

ANG FANG AND ANG KIM TIAO PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. Nos. L-22429 and L-22430. October 29, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Two criminal cases against petitioners are before this Court for review on certiorari: The first, a violation of Section 2703, Revised Administrative Code [fraudulent practice against customs revenues (smuggling)]; and, the second, a violation of Article 192, Revised Penal Code [illegal importation of prohibited drugs (opium)]. The Manila court[[1]] found petitioners guilty on both counts. The sentence against each: For smuggling (violation of Section 2703, Revised Administrative Code), "an indeterminate penalty ranging from a minimum of not less than 1 year imprisonment (no maximum provided) and to pay a fine of P2,000 with subsidiary imprisonment in case of insolvency"; and, for illegal importation of opium (violation of Article 192, Revised Penal Code), "an indeterminate penalty ranging from a minimum of 1 year and 1 day to a maximum of 3 years, 6 months and 21 days of prision correccional and to pay a fine of P2,000, with subsidiary imprisonment in case of insolvency." On appeal, the Court of Appeals [2] voted to affirm, except for the smuggling case where an indeterminate prison term "consisting of a minimum of not less than six (6) months and a maximum of not more than two (2) years" was imposed, with costs.

The undisputed facts are:

Sometime in March, 1955, petitioner Ang Fang, a merchant with an annual allocation of \$1,000.00, opened a letter of credit with the China Banking Corporation for \$100.00 to be used for the importation of "joss" papers from Hongkong. In accordance with the accepted firm offer and the letter of credit, a bill of lading covering "joss" papers contained in four bales was sent to, and received by, Ang Fang from the shipper. Bee Chiong Hong in Hongkong.

On March 16, 1955, a shipment of four bales supposedly consisting of "joss" papers, bearing identification mark "BTC" and consigned to Ang Fang, was unloaded in the Port of Manila from the steamer "S/S Schwabenstein" which came from Hongkong. The shipment was placed under customs' custody pending release in due course to the consignee.

After arrival of the bales above-mentioned, petitioner Ang Kim Tiao, in representation of consignee Ang Fang, submitted to the Bureau of Customs the necessary documents for the release of the shipment, which was later given Entry No. 23450. These documents consisted of the permit to deliver the imported goods; the importer's declaration for advance payment of sales tax; the official receipt of cash deposit made to cover the estimated taxes; the release certificate from the Central Bank through the China Banking Corporation as agent; the bill of lading; the commercial invoices; and the Customs Consumption Entry.

Prior to the arrival of the shipment, there had been reports of illegal importation of dutiable merchandise. Said shipment was, consequently, subjected to rigid inspection. Instead of examining the bales at the pier where they

were unloaded, the customs authorities decided to inspect them thoroughly at the Parcel Section. Upon opening the four bales -by a committee composed of Customs Examiner Alcantara, Chief Appraiser Aceron, Deputy Collector Millares and Rizalino de Guzman of the Port Terminal Secret Service, in the presence of other persons - it was found that two of the bales, Nos. 3 and 4, had holes in the center, 1/2 foot square (6x6 inches) and about 1 foot deep. In bale No. 3, twenty-two packages containing ladies' and men's watches of different makes, together with stainless steel and gold-filled bracelets and watch crowns, were found, viz: 2,860 watches for men and ladies; 973 gold-filled watch crowns, and 2,400 gold-filled and stainless bracelets for men's and ladies' watches. In bale No. 4, 170 tins of opium (Dog Brand) were discovered.

The tins of opium were submitted for analysis to the National Bureau of Investigation. Its chemist, Lorenzo A. Sunico, selected at random several tins from the six packages submitted to him, found that the contents thereof were opium.

Ang Kim Tiao - who submitted the papers for the release of the four bales of supposed "joss" papers - was investigated. His statement was taken down in writing. There, he stated that he is a cousin of Ang Fang who resides at 503 Nueva St.; that the negotiable bill of lading was among the papers signed by him and submitted to the Bureau of Customs for the release of the four bales. In none of these papers were the goods in question declared. Only "joss" papers in four packages were mentioned. Ang Fang, however, asserted that he did not order them. Ang Kim Tiao testified that he took steps to have the goods released; that he was not able to do so as he was informed on March 23, 1955 by Mr. Aceron, Chief Appraiser, that they would not be released; that he informed Ang Fang about the matter, but that the latter did not do anything.

1. Our inquiry is mainly directed at the question of whether the People had discharged its heavy burden. And this, on the face of petitioners' disclaimer.

But the facts just recited - without more - will support the conclusion of the Court of Appeals that "[N]o one else in the whole world could have ordered them to be shipped to Manila".[3] Because there is no point in petitioners' averment that the innocuous documents show only an importation of "joss" papers. For, documents would not recite the clandestinely imported goods. These are, as here, ingeniously concealed with legally imported merchandise on the chance that the former could escape detection. Or, if discovered, the importer could, by improper methods, obtain delivery thereof just the same. Smugglers thrive on their wits. Neither will it profit petitioners to throw the burden of illegal shipment on their shipper. Reason: the shipper will not include it unless ordered and paid; or, unless a secret understanding was had between him and the local importer. Those undeclared goods could not have been planted either. The value thereof leaves us unwilling to accept that a racketeer mixed them with the genuinely imported "joss" papers. Unless, of course, an unholy alliance existed between him and petitioners. So much is to be risked for so uncertain a result.

Here is the picture that the record projects: Ang Fang is the importer. The bales, in which the smuggled items were discovered, were consigned to him. Previous reports of illegal importation of dutiable merchandise reached the authorities. The other petitioner, Ang Kim Tiao, is a longtime employee and cousin of Ang Fang. The two Angs are both interested in the release because they imported the goods. Ang Kim Tiao pressed for the immediate release of the goods. When told that the bales would undergo rigid inspection at the Parcel Office, petitioners shied away; they did not appear at the scheduled examination, despite the fact that both were duly notified thereof. They did not bother to procure delivery of the joss papers, did not even as much as inquire about the cause for refusal to release them; and this, in spite of the fact that Ang Kim Tiao was at first insistent in prompt release. This pattern of conduct does not comport with petitioners' claim that they are ignorant of the clandestine shipment and that they are but victims of an ingenious plot concocted by others. Correctly, as the Court of Appeals observed, "[I]t would be sheer naivete' if not pure infantilism of thought to accept their pretensions".[4]

2. Next, we address ourselves to the penalty. That imposed by the courts below for the illegal importation of opium is fair. For the crime of fraudulent practice against customs revenues (Section 2703, Revised Administrative Code), we feel that we should - under the Indeterminate Sentence Act - elevate the minimum of the penalty to the level set by the trial court.

Wherefore, the judgment under review is modified in the sense that, for the violation of Section 2703 of the Revised Administrative Code, petitioners are hereby sentenced each to imprisonment for an indeterminate period ranging from one (1) year to two (2) years,[5] and to pay a fine of Two Thousand Pesos (f 2,000), with the corresponding subsidiary subsidiary imprisonment. In all other respects, said judgment is affirmed. Costs against petitioners.

SO ORDERED.

Concepcion, C.J. Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Ruiz Castro, JJ., concur.

[1] Criminal Cases Nos. 32033 and 32034, Court of First Instance of Manila, entitled "People of the Philippines, plaintiff, versus Ang Fang and Ang Kim Tiao, accused."

[2] CA-G.R. Nos. 01893-R and 01894-R, "People of the Philippines, plaintiff-appellee, versus Ang Fang and Ang Kim Tiao, defendants-appellants".

[3] Decision of the Court of Appeals, Petitioners' brief, p. 42.

[4] Decision, Court of Appeals, Petitioners' brief, p. 44. Cf.: U. S. vs. Pow Sing, et al., 23 Phil. 421, 422; U. S. vs. Ah Tung, et al., 26 Phil. 321, 322-323; U. S. vs. Aztigarraga, et al., 36 Phil. 886, 887-888.

[5] The corporal penalty in Sec. 2703, Revised Administrative Code, is from 6 months to 2 years.

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