

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. MAXIMO MARTIN, CANDIDO MARTIN AND RODOLFO HIGASHI, DEFENDANTS-APPELLEES.

G.R. No. L-33487. May 31, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

This appeal by the People of the Philippines from the order dated August 2, 1968 of the Court of First Instance of La Union dismissing criminal case A-392 on the ground of lack of jurisdiction, was certified by the Court of Appeals to this Court, the issues raised being purely of law.

The central issue is the proper interpretation of the provisions of Section 46 of Commonwealth Act 613, as amended by Rep. Act 144 and Rep. Act 827, otherwise known as the Philippine Immigration Act.

The defendants Maximo Martin, Candido Martin and Rodolfo Higashi were charged in criminal case A-392 of the CFI of La Union with a violation of Section 46 of Com. Act 613, as amended. The information dated January 12, 1968 recites as follows:

"The undersigned Acting State Prosecutor, and Asst. Provincial Fiscal accuse MAXIMO- MARTIN, CANDIDO MARTIN and RODOLFO HIGASHI of violation of Sec. 46 of Commonwealth Act No. 613 otherwise known as Philippine Immigration Act of 1940, as amended by Republic Act No. 827, committed as follows:

"That on or about the 22nd day of September, 1966, in the Municipality of Sto. Tomas, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another and in active aid with Filipino nationals who are presently charged before the Court of First Instance of Bulacan in Crim. Case No. 6258-M, did then and there wilfully, unlawfully and feloniously bring in and carry into the Philippines thirty nine (39) Chinese aliens who traveled by the Chinese vessel 'Chungking' from the port of Hongkong and who are not duly admitted by any immigration officer or not lawfully entitled to enter the Philippines, and from the Chinese vessel 'Chungking,' accused took delivery, loaded, and ferried the Chinese aliens in the vessel 'MARU XI' owned, operated, under the charge and piloted by all the herein accused from outside into the Philippines, surreptitiously landing the said aliens at Barrio Damortis, Sto. Tomas, La Union, Philippines, which place of landing is not a duly authorized port of entry in the Philippines."

After the thirty-nine (39) illegal entrants were landed in barrio Damortis, as charged in the indictment, they were loaded in a car and two jeepneys for transport to Manila. They did not however reach their destination because they were intercepted by Philippine Constabulary agents in Malolos, Bulacan.

For concealing and harboring these thirty-nine aliens, Jose Pascual, Filipinas Domingo, Jose Regino, Alberto Bunyi, Emerdoro Santiago and Ibarra Domingo were charged before the Court of First Instance of Bulacan in criminal case 625 8-M. The amended information in the said criminal case reads as follows:

"The undersigned Provincial Fiscal accuses Jose Pascual, Filipinas Domingo, Jose Regino, Alberto Bunyi, Emerdoro Santiago and Ibarra Domingo of the violation of Section 46 of Commonwealth Act No. 613, otherwise known as the Philippine Immigration Act of 1940, as amended by Republic Act No. 827, committed as follows:

"That on or about the 22nd day of September, 1966, in the municipality of Malolos, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above named accused and several others whose identities are still unknown, conspiring and confederating and aiding one another, did then and there wilfully, unlawfully and feloniously, bring, conceal and harbor 39 Chinese aliens not duly admitted by any immigration officer or not lawfully entitled to enter or reside within the Philippines under the terms of the Immigration Laws, whose names are as follows: Hung Chan Cheong, Hung Ling Choo, Sze Lin Chuk, Chian Giok Eng, Mung Bun Bung, Lee Chin Kuo, Gan Kee Chiong, See Sei, Hong Chun, Go Kian Sim, Kho Ming Jiat, See Lee Giok, Uy Chin Chu, Go Su Kim, Go Chu, Chiang Tian, Chua Tuy Tee, Sy Jee Chi, Sy Sick Bian, Sy Kang Liu, Ang Chi Hun, Kho Chu, Chua Hong, Lim Chin Chin, Ang Lu Him, William Ang, Sy Siu Cho, Ang Puy Hua, Sy Chi Tek, Lao Sing Tee, Cua Tiong Bio, Kho Lee Fun, Kho Lee Fong, Ang Giok, Sy Si Him, Sy Lin Su, Lee Hun, Sy Siong Go and Sy Cho Lung, who previously earlier on the same day, thru the aid, help and manipulation of the above-named accused, were loaded and ferried to the shore from the Chinese vessel 'CHIUNG HING' in a fishing vessel known as the 'MARU XI' and landed at barrio Damortis, Sto. Tomas, La Union, and immediately upon landing were loaded in 3 vehicles: an automobile bearing plate No. H-3 812-Manila driven and operated by Emerdoro Santiago and 2 jeepneys with plates Nos. S-27151-Philippines-1966 and S-26327-Philippines, 1966 driven and operated by Jose Regino and Alberto Bunyi, respectively, and brought southwards along the MacArthur highway and upon reaching Malolos, Bulacan, were apprehended by the agents of the Philippine Constabulary, the latter confiscating and impounding the vehicles used in carrying and transporting the said aliens and including the sum of P5,750.00 found in the possession of the accused Jose Pascual which was used and/or to be used in connection with the commission of the crime charged."

On July 1, 1968 the three accused in criminal case A-392 filed a "motion to dismiss" [quash] on the ground that the CFI of La Union has no jurisdiction over the offense charged in the said indictment as the court had been pre-empted from taking cognizance of the case by the pendency in the CFI of Bulacan of criminal case 6258-M. This motion was opposed by the prosecution.

On August 2, 1968 the Court of First Instance of La Union dismissed the case, with costs de oficio. The Government's motion for reconsideration was denied; hence the present recourse.

In this appeal the Government contends that the lower court erred (1) "in declaring that the information in the instant case [A-392] alleges conspiracy between the accused herein and the persons accused in criminal case 6258-M of the Court of First Instance of Bulacan"; (2) "in holding that by reason of said allegation of conspiracy in the information in this case [A-392], the act of one of the accused in both criminal cases is deemed the act of all the accused and that as a consequence all those accused in the two cases are liable and punishable for one offense or violation of Section 46 of Commonwealth Act 613, as amended, although committed by and through the different means specified in said Section"; (3) "in holding that the violation of Section 46 of Commonwealth Act 613, as amended, committed by the accused in both criminal cases partakes of the nature of a transitory or continuing offense"; and (4) "in declaring that it lacks jurisdiction and is now excluded from taking cognizance of this case [A-392] and in dismissing it."

Section 46 of Commonwealth Act 613, as amended, reads as follows:

"Any individual who shall bring into or land in the Philippines or conceal or harbor any alien not duly admitted by any immigration officer or not lawfully entitled to enter or reside within the Philippines under the terms of the immigration laws, or attempts, conspires with, or aids another to commit any such act, and any alien who

enters the Philippines without inspection and admission by the immigration officials, or obtains entry into the Philippines by wilful, false, or misleading representation or wilful concealment of a material fact, shall be guilty of an offense and upon conviction thereof, shall be fined not more than ten thousand pesos, imprisoned for not more than ten years, and deported if he is an alien.

"If the individual who brings into or lands in the Philippines or conceals or harbors any alien not duly admitted by any immigration officer or not lawfully entitled to enter or reside herein, or who attempts, conspires with or aids another to commit any such act, is the pilot, master, agent, owner, consignee, or any person in charge of the vessel or aircraft which brought the alien into the Philippines from any place outside thereof, the fine imposed under the first paragraph hereof shall constitute a lien against the vessel or aircraft and may be enforced in the same manner as fines are collected and enforced against vessels under the customs laws: Provided, however, That if the court shall in its discretion consider forfeiture to be justified by the circumstances of the case, it shall order, in lieu of the fine imposed, the forfeiture of the vessel or aircraft in favor of the Government, without prejudice to the imposition of the penalty of imprisonment provided in the preceding paragraph."

To be stressed at the outset is the significant repetition, in the second paragraph above-quoted, of basic words and concepts set forth in the first paragraph. Thus, the first paragraph begins with: "Any individual who shall bring into or land in the Philippines or conceals or harbor any alien..."; the second paragraph starts with: "If the individual who brings into or lands in the Philippines or conceals or harbors any alien..." (italics ours) Scanning Section 46 in its entire context, it is at once apparent, there being no indication to the contrary, that the act of bringing into, the act of landing, the act of concealing, the act of harboring, are four separate acts, each act possessing its own distinctive, different and disparate meaning. "Bring into" has reference to the act of placing an alien within the territorial waters of the Philippines. "Land" refers to the act of putting ashore an alien. "Conceal" refers to the act of hiding an alien. "Harbor" refers to the act of giving shelter and aid to an alien. It is of course understood that the alien brought into or landed in the Philippines, or concealed or harbored, is an "alien not duly admitted by any immigration officer or not lawfully entitled to enter or reside within the Philippines under the terms of the immigration laws."^[1]

The rule is too well-settled to require any citation of authorities that the word "or" is a disjunctive term signifying dissociation and independence of one thing from each of the other things enumerated unless the context requires a different interpretation. While in the interpretation of statutes, 'or' may read 'and' and vice versa, it is so only when the context so requires.^[2]

A reading of Section 46 above-quoted does not justify giving the word "or" a non-disjunctive meaning.

Bringing into and landing in the Philippines of the 39 aliens were completed when they were placed ashore in the barrio of Damortis on September 22, 1966. The act of the six accused in criminal case 625 8-M before the CFI of Bulacan of transporting the aliens constitutes the offenses of "concealing" and "harboring," as the terms are used in Section 46 of our Immigration Laws. The court a quo in point of fact accepted this interpretation when it observed that "it could happen that different individuals, acting separately from, and independently of each other, could violate and be criminally liable for violation of the Immigration Act, if each individual independently commits any of the means specified under said Section 46 of Commonwealth Act 613, as amended by Republic Act 827. For example, an individual acting independently, with the use of a motor boat, brings into the country and lands several Chinese aliens and after doing so he goes away. There is no question that said individual violated said Section 46 of the Immigration Act, for bringing into and landing in the Philippines some aliens. Now, after the said landing of the said aliens another individual also acting independently, without connection whatsoever with the one who brought and landed the said aliens, and knowing that the Chinese aliens have no right to enter the country or unlawfully conceals or harbors the said aliens. There is no doubt that this person is

also liable and punishable for another separate violation of said Section 46 of Commonwealth Act 613."

This notwithstanding, the court dismissed this case on the ground that there is an express allegation in the information of connivance between the three defendants-appellees herein and the six accused in criminal case 6258-M of the CFI of Bulacan. In our view the court a quo incurred in error in reaching this conclusion. This error, which is one of misinterpretation of the phraseology of the information, was induced by a mis-reading of the first portion of the said information which states as follows:

"That on or about the 22nd day of September, 1966, in the Municipality of Sto. Tomas, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another and in active aid with Filipino nationals who are presently charged before the CFI of Bulacan in Crim. Case No. 6258-M, did then and there wilfully, unlawfully and feloniously bring in and ferry into the Philippines thirty-nine (39) Chinese aliens who traveled by the Chinese vessel 'Chungking' from the port of Hongkong..."(italics ours)

It is crystal-clear that the words, "the above-named accused, conspiring and confederating together and mutually helping one another," can refer only and exclusively to the three persons accused in this case, namely Maximo Martin, Candido Martin and Rodolfo Higashi. While the unfortunate insertion in the information of the clause reading, "and in active aid with Filipino nationals who are presently charged before the CFI of Bulacan in Crim. Case No. 6268-M," may yield the implication that the three defendants-appellees and the six accused in criminal case 6258-M before the CFI of Bulacan, may have agreed on the sequence of the precise steps to be taken in the smuggling of the Chinese aliens and on the identities of the persons charged with consummating each step, still there seems to be no question that the three defendants-appellees are charged only with bringing in and landing on Philippine soil the thirty-nine aliens, whereas the six accused in criminal case 6258-M are charged only with concealing and harboring the said aliens. It is technically absurd to draw a conclusion of conspiracy among the three defendants-appellees and the six accused in the criminal case 625 8-M before the CFI of Bulacan who are not named defendants in this case.

At all events, the words, "and in active aid with Filipino nationals who are presently charged before the CFI of Bulacan in Crim. Case No. 625 8-M," can and should be considered as a surplusage, and may be omitted from the information without doing violence to or detracting from the intentment of the said indictment. These words should therefore be disregarded.

Finally, the court a quo erred in maintaining the view that the acts of bringing into and landing aliens in the Philippines illegally and the acts of concealing and harboring them constitute one "transitory and continuing violation." We here repeat and emphasize that the acts of bringing into and landing an alien in the Philippines are completed once the alien is brought ashore on Philippine territory, and are separate and distinct from the acts of concealing and harboring such alien. If the aliens in this case were apprehended immediately after landing, there would be no occasion for concealing and harboring them. Upon the other hand, one set of persons may actually accomplish the act of bringing in and/ or landing aliens in the Philippines, and another completely different set of persons may conceal and/or harbor them. The general concept of a continuing offense is that the essential ingredients of the crime are committed in different provinces. An example is the complex offense of kidnapping with murder if the victim is transported through different provinces before he is actually killed. In such case, the CFI of any province in which any one of the essential elements of said complex offense has been committed, has jurisdiction to take cognizance of the offense.[3]

The conclusion thus becomes ineluctable that the court a quo erred in refusing to take cognizance of the case at bar.

ACCORDINGLY, the order of the Court of First Instance of La Union of August 2, 1968, dismissing this case and cancelling the bail bond posted by the three defendants-appellees, is set aside, and this cases is remanded for further proceedings in accordance with law.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee.Barredo, and Villamor, JJ., concur.

Makasiar, J., did not take part.

[1] "Bring into" refers to violations where actual landing or placing of aliens on shore could not be shown. (Middleton vs. U.S., C.C.A. Fla., F.2d 239, 240, cited in 5-A Words & Phrases, Permanent Edition, p. 383) "Landing" is setting on shore or coming on shore. (Taylor vs. U.S., 152 F. 1, 10, CCA. 197, cited in 24 Words & Phrases, permanent Edition, p. 323) Under the Federal Immigration Law, "harbor" means to clandestinely shelter, succor and improperly protected aliens; "conceal" means to shield from observation and to prevent discovery of such alien persons. (Susnjar vs. U.S., C.C.A., Ohio, 27 F. 2d 223, 224, cited in 8 Words & Phrases, Permanent Edition, p. 481.

[2] Kataniag vs. The People of the Philippines, 74 Phil. 45.

[3] Parulan vs. Rodas, 78 Phil. 855.

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