

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ONG TIN, DEFENDANT AND APPELLANT.

G. R. No. 10067. April 28, 1958

Ponente: FELIX, J.

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FELIX, J.:

The facts of this case are not in controversy and are correctly narrated in the brief of the State. They are as follows:

Ong Tin is undisputedly an alien, he being a subject of the Republic of China (Exhs. A, B and C). On May 27, 1954, he applied with the Office of the Mayor of Quezon City for a permit and license to open and operate a "sari-sari" store to be located at the corner of K-D and K-3rd, Kamuning, Quezon City, which application was approved on the same date with the issuance to him of Permit No. 4360 (Exhibits D and E). On August 8, 1954, Pedro S. Bolano, Chief of the Licenses-Taxes Division, Office of the City Treasurer, Quezon City, went to the said store and informed Ong Tin that pursuant to the memorandum order of the Mayor of Quezon City, he was required to surrender the permit that was previously issued to him. Appellant replied that he could not surrender the permit for the reason that the question of the constitutionality of Republic Act No. 1180 was pending resolution by the Supreme Court.

Pursuant to the subpoena issued by the First Assistant City Attorney of Quezon City directed to Ong Tin (Exhibit Y), the latter appeared before said official who then required of him to surrender his license and warned him not to continue engaging in his retail business as otherwise he would be prosecuted for violation of the law. Ong Tin asked for a week time to decide whether or not to surrender his license after which he informed the City Attorney that he was not willing to surrender said license and that he was ready to fight the case in court. On October 12, 1954, Bolano, accompanied by Patrolman Leonardo San Jose, again repaired to the premises of Ong Tin and saw that the "sari-sari" store was still operating and continues to operate up to the present time.

Because of the foregoing facts that appeared at the investigation conducted by the authorities, Ong Tin was charged in the Court of First Instance of Rizal (Quezon City Branch) with violation of Section 1, in relation to Section 6 of Republic Act No. 1180, entitled "An Act to Regulate the Retail Business", and after proper proceedings and hearing the Court found said defendant guilty as charged in the information and sentenced him to suffer: "the penalty of three (3) years of prision correccional and a fine of P3.000 and upon defendant's failure to pay the same, for him to suffer the corresponding subsidiary imprisonment which shall not exceed 1/3 of the principal penalty; and to pay the costs. After the service of the sentence, defendant is hereby ordered deported to the country of his origin."

From this decision Ong Tin appealed to this Court, his counsel contending in this instance that the lower Court erred:

- In convicting the accused without passing upon the constitutionality of Republic Act 1180-an issue squarely raised by the accused as a defense during the trial of this case;

- n not finding that Republic Act 1180 is unconstitutional and, therefore, null and void;
- In convicting the abused because Republic Act 1180, as applied to him, is unconstitutional and does not warrant his conviction;
- In not holding that even assuming Republic Act 3] 80 to be constitutional, the same does not apply to the accused inasmuch as he obtained his permit and license to engage in the retail trade before the said law was approved and before it became effective; and
- In failing to take into account the confusion which reigned in the mind of the accused as a consequence of divergent views held by the City Mayor and the City Attorney regarding his continuance in the retail business and thus erred in finding the accused guilty beyond reasonable doubt of the violation of the provisions of Republic Act 1180.

As may be seen the first three assignments of error deal with the constitutionality of the aforementioned Republic Act 1180, a point which was already decided by Us in the noted case of *Lao H. Ichong vs. Jaime Hernandez et al.*, (101 Phil, 1155) penned by Mr. Justice Alejo Labrador and promulgated on May 31, 1957, In this decision we said:

"Resuming what we have set forth above we hold that the disputed law (Rep. Act No. 1180) was enacted to remedy a real actual threat and danger to national economy posed by alien dominance and control of the retail business and free citizens and country from such dominance and control; that the enactment clearly falls within the scope of the police power of the State, thru which and by which it protects its own personality and insures its security and future; that the law does not violate the equal protection clause of the Constitution because sufficient grounds exist for the distinction between alien and citizen in the exercise of the occupation regulated, nor the due process of law clause, because the law is prospective in operation and recognizes the privilege of aliens already engaged in the occupation and reasonably protects their privilege; that the wisdom and efficacy of the law to carry out its objectives appear to us to be plainly evident—as a matter of fact it seems not only appropriate but actually necessary—and that in any case such matter falls within the prerogative of the Legislature, with whose power and discretion the Judicial department of the Government may not interfere; that the provisions of the law are clearly embraced in the title, and this suffers from no duplicity and has not misled the legislators or the segment of the population affected; and that it cannot be said to be void for supposed conflict with treaty obligations because no treaty has actually been entered into on the subject and the police power may not be curtailed or surrendered by any treaty or any other conventional agreement."

It is claimed, however, that in the decision appealed from the trial court failed to pass upon the constitutionality of Republic Act No. 1180, an issue squarely raised by the accused as a defense during the trial of the case. We consider, however, that this alleged error is of no moment, because laws passed by Congress are presumed to be constitutional until they are otherwise declared by final decision of this Court.

The next issue raised by defense counsel refers to the proposition that even assuming that Republic Act No. 1180 is constitutional, yet the same does not apply to the accused inasmuch as he has obtained his permit and license to engage in the retail trade before said law was approved and before it became effective. We find no merit in this contention because the acts constituting the crime for which appellant has been convicted in the case at bar were all executed after the effectivity of Republic Act No. 1180, and by no means can We consider appellant's conviction as the result of the application to him of an *ex post facto* law. In this connection defense counsel further argues that appellant can not be convicted of a violation of Republic Act No. 1180 since he had secured a license to operate a sari-sari store prior to the date when said law became effective on June 19, 1954. Said in other words, counsel contends that the license can not be taken away from him and much less can he be held criminally liable of making use of said license. But, as pointed out by the Solicitor General, it has already been held that the

granting of license does not create irrevocable rights, neither is it property or property rights (Pedro vs. Provincial Board of Rizal, 56 Phil., 123; Vinco vs. Municipality of Hinigaran, 44 Phil., 790; Joaquin vs. Herrera, 37 Phil., 705; 12 C. J. 958, Section 494; 37 C. J. 168). Moreover, as appellant himself admitted in the instant case that he continued to operate his sari-sari store even after the passage of Republic Act No. 1180, and that up to the present he continues to operate the same, it can not be denied that he has incurred the liability prescribed by law, because under its provisions his continued operation of the store was in violation of the context thereof.

Going now over the penalty of incarceration imposed upon appellant by the court a quo, We notice that the convict was sentenced to three (3) years of prision correctional, a punishment which does not come within the classification of imprisonment penalties provided by special penal laws, but of the Revised Penal Code. The Solicitor General also points out that the provisions of the Indeterminate Sentence Act have not been applied in his case.

Wherefore, and in so far as the penalty of imprisonment is concerned, the decision appealed from shall be, as it is hereby modified by sentencing appellant to an indeterminate penalty of from three (3) years to three (3) years and three (3) months of imprisonment. With the modifications just stated, the decision appealed from is hereby affirmed in all other respects, with costs against appellant. So ordered.

Paras, C. J., Bengzon, Reyes A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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