

THE PEOPLE OF THE PHILIPPINE ISLANDS PLAINTIFF AND APPELLEE, VS. ANG HOK HIN, DEFENDANT AND APPELLANT.

G. R. No. 36006. November 19, 1932

Ponente: HULL, J.

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HULL, J.:

Appellant was charged in the Court of First Instance of Manila as follows:

"That on or about the 5th day of May, 1931, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully, feloniously, fraudulently and knowingly import and bring and assist in importing and bringing into the Philippine Islands, contrary to law, 26 cases containing 1,920 pieces, plain colored artificial silk textile; and 160 pieces, plain striped artificial silk textile, from Kobe, Japan, a foreign port, per the S. S. President Harrison;" which complaint was based on section 2702 of our Administrative Code, which reads:

"SEC. 2702. Unlawful importation of merchandised— Any person who shall fraudulently or knowingly import or bring into the Philippine Islands, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, shall be punished by a fine of not more than two thousand pesos, or by imprisonment for not more than two years, or both.

"When, upon trial for a violation of this section, the defendant is shown to have or to have had possession of the merchandise in question, such possession shall be deemed sufficient evidence to authorize conviction, unless the defend-ant shall explain the possession to the satisfaction of the court."

After trial the accused was convicted and sentenced to six months' imprisonment, to pay a fine of P1,000. with subsidiary imprisonment in case of insolvency, and to pay the costs of the proceedings.

Upon appeal it is urged, that even granted the truth of the facts, which the prosecution attempted to prove, that no violation of section 2702 was established.

In brief, the facts are: On May 5, 1931, the steamship President Harrison arrived at the port of Manila, bringing on board a shipment consisting of two packages and thirty four cases marked AH, consigned to the defendant Ang Hok Hin. According to the inward foreign manifest filed by the master of the said ship, the cargo was shipped from Kobe, Japan, by Kian Tong Hing, and it consisted of two packages bearing the Nos. 620 and 630, canned goods, and the thirty-four cases bearing the Nos. 631 to 664, dried cut radish.

In the morning of said day, May 5, 1931, the defendant Ang Hok Hin presented to the chief of the Marine Di-vision of the Bureau of Customs an application for permit for the delivery at the pier of the said thirty-six boxes, stating that they contained dried fish and cuttle fish. There is evidence to the effect that defendant secured a friendly customs inspector, that some of the goods were promptly loaded on a truck and left the piers, and that the defendant offered a bribe to one of the secret service agents of the Bureau of Customs not to interfere. Upon careful inspection it was found that twenty- six of the thirty-six cases involved contained silk instead of dried fish.

Neither silk nor dried fish are prohibited articles of importation nor is the joinder of such articles of importation prohibited.

Section 2702 was evidently taken from section 3082 of the Revised Statutes, and, at the time it was enacted, the current construction in the United States of that section was that it was limited primarily to smuggling, or as announced in the case of *United States vs. Kee Ho* (33 Fed. Rep., 333):

"The offense of bringing merchandise into the United States 'contrary to law does not include frauds or illegalities concerning the invoicing of the same or the payment of duties thereon, which can only occur after the importation is accomplished, and the merchandise brought within the cognizance of the customs officers. (U. S. vs. Clafin, 13 Blatchf, 184.)" While this rule may be questioned as having been enforced in only two cases, both of which were trial court's, the rule is not without reason, and the specific acts, the false declarations, and the attempted fraud on customs revenues are specifically provided for in other sections. We, therefore, believe that the Legislature did not attempt to enlarge the scope of the paragraph 2702, expressed in general language, to cover offenses already specifically provided for. To hold with the Attorney-General would impute to the Legislature the inconsistency of passing a criminal statute (2703) punishing certain specific crimes and at the same time passing a general statute (2702) in which the same offenses were denounced and made punishable though based primarily upon the ground they were offenses under paragraph 2703.

We, therefore, hold that the contention of the appellant that there is a fatal variance between the complaint and the proof is well founded. The accused must therefore be acquitted, in this action. It is so ordered. Costs de officio.

Street, Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Vickers, and Imperial, JJ., concur.

DISSENTING

BUTTE, J.:

I dissent from the decision of my brethren on the following grounds:

The information filed in this case was demurrable. It is technically insufficient to charge the defendant with unlawfully importing the merchandise here involved "contrary to law". For the better information of the defendant, the information should have charged what law, or what rule, regulation or requirement of the Collector of Customs, promulgated in pursuance of law, was violated by the importation. However, the defendant did not question the sufficiency of the information nor does he do so now. His contention in this court is that the record presents no evidence of the violation of any law. This contention seems to me to fly in the face of what the evidence convincingly shows.

It shows that he violated section 1363 of the Administrative Code, paragraph (m), sub-paragraphs 3, 4 and 5. It also shows that he violated the first and second clauses (both being separate offenses) of section 2703 of the Administrative Code.

It is true that the importation complained of could have been prosecuted under the first clause of section 2703 of the Administrative Code which reads as follows:

"Any person who makes or attempts to make any entry of imported or dutiable exported merchandise by means of any false or fraudulent invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice whatever * * *" and the defendant would have been subjected to a higher penalty than under section 2702 of the Administrative Code. The fiscal elected to prosecute him under section 2702 for the importation made in violation of section 2703 and I see no reason why the fiscal may not elect under which section he will prosecute. The fiscal may have wished to apply the second paragraph of section 2702 which does not appear in section 2703. It reads as follows:

"When, upon trial for a violation of this section, the defendant is shown to have or to have had possession of the merchandise in question, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the court." Indeed, the judgment of conviction in this case was based in part on that paragraph.

The importation, under the evidence, also violated the second clause of section 2703, which reads as follows:

"* * * or shall be guilty of any willful act or omission by means whereof the Government of the Philippine Islands might be deprived of the lawful duties, or any portion thereof, accruing from the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, shall, for each offense, be punished by a fine not exceeding five thousand pesos or by imprisonment for not more than two years, or both."

It being proven that the acts of the defendant were "contrary to law" because they violated any or all of the foregoing provisions, the requisites for a conviction under section 2702 of the Administrative Code have been literally met. The fact that the defendant might have been convicted under section 2703 for the violation of that law, so far from precluding, in my judgment directly sustains the prosecution under section 2702, for it proves that the importation was "contrary to law".

AVANCEÑA, C. J.: I concur in this dissenting opinion.

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