

CO KIAT, PETITIONER, VS. HON. COURT OF APPEALS, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-48700. July 02, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is an appeal by certiorari of the decision dated April 29, 1977 of the Court of Appeals which affirmed the convictions of Co Kiat and Godofredo Cruz of the theft or hijacking of 540 cases of Salem cigarettes from Clark Air Base. Upon separate motions for reconsideration filed by the accused, Cruz was acquitted on the ground of reasonable doubt but Co Kiat's conviction was maintained.

Co Kiat's petition for review was denied by this Court on September 29, 1978 in a minute resolution (p. 97, Rollo), but on motion for reconsideration the court decided to give his petition due course (p. 157, Rollo).

The facts of the case are recited in the decision of the Court of Appeals as follows:

"Airman First Class James A. Sconiers is an American Negro. He was a member of the 6200th U.S. Security Police Squadron stationed at Clark Airbase, Angeles City. As such, he used to escort the shipment of cargoes from the Central Exchange Warehouse at Clark Airbase to the Manila Port Area (p. 129, Rec.; p. 2, tsn, July 16, 1969).

"In the afternoon of September 2, 1968, after Sconiers had just come off from his job at the base, a certain Filipino approached him and invited him to a place called the 'Block.' Upon reaching said place, he was brought to the 'Sky High Club' just across the street. While drinking San Miguel Beer in said club, they were joined by two or three other Filipinos, one of them was in PC uniform (pp. 2-3, tsn, July 16, 1969).

"After the usual introduction, the three Filipinos started asking Sconiers questions about his job. Then the trio proposed to Sconiers the idea of hijacking the shipment of blue seal cigarettes to be escorted by the latter on September 4, 1968. At first, Sconiers was afraid because he was about to get married. But the three convinced Sconiers by telling him not to worry as they knew all the people in the warehouse as well as in Manila (pp. 2-5, tsn, July 16, 1969).

"Then, September 4, 1968 came. That same morning, 540 cases of 'blue seal' Salem cigarettes were readied for shipment from the U.S. Clark Air Base, Angeles City to the Manila Port Area. The cigarettes were placed inside six (6) connexes (metal shipping container).

"After the connexes were loaded with ninety (90) cases of 'blue seal' Salem cigarettes each, they were sealed and welded. Then the connexes were placed in a flat bed on a trailer pulled by a tractor (pp. 4-7, tsn, July 11, 1969).

"The tractor with the trailer driven by accused Adriano Sigua left Clark Air Base at about 9:15 to 9:30 that same morning of September 4, 1968. Sconiers who was assigned as escort brought with him the shipping record (Exhibit 'A') evidencing the shipment for delivery to the Liaison officer stationed at the Manila Port Area (pp. 5-10, tsn, July 16, 1969).

"Instead of going straight to Manila, however, the trailer proceeded to the compound of the Visayan Bicycle Manufacturing Company located at Valenzuela, Bulacan. Inside the compound a group of men started moving as soon as the trailer arrived. Among these men were the appellant Co Kiat and two of the men who talked with Sconiers at the 'Sky High' night club in the evening of September 2, 1968. Also with the group was the accused Felicidad Tan. Shortly thereafter, a small truck entered the compound; and the men started unwelding the connexes with the equipment carried by this small truck (pp. 11-12, tsn, July 16, 1968).

"Then the appellant, Major Godofredo Cruz, arrived with two bodyguards. Sconiers was told to go down the trailer to meet Major Cruz. After the introduction, Major Cruz assured Sconiers that he (Major Cruz) controlled all the people and police in the area.

"After the connexes were unwelded, Co Kiat instructed the men to unload the cases of Salem cigarettes. Beside Co Kiat was the accused Felicidad Tan who helped supervise the unloading. Then the cigarettes were replaced with hollow blocks brought by Co Kiat inside the compound three days prior to the incident. After filling up five of the six connexes with hollow blocks, they were welded back. The sixth connex was welded back without replacing the cigarettes inside it (pp. 13-15, tsn, July 16, 1969).

"After talking for 5 to 10 minutes, Major Cruz told Sconiers to go back to the trailer. Thereafter, Major Cruz left with his bodyguards; while Sconiers proceeded to Manila to submit the shipping papers. After the papers were checked, Sconiers started back for Clark Air Base (pp. 14-18, tsn, July 16, 1969).

"On their way home, a Filipino employee from the Central Exchange motorpool got inside the tractor. He told Sconiers that he knew what happened, and alighted from the tractor about a quarter of a mile away from the main gate to Clark Air Base where Sconiers alighted. As Sconiers was proceeding to the jeepney stand, a Filipino took him downtown to a club (p. 18, tsn, July 16, 1969).

"Sconiers was brought before the accused Alfonso Torres who was then seated alone inside the club. Torres ask Sconiers to sit down and told the latter that he was the brain of the hijacking. Torres then brought Sconiers to a corner nearby. He (Torres) went inside and came back with a portfolio (Exhibit 'C') containing P14,000.00. Torres then took Sconiers into a jeepney and after travelling for a distance, they both got off. Torres gave Sconiers the portfolio and repeated his (Torres) warning to Sconiers not to report what happened. After that, Sconiers boarded a jeepney to report for work at the base (pp. 18--19, tsn, July 16, 1969).

"Meanwhile, after the cigarettes were piled in the basketball court inside the compound of the Visayan Bicycle Manufacturing Company on instruction of Co Kiat, a big red truck arrived at about 2:00 P.M. The cigarettes were then loaded inside the red truck and after Co Kiat had introduced Felicidad Tan as his wife to Benjamin Balmes, the two (Felicidad and Balmes) brought their truckload of cigarettes to 264 Roosevelt Avenue, Quezon City. The remaining cigarettes were loaded inside the panel truck and were also hauled to 264 Roosevelt Avenue by Co Kiat (pp. 3-4, tsn, Aug. 14, 1969).

"Between 7:00 to 11:30 in the evening, many automobiles were hauling the cigarettes from the house at 264 Roosevelt Avenue. Then Co Kiat and Balmes themselves rode the panel truck fully loaded with Salem cigarettes to deliver them to Banawe Street, Quezon City. Upon reaching the intersection of Roosevelt Avenue and San Francisco del Monte, Quezon City, however, they were caught and apprehended by ASAC agents who had been watching the activities going on inside the house at 264 Roosevelt Avenue (pp. 4-5, tsn, Aug. 14, 1969)." (Rollo, pp. 33-36.)

On May 16, 1969, seventeen (17) persons were charged for Qualified Theft before the Circuit Criminal Court of Pampanga (Crim. Case No. COC-V-049), among them the petitioner Co Kiat, James Sconiers, Major Godofredo Cruz, Felicidad Tan and Alfonso Torres. Sconiers was dropped from the complaint based on the terms of the US-Phil. Bases Agreement. He was tried by the U.S. military court inside Clark Air Base. The other accused have remained at large. Co Kiat, Godofredo Cruz, Felicidad Tan and Alfonso Torres pleaded not guilty, but Torres

escaped during the trial of the case.

The trial resulted in the acquittal of Felicidad Tan. Co Kiat and Godofredo Cruz were found guilty beyond reasonable doubt, "as principals of the crime defined and penalized in Article 308 (Simple Theft) of the Revised Penal Code." Absent any mitigating or aggravating circumstances, they were each sentenced by the circuit criminal court, "to suffer an indeterminate penalty of NINE (9) YEARS, FOUR (4) MONTHS and ONE (1) DAY of Prision Mayor, as minimum imprisonment, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal, as maximum imprisonment: to indemnify jointly and severally the United States Government the amount of P203,212.80 (at the then exchange rate of P4.80 to \$1.00), without subsidiary imprisonment in case of insolvency, with temporary disqualification to hold public office insofar as accused Godofredo Cruz is concerned, and the other accessories of the law and to pay the costs. (pp. 32--33, Rollo.)

On appeal to the Court of Appeals, the conviction of Co Kiat and Godofredo Cruz was affirmed (CA-G.R. No. 13004-CR, April 29, 1977) (p. 31, Rollo). Separate motions for reconsideration were filed by Cruz and Co Kiat. Cruz was acquitted upon reconsideration, but Co Kiat's conviction remained, hence, this petition for review by Co Kiat alleging that:

- "1. The Court of Appeals erred in convicting him on the same evidence which it found 'incredible,' 'polluted,' and 'inadequate' to convict his co? accused;
- "2. The Court of Appeals erred in convicting him of 'conspiracy' while it acquitted his co-conspirator;
- "3. The Court of Appeals erred in convicting him on mere suspicion, surmises, and conjectures;
- "4. The Court of Appeals erred in sustaining the jurisdiction of the trial court although the crime was committed in Valenzuela, Bulacan; and
- "5. The Court of Appeals erred in not upholding Co Kiat's right to presumption of innocence." (pp. 8-9, Petitioner's Brief, p. 170, Rollo.)

After deliberating on the petition, the appellants' brief, the Solicitor General's comment and brief for the respondents, we are not persuaded that the petition should be granted.

The petitioner's first, second, third and fifth assignments of error may be reduced to the single question of whether the Court of Appeals erred in affirming his conviction although it let Cruz go free. The acquittal of Cruz on reasonable doubt did not necessarily mean acquittal for Co Kiat as well. Firstly, the only evidence against Cruz was provided by Juanita Barrios Co and James Sconiers who declared that he was at the Visayas Bicycle Manufacturing plant when the stolen cigarettes were delivered there by Sconiers and Sigua. But Cruz was able to convince the Court of Appeals that the identification of him by the prosecution witnesses was unreliable and should not prevail over his alibi. On the other hand, besides these witnesses, there was other evidence connecting Co Kiat with the theft for he not only admitted being present at the Visayan Bicycle Manufacturing Compound when the stolen goods were delivered there, but the prosecution proved that he brought the hollow blocks which were loaded in the connexes in place of the cigarettes, and that he supervised the stock piling of the cigarettes on the premises. Furthermore, he was inside the panel truck transporting the stolen cigarettes when apprehended by ASAC agents at the corner of Roosevelt Avenue and San Francisco Del Monte. He was literally "caught with the goods."

Petitioner's arguments that in view of Cruz's acquittal, he (Co Kiat) may not be convicted as Cruz's co-conspirator in the commission of the theft has no merit. Cruz was not the only co-conspirator of Co Kiat in the commission of the theft. Fifteen (15) other persons, including Sconiers (who was convicted by the U.S. court martial) were charged with Co Kiat as co--conspirators in the commission of the crime. The reason why only the petitioner,

Cruz, and Felicidad Tan stood trial is that all the others escaped.

As the asportation of the cigarettes commenced when they were taken out of Clark Air Base by Sconiers and Sigua and continued when the goods passed through Valenzuela, Bulacan, until they were seized by the ASAC agents in Quezon City, the courts in any of those places had jurisdiction over the offense (*Buaya vs. Polo*, 169 SCRA 471).

It is a well-settled doctrine in this jurisdiction, that factual findings of the trial court are entitled to great weight and authority (*Macua vs. Intermediate Appellate Court*, 155 SCRA 29) and that the jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals, is limited to reviewing and revising the errors of law imputed to it, its findings of facts being conclusive (*Chan vs. Court of Appeals*, 33 SCRA 737).

In a petition for review of decisions of the Court of Appeals, the jurisdiction of this Court is confined to reviewing questions of law, unless the factual findings are totally bereft of support in the records or are so glaringly erroneous as to constitute a serious abuse of discretion (*Canete, et al. vs. Court of Appeals*, 171 SCRA 13).

Except in criminal cases in which the penalty imposed is reclusion perpetua or higher, appeals to the Supreme Court are not a matter of right but of sound judicial discretion and are allowed only on questions of law and only when there are special and important reasons, which we do not find in this case (*Balde vs. Court of Appeals*, 150 SCRA 365).

WHEREFORE, the petition is denied. The decision of the Court of Appeals convicting petitioner Co Kiat of the crime of theft is affirmed in toto. Costs against the petitioner.

SO ORDERED.

Narvasa, Acting C.J., Cruz, Gancayco, and Medialdea, JJ., concur.

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