

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. KOH TAN ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 29710. February 23, 1929

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 25th day of March, 1928, the provincial fiscal of Sulu filed an amended information against the above-named defendants, charging them with a violation of section 5 in connection with section 4 of Act No. 702, and in connection with the Act of Congress of the United States, approved April 29, 1902, as amended. The information alleged:

"That on or about the year 1916 and continuously up to the present time, in the municipal district of Sitankaa, Province of Sulu, P. I., the herein defendants, being Chinese laborers did then and there willfully, unlawfully and illegally and without the previous consent of the proper authorities, come to the Philippine Islands and remain in the said municipal district of Sitankai without registration or landing certificates, and the two of the accused, Kong Loon Lui, and Sue Hong, being laborers before and merchants now, remained in the said municipal district without first securing the said landing and registration certificates within the period prescribed by law.

"All contrary to law."

To said information the defendants demurred on the following grounds: (a) That the court did not have jurisdiction of the case; (b) that the information did not state facts sufficient to constitute a cause of action and (c) that the information is ambiguous, uncertain and charges more than one violation of the law. The demurrer was overruled, upon the ground that during the entire existence of said Act No. 702 the Supreme Court of the Philippine Islands has recognized the jurisdiction of the Courts of First Instance in many analogous cases.

Upon said information the defendants were arraigned, tried, found guilty of the acts therein described, and sentenced by the Honorable A. Horrilleno, judge, to be deported to China by the proper authorities and to pay the costs. From that sentence the defendants appealed.

Counsel for appellants now contend:

- (1) That the lower court committed an error in overruling their demurrer; and
- (2) That the lower court committed an error in holding that the appellants violated Act No. 702 and in sentencing them to be deported.

A careful examination of the evidence shows that the defendants are Chinese laborers who came to the Philippine Islands clandestinely; that they arrived at the municipal district of Sitankai, Province of Sulu, between the years 1916 and 1923; and that when the customs inspector asked for the certificates required by Act No. 702, they admitted that they had no such certificates.

Only four of the nine defendants testified during the trial. Two of them attempted to show that they were born in

the Philippine Islands and that their mothers were Moras. They presented, however, no proof to corroborate their testimony. The other two defendants attempted to show that they were merchants. In cross-examination, however, they admitted that they came to the Philippine Islands as laborers and that after a few years they went into business. The remaining five defendants presented no defense whatsoever.

The law applicable to the foregoing facts is found in section 5 in relation with section 4 of Act No. 702. Said sections are as follows:

"SEC. 5. Every Chinese person having a right to be and remain in the Philippine Islands shall obtain the certificate of registration specified in section three of this Act as evidence of such right and shall pay the fee and furnish his photograph in triplicate as in said section prescribed; and every Chinese person found without such certificate within the Philippine Islands after the expiration of the time limited by law for registration shall be presumed, in the absence of satisfactory proof to the contrary, to be a Chinese laborer and shall be subject to deportation as provided in section four of this Act. Every Chinese person shall, on demand of any customs official, police, constabulary, or other peace officer exhibit his certificate, and in his refusal to do so may be arrested and tried as provided in section four of this Act.

"SEC 4. Any Chinese laborer within the limits of the Philippine Islands who shall neglect, fail, or refuse to obtain within the time prescribed by section four of the Act of Congress of the United States referred to in section one of this Act, the certificate of registration by this Act provided to be issued, and who shall be found within the Philippine Islands without such certificate of registration after such time has elapsed, may be arrested upon warrant issued by the Court of First Instance of the province or by the justice's court of the municipality returnable before said Court of First Instance, by any customs official, police, constabulary, or other peace officer of the Philippine Islands and brought before any judge of a Court of First Instance in the Islands, whose duty it shall be to order that such Chinese laborer be deported from the Philippine Islands, either to China or the country from whence he came, etc." (Vol. II, P. L., pp. 364, 365.)

Under the provisions of section 5 of Act No. 702 above quoted, the defendants, being Chinese persons without certificates of registration, are presumed to be Chinese laborers and are subject to deportation as provided in section 4 of said Act No, 702. Said section 4 provides for the arrest of Chinese persons residing in the Philippine Islands without having complied with the provisions of Act No. 702.

It also provides for their trial before the Court of First Instance, "whose duty it shall be to order that such Chinese laborer be deported from the Philippine Islands, either to China or the country from whence he came."

Summarizing the facts in the present case and the law thereto applicable, it may be stated: The defendants are Chinese laborers; they were found in the Philippine Islands without certificates of registration, in violation of section 5 in relation with section 4 of Act No. 702. They were brought before the Court of First Instance, tried and found guilty of said violation of Act No. 702. The penalty provided in said Act is deportation, and they were sentenced to be deported. Therefore, the sentence of the lower court, ordering the defendants to be deported from the Philippine Islands, is in accordance with the facts and the law.

Counsel for appellants vigorously contends that the Court of First Instance did not have jurisdiction of the case and that it falls within the jurisdiction of the Bureau of Customs. In answer to this contention it may be said that sections 4 and 5 of Act No. 702 above quoted, expressly confer upon the Courts of First Instance jurisdiction of cases arising from a violation of the provisions of said sections. Accordingly, all prosecutions for a violation of Act No. 702 have heretofore been brought before the Courts of First Instance, and the Supreme Court has never questioned the jurisdiction of said courts, as shown by the following cases: (U. S. vs. Sy Quiat, 12 Phil, 676; U. S. vs. Lim Co, 12 Phil., 703; U. S. vs. Chan Sam, 17 Phil., 448; U. S. vs. Soy Chuy, 33 Phil, 545; U. S. vs. Ang, 34

Phil, 44; U. S. vs. Lui Pak Chuen, 42 Phil, 31.)

Only in one case (U. S. vs. Vy Bo Tec, 34 Phil., 260) did we find that the Bureau of Customs took jurisdiction. But later, said bureau, perhaps realizing its mistake, turned the case over to the Court of First Instance.

The present case differs from a case where Chinese laborers attempt to enter the Philippine Islands and are detained by the department of customs. When Chinese laborers are found within the territory after the adoption of said Act No. 702; without the required certificate, the Courts of First Instance have jurisdiction. Where, however, Chinese laborers attempt to enter the territory of the Philippine Islands and are detained by the department of customs, their remedy is a very different one from the remedy provided for under said Act No. 702. In cases where laborers are found within the Philippine Islands without the required certificate, the law expressly provides that the Courts of First Instance shall have jurisdiction to try them and, if found guilty, to order their deportation. In cases where Chinese laborers attempt to enter the Philippine Islands without the required certificate and are detained by the department of customs and their entrance is refused, their remedy, according to long years of practice, is to sue out a writ of habeas corpus and thus test their right to enter the Philippine Islands. The question, in the first case is, whether they are properly within the Philippine Islands; in the second case the question is, whether they have a right to enter the Philippine Islands.

Therefore, there is absolutely no ground for the contention that the Court of First Instance did not have jurisdiction of the case.

Counsel also contends that Act No. 702 relates exclusively to Chinese persons found in the Philippine Islands at the time of the passage of said Act on March 27, 1903, and that it has no application in the case of the appellants, who came to the Islands between the years 1916 and 1923. We have carefully examined said Act, and have failed to find therein any provision supporting counsel's contention. On the contrary, the provisions of section 5 of said

Act are sufficiently broad, and extend to all cases of Chinese persons found in the Philippine Islands without certificates of registration, irrespective of the time of their entrance. It was not contemplated by the lawmakers, that all Chinese laborers who should, for any reason, fail to secure the required certificate, were thereby permitted to remain in the Philippine Islands.

The last contention of the appellants' counsel is, that there is no proof in the record, showing that the appellants are Chinese persons or of Chinese descent. This contention is not supported by the record. The testimony of customs inspector MacLand and the opinion of the trial judge as to the nationality of the appellants, after having personally observed their appearance, dress, language, manners and racial characteristics—are sufficient proof that they are Chinese. Furthermore, under section 5 of Act No. 702, it being established that the appellants are Chinese persons, they are presumed to be Chinese laborers, and the burden of proof is upon them to show that they are not. (U. S. vs. Sy Quiat, 12 Phil., 676; U. S. vs. Lim Co, 12 Phil., 703.)

In view of all of the foregoing, we are of the opinion, that the sentence appealed from is in accordance with the facts and the law. The same is, therefore, hereby affirmed, with costs. It is so ordered.

Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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