

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ROQUE L. DIPAY, DEFENDANT AND APPELLANT.

G.R. No. L-8380. November 29, 1955

Ponente: REYES, A., J.

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REYES, A., J.:

This is an appeal from a judgment of the Court of First Instance of Zamboanga, convicting appellant Roque L. Dipay of a violation of section 2703 of the Revised Administrative Code, as amended by Republic Act No. 455, and sentencing him to six months imprisonment and a fine of P600, with subsidiary imprisonment in case of insolvency, and to pay the costs. The case has been certified to us by the Court of Appeals on the ground that it involves a question of jurisdiction.

The record shows that the case began with the filing of an information by the City Attorney of Zamboanga charging the appellant with the violation mentioned. Appellant having waived preliminary investigation, he was bound over to the Court of First Instance of Zamboanga, where a special counsel of the city filed an information charging him with a violation of section 2303 of the Administrative Code (as amended by Republic Act No. 455), alleged to have been committed as follows:

"That on or about the 15th day of August, 1951, and within the jurisdiction of this Court, viz., in the City of Zamboanga; Philippines, the above named accused did then and there wilfully, unlawfully, feloniously and fraudulently and knowingly buy 81 cartons of Herald Cigarettes manufactured in the United States, the same having been imported contrary to law, thereby depriving the Government of the Republic of the Philippines of the lawful duty or any portion thereof accruing from the said merchandise."

Obviously, the criminal act charged in the body of the information, which is that of buying cigarettes knowing that they have been illegally imported, falls squarely under section 2702 of the Revised Administrative Code, as amended, which reads:

"Sec. 2702. Unlawful importation of merchandise. Any person who shall fraudulently or knowingly import or bring into the Philippines, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, shall be punished by a fine of not less than P600 but not more than P5,000 and by imprisonment for not less than 3 months nor more than 2 years and, if the offender is an alien, he may be subject to deportation.

"When, upon trial for a violation of this section if the defendant is shown to have or to have had possession of the merchandise in question, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the court.

The act charged does not come under section 2703 and much less under section 2303 of the same code, for which reason the trial court, at the commencement of the hearing, allowed the information to be amended by having it stated therein that the legal provision violated is section 2702. It was under the information as so amended that

appellant was tried.

It is clear then that appellant went to trial on a charge that he had violated section 2702 of the Revised Administrative Code, as amended, by buying imported cigarettes knowing them to have been illegally imported. But while the information alleged that the illegal purchase was made "in the City of Zamboanga and the trial was held in that city, the evidence shows that the said illegal purchase was made in Sitangkay in the Province of Sulu.

In the case of *Beltran vs. Ramos* (50 Off Gaz No 12 p. 5762), this Court held that the accused should be tried in the province where the offense was committed. The Court said:

"The respondent contends that the provinces of Occidental and Oriental Mindoro constitute the" Eighth Judicial District under the provisions of the Judiciary Act of 1948 (Republic Act No. 296). There being: no separate court for the Province of Occidental Mindoro, it is claimed that the judge of the district may hold his sessions in either of the two provinces. This contention is untenable in the present case for the reason that the Rules of Court expressly provide that a criminal case should be instituted and tried in the municipality or province where the offense was committed or any of its essential ingredients took place. This is a fundamental principle, the purpose being not to compel the defendant to move to, and appear in a different court from that of the province where the crime was committed, as it would cause him great inconvenience in looking for his witnesses and other evidence in another place. Although the judge of a district may hold sessions in any part of said district, yet he should hold the trial in any particular case subject to the specific provisions of section 14(a), Rule 106, in order not to violate the Rules of Court and disregard the fundamental rights of the accused. Sometimes a judicial district includes provinces far distant from each other. Under the theory of respondent, the accused may be subjected to the great inconvenience of going to a far distant province with all his witnesses to attend the trial there. This is prohibited by the Rules of Court as being unfair to the defendant.

"There is no contradiction between the Judiciary Act and Rule 106, section 14(a). They should, therefore, be enforced together harmoniously."

Conformably to the above ruling, the present case should have been tried in Sulu and not in Zamboanga.

Wherefore, the judgment appealed from is set aside and the case remanded to the court below for proper trial. No costs.

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

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