

VICENTE PAGADO, PETITIONER AND APPELLEE, VS. VICENTE ALDANESE, INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G. R. No. 17463. March 01, 1921

Ponente: MALCOLM, J.

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MALCOLM, J.:

By motion, the petitioner Vicente Pagado, on behalf of his wife Ang Tec, now detained by the Insular Collector of Customs, asks for her release on bail pending appeal. The Acting Attorney-General opposes the granting of the petition.

Ang Tec was denied admission to the Philippine Islands by the customs authorities. Application for habeas corpus was then filed in the Court of First Instance of Manila, with the result that the decision of the Insular Collector of Customs was reversed and it was ordered that the petitioner Ang Tec be permitted to disembark and to remain in the country. From this decision of the Court of First Instance, the Insular Collector of Customs has appealed to the Supreme Court.

Both parties are agreed that the applicable provision of law is section 5 of the Act of Congress of May 5, 1892 (27 Stat. at L., 25) which provides:

"That after the passage of this Act on an application to any judge or court of the United States in the first instance for a writ of habeas corpus, by a Chinese person seeking to land in the United States, to whom that privilege has been denied, no bail shall be allowed, and such application shall be heard and determined promptly without unnecessary delay."

The Attorney-General cites the case of *Tan Puy vs. Collector of Customs* ([1917] 36 Phil., 586), as substantiating his interpretation of the law. In the decision of this case typical of others of the same nature, it was held that "A Chinese¹ alien who is seeking admission into the territory of the Philippine Islands under the Chinese Exclusion Laws, is not entitled to bail during the pendency of his appeal after it has been decided that he is not entitled to enter." It is noteworthy, however, that in this and other cases, the aliens were refused admission by the customs authorities and on filing proceedings in habeas corpus before the courts of first instance, they were again defeated in the attempt to obtain entry. Under the instant facts, on the contrary, the petitioner has been successful in »the Court of First Instance.

The Act of Congress of 1892 prohibits the allowance of bail on an application to any judge in first instance for a writ of habeas corpus by a Chinese person seeking to land in the Islands to whom that privilege has been denied. The Act does not prohibit admission to bail pending an appeal in the second instance by a Chinese person to whom the privilege of landing has been granted. The power to admit to bail thus rests, in implication, on the express prohibition of the Chinese Exclusion Act. Although the practice of the Federal courts as to the allowance of bail has been marked by some variance, and the matter has been the subject of confusion, we think the true rule is, that if the writ be sustained and the petitioner discharged, the court in its discretion may provide for bail to

insure appearance if the ruling be reversed. (2 C. J., 1100; U. S. vs. Sisson [1914], 220 Fed., 538.)

The reason assigned for the prohibition by this court in its decision in *Tan Puy vs. Collector of Customs*, supra, that "It would mean a great burden upon the officials of the Government charged with the administration of the Chinese Exclusion Laws to permit large numbers of Chinese persons seeking admission to the Philippine Islands to enter the Islands and scatter broadcast," does not exist in this case. There will be relatively few immigrants who will obtain a reversal of decisions of collectors of customs by Courts of First Instance. The situation is more nearly analogous to the rule laid down by this court with reference to admission to bail under Act No. 702, namely, that a Chinese person who has appealed to the Supreme Court from a judgment of the, Court of First Instance ordering his deportation may be admitted to bail pending his appeal (*U. S. vs. Go-Siaco* [1909], 12 Phil., 490.) It was said in the case last cited that "There is no reason to think that his being at large will be any menace to the people in the locality where he resides, nor is there any reason to believe that his attendance at court to abide the judgment which may be entered against him can not be secured by the giving of bail as in ordinary cases." The decision of the court of First Instance, being in favor of the petitioner, the presumption of an ultimate successful termination arises. To keep such a person in confinement during the time needed for judicial proceedings to unwind would be a gross injustice.

The motion, is granted. The order of the court is, that; Ang Tec, the wife of the petitioner Vicente Pagado, be discharged from the custody of the Insular Collector of Customs on filing a bond in such sum as shall be suggested by the Attorney-General and approved by the court, conditioned that she will surrender herself again to the customs authorities when the appeal shall have been heard and determined by this court, if the decision upon such appeal be adverse to her right to land. So ordered.

Mapa, C. J., Araullo, Street, and Villamor, JJ., concur.

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