa awakened her son Francisco Villa and advised him of what had occurred. Francisco who happened to be an employee of the National Bureau of Investigation, went to his office and reported the

matter to the Price Enforcement Unit. Francisco, accompanied by Efrain Verano and Felipe Guatno, agents of the prisco, came back home. There Eusebio related the incident to the agents. Then Francisco gave to the houseboy a five-peso bill telling him to buy milk in the same store. At about 11:20 in the same morning Eusebio returned to the store leaving the two prisco agents in the house of the Villa family. After sometime the houseboy came back with a can of Klim milk and with the amount of P2.80 as change, telling the agents that the accused had charged him P2.20 for the can of Klim milk. Francisco and the two agents went to the store of the accused at 320 F. B. Harrison Street, Pasay City, and there asked the accused if he had sold one can of Klim milk for P2.20 to Eusebio. The accused answered in the affirmative. The accused then signed the investigation slip, exhibit "B." The prisco agents brought the accused to their office where he was photographed and fingerprinted.

The appellant contents that there has been an entrapment and, consequently, he should be acquitted.

It has been decided in several cases by this court that entrapment is not prohibited as contrary to public policy. It is instigation which has been deemed contrary to public policy and held illegal (*People vs. Galicia*, 40 Off. Gaz. No. 23,4476, 4478).

Furthermore, in the present case it would be hard to conclude that there was even entrapment, because the accused had already charged the sum of P2.20 and the prisco agents only tried to verify the illegal act of the accused.

In the second assignment of error the appellant maintains that the punishment imposed by the trial court is unconstitutional as being cruel and unusual and shocking to the conscience.

With regard to the fine, it should be considered that Congress thought it necessary to repress profiteering with a heavy fine so that dealers would not take advantage of the critical condition of the country to make unusual profits. It is true that in specific individual cases the profit made is small but when it is remembered that these individual transactions are numerous and make a great total and affect the poor people in general, it can be easily seen that the raise in the price above that authorized by law, causes a great hardship to the country. The courts cannot interfere with the discretion of the legislative body in enforcing a public policy unless there has been a clear violation of the Constitution.

In the case of *People vs. Pablo de la Cruz*, (92 Phil., 906) this court discussed the constitutionality of similar penalties with regard to profiteering, but exercising the discretion vested in the courts by the statute in question, reduced the penalty to six months and the fine to P2,000. This policy was followed in the subsequent case of *People vs. Chu Chi*, (92 Phil., 977). In the present case we reduce the fine to P2,000.00.

With reference to the deportation of the accused who is an alien, it should be noted that the trial court stated that Tiu Ua, being an alien, shall be, upon final conviction, subject to immediate deportation without the necessity of any further proceedings on the part of the Deportation Board.

It should be noted that the trial court did not impose deportation but simply stated that the defendant was subject to it. Actual deportation, therefore, is for the proper administrative authorities to decide, considering the circumstances of the case.

With the above modification, the judgment appealed from is affirmed in all other respects, without pronouncement as to costs. It is so ordered.

Paras, C.J., Pablo, Bengzon, Padilla, Reyes; A., Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Judgment affirmed with modification.

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