

ANG BENG, ET AL., PETITIONERS AND APPELLANTS, VS. THE COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLEE.*G. R. No. L-9621. January 30, 1957*

Ponente: PARAS, C.J.

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The petitioners, both Chinese nationals, were prosecuted in and convicted by the Court of First Instance of Manila for violation of the Import Control Law (Republic Act No. 650) in Criminal Case No. 21317. They were also charged before the Deportation Board. Pending appeal of the criminal case in the Court of Appeals, the Import Control Law expired, in view of which and with the conformity of the Solicitor General, petitioners' motion for dismissal was granted and they were ordered discharged. The Deportation Board, however, submitted to the President of the Philippines its findings in the Deportation Case and recommended petitioners' deportation. On January 18, 1954, the President issued the corresponding order of deportation.¹ On March 1, 1955, the petitioners filed with the Court of First Instance of Manila a petition for prohibition and certiorari, praying that the President's order of deportation be declared illegal and that they be released. From the dismissal of the petition the petitioners have appealed before us.

The issue raised is whether the order deporting the petitioners should be, set aside, because the law defining the crime of which they were convicted had already expired, the order of deportation being based on said conviction.

The felony with which the petitioners were charged was committed during the effectivity of the Import Control Law. The pertinent legal provisions are therefore Articles 366 and 22 of the Revised Penal Code, to wit:

"Art. 36. Without prejudice to the provisions contained in Article 22 of this Code, felonies and misdemeanors, committed prior to the date of effectiveness of this Code shall be punished in accordance with the Code or Acts in force at the time of their Commission.

"Art. 22. Penal laws¹ shall have a retroactive effect in so far as they favor the person guilty of felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same."

We cannot subscribe to petitioners' contention that the expiration of the Import Control Law should be considered favorable to them in the sense that it erases the stigma of their conviction. There is no law upholding such proposition. The benefit of retroactivity and liberal construction accrues when penal laws are repealed. There is no subsequent repealing law that petitioners could mention. The law violated by them expired in virtue of its own force. The case of *Tamayo*, 6 Phil., 225, invoked by petitioners is irrelevant, as it involved absolute repeal.

What is more, the order of deportation emanated from a branch of the government which exercises jurisdiction independent from the judiciary. The President, in the exercise of his executive prerogative and as an act of State, is vested with full power and discretion to issue orders of deportation.

"The power to expel or exclude aliens, being a power affecting international relations, is vested in the political

department of the government, and is to be regulated by treaty or act of Congress, and to be executed by the executive authority according to the regulations so established, except as far as the judicial department has been authorized by treaty or statute, or required by the paramount law of the Constitution, to intervene." (In re Faterson, 1 Phil., 95; In re McGulluch Dick, 38 Phil. 41.)

To spearhead all other consideration, it is fundamental that an executive' order for exportation is not dependent on a prior judicial conviction in a criminal case. This axiom of law was reiterated in the decision in the case of Tan Tong vs. Deportation Board, (96 Phil., 934) which pertinently ruled as follows:

"The power to deport aliens is lodged in the President of the Republic of the Philippines. As an act of state, it is vested in the Executive by virtue of this office, subject only to the regulations prescribed in section 69 of the Revised Administrative Code of to such future legislation as may be promulgated on the subject. (In re McGulluck Dick, 38 Phil., 41)

"By no form or manner of reasoning can the inference be made that by section 2702 of the Revised Administrative Code the Legislature intended that an alien can be deported for illegal importation only upon conviction therefor in a competent Court, and thereby deprived the Deportation Board of its power to investigate charges of unlawful importation of merchandise against a'n alien, especially, when as it appears from the record, no criminal action for unlawful importation has been filed against him. The language of the provision and the chapter in which it is found do not justify petitioner's contention. No derogation of a power vested in the Chief Executive or a limitation thereof can be presumed by the implication from the mere addition of the Clause he may be subject to deportation at the end of Section 2702. This section punishes illegal importation and imposes, in addition to the penalty prescribed, the liability to deportation if the person found guilty is an alien. Its sole import is that if a competent court has found an alien guilty of a violation of section 2702 of the Revised Administrative Code, the proceedings outlined in section 69 of the said Code are no longer necessary for deportation. Beyond this it is unreasonable if not absurd, to presume that the legislature intended more. It could not have intended that if there is no conviction for a crime of unlawful importation, or if no charges have been filed against an alien therefor, the Deportation Board may not proceed to investigate said charges against him and recommend deportation." (Italics supplied.)

In view of the foregoing, the decision appealed from is hereby affirmed. So ordered, with costs against the appellants.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista, Angelo, Labrador, Concepcion, Reyes, J. B. L., Endentia, and Felix, JJ., concur.

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