

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. VICENTA G. DE HILARIO AND LEONARDO AGUILA, DEFENDANTS AND APPELLEES.

G. R. No. L-5085. June 27, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Vicenta G. de Hilario and Leonardo Aguila were charged before the Court of First Instance of Pampanga with the violation of Executive Orders Nos. 361, 390, 428 and 435, in connection with section 12 of Republic Act No. 509, otherwise known as the Price Control Law.

On August 21, 1951, the court conducted the necessary preliminary investigation and having found from the evidence presented that there was probable cause showing that the crime charged had been committed, it issued an order for the arrest of the defendants.

On August 24, 1951, the defendants moved for a reinvestigation of the case on the ground that they were not able to appear at the first investigation for lack of proper notification, but they withdrew later this motion and gave notice that they would instead file a motion to dismiss. This they did on the same day alleging, among other grounds, that it can be inferred from the evidence adduced in the preliminary investigation that they were not merely entrapped but instigated to commit the crime which constitutes a defense in cases of this nature. Over the opposition of the Government, the court found the petition meritorious and dismissed the case with costs de oficio. The case is now before this court by virtue of the appeal interposed by the Provincial Fiscal.

It appears that on May 4, 1951, Jose Ignacio and Feliciano Simeon, agents of the Price Stabilization Corporation, otherwise known as PRISCO, betook themselves to the drug store owned by Vicenta G. de Hilario situated in Angeles, Pampanga, with the purpose of purchasing some articles. Leonardo Aguila was then a salesman in that store. Agent Ignacio informed Aguila that he wanted to buy a bottle of Sloan Liniment, a bottle of Hydrogen Peroxide and a box of Kotex. In the presence of Vicenta G. de Hilario, owner of the store, Aguila informed Agent Ignacio that the price of the liniment was P1.20, that of Hydrogen Peroxide P0.50, and the box of Kotex P2.00, or a total of P3.70. Agent Ignacio tendered a five-peso bill, which was previously marked, in payment of the articles, and Aguila gave Ignacio P1.30 as change. Aguila also gave the buyer a receipt covering the payment. At that time the maximum selling prices in Pampanga of the drugs sold were P0.99 for a bottle of Sloan Liniment, P0.39 for a bottle of Hydrogen Peroxide, and P1.48 for a box of Kotex. As these sales were in violation of the Price Control Law, the owner as well as the salesman were then and there apprehended and an apprehension slip was issued to them. Thereafter, a charge for the violation of the Price Control Law was filed against them as set forth in the early part of this decision.

Upon the foregoing facts, the lower court found that the case at bar is one of instigation and not of entrapment for the reason that, in its opinion, Agent Ignacio was not a buyer in good faith for "he did nothing more than to induce the accused to commit the crime charged in the information by pretending to be a buyer, paying with marked

money from the public funds appropriated for the Prisco." It concluded that since, unlike entrapment which is no defense in a criminal prosecution, instigation or inducement may be set up as a defense, in line with the doctrine laid down in the case of *U. S. vs. Phelps* (16 Phil., 440), the dismissal of the case is in order. This is the only ground on which dismissal is predicated; this is now assigned as error by the Solicitor General.

The facts of the case do not support this finding of the lower court. There is nothing in the record to show that the agents of the Price Stabilization Corporation who were assigned to detect those who violate the Price Control Law committed any act which may in any way induce or influence the defendants to sell the drugs in question at prices beyond those fixed by law, for the only thing they did was to present themselves in the store of the defendants and indicate their intention to buy some articles for sale therein. Of course, their purpose in going to the store was in obedience to a preconceived plan to determine if the law was there being violated, but beyond signifying their intention to buy, they have not done any other overt act. There is nothing improper for them to do what they did. Since charging of excessive prices originated from the mind of the defendants and not from the agents, the question of inducement is out of the picture. What they did was merely to lay a trap to detect those who violated the law, and cases there are where such device is allowed in order that the purpose of the law may not be defeated. Entrapment, as distinguished from inducement, cannot offer a valid excuse to defeat prosecution.

In *People vs. Lua Chu, et al.* (56 Phil., 44, 52), this court quoted with approval the following pertinent rule: "while it has been said that the practice of entrapping persons into crime for the purpose of instituting criminal prosecution is to be deplored, and while instigation, as distinguished from mere entrapment, has often been condemned and has sometimes been held to prevent the act from being criminal or punishable, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation' of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him free from the influence or the instigation of the detective."

The case of *U. S. vs. Phelps* (16 Phil., 440), invoked by the lower court, is a clear case of inducement. In that case, Internal Revenue Agent Homer C. Smith induced one James O. Phelps to look for an opium den where he could smoke opium. Smith went to Phelps three times to convince the latter of his real desire to smoke opium. Because of Smith's insistence, Phelps made efforts to look for a place where both of them could smoke this drug until he finally found one. Phelps took Smith to that place which turned out to be the house of a Chinaman and there Smith received an opium pipe and gave P2 for the service. After a while, Smith went out and returned forty minutes afterwards to arrest Phelps. These facts are strikingly dissimilar from those of the case at bar. The criminal intent originated in the mind of the entrapping agent and Phelps was merely induced to commit the act by repeated and persistent solicitation. There is no parity between the two cases.

Wherefore, the order appealed from is hereby set aside and the case is hereby remanded to the lower court for further proceedings.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador. JJ., concur.

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