

TAN PING CO AND TAN KIM, PETITIONERS AND APPELLANTS, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G. R. No. 41391. September 06, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

Tan Ping Co applied to the Court of First Instance of Manila for a writ of habeas corpus on the ground that the respondent, the Insular Collector of Customs, was detaining him and his daughter, Tan Kim, for the purpose of deporting them to China. The lower court ordered that the petitioners be remanded to the custody of the respondent for appropriate action, and that they be adjudged to pay the costs. From that decision the petitioners have appealed to this court.

The attorney for the appellants makes the following assignments of error:

"I. The lower court erred in holding that the denial by the respondent Insular Collector of Customs to allow Tan Ping Co or his counsel to cross-examine Tan Kim in connection with her testimony in the proceeding instituted against Tan Ping Co on January 31, 1934, on the matters she testified in a separate proceeding against herself on January 30, 1934, is not abuse of power and discretion, when the proceeding of January 30th was made part of the record of the proceeding-of January 31, 1934.

"II. The lower court erred in holding that it is not abuse of power and discretion for the board of special inquiry and the Insular Collector of Customs to refuse to continue the case or to grant a rehearing, when the case before the board of special inquiry was abruptly, arbitrarily and illegally terminated without Tan Ping Co or his counsel having rested the same.

"III. The lower court erred in not holding that Tan Kim was not found in a house of prostitution or found actually practising prostitution, as required by law.

"IV. The lower court erred in not holding that the Insular Collector of Customs is not empowered by section 19 of the Act of Congress of February 5, 1917, to order the arrest and deportation of an alien who has not been found an inmate of a house of prostitution or found actually engaged in the business of prostitution.

"V. The lower court erred in not holding that Tan Ping Co did not import Tan Kim for the purpose of prostitution or for any other immoral purpose as required by law.

"VI. The lower court erred in not holding that it is abuse of power and discretion to disbelieve corroborated testimonies of witness without making it appear on record the reason therefor and give more credence to the uncorroborated testimony of one who had been changing her testimony and contradicting herself at different times.

"VII. The lower court erred in not holding that the Insular Collector of Customs is not empowered by section 19 of the Act of Congress of February 5, 1917, to order the arrest and deportation of an alien who did not import a person for the, purpose of prostitution or for any other immoral purposes."

It appears from the record that in January 1934 Tan Kim escaped from the house of prostitution of Yap Ah Huan in Gotamco Street, Pasay, where she was being kept, and applied to the Chinese Consul for protection. This official delivered her into the custody of the Insular Collector of Customs, who ordered that she be brought before a board of special inquiry for investigation. A hearing was held on January 30, 1934. Tan Kim testified under oath that her true name was Chiu Ay Kim; that at the instance of Tan Ping Co she took the name of Tan Kim when she came to the Philippine Islands; that Tan Ping Co appeared at the investigation held before she was landed. She further testified that she is not the daughter of Tan Ping Co, but of the deceased Chiu Ka Hian; that her mother, Ng Yok Ko, is living in Shanghai; that she was sold to Yap Ah Huan in China more than two years prior to the hearing on January 30, 1934; that she was forced by Yap Ah Huan to engage in prostitution while in China, and later was brought by her to the Philippine Islands; that after being landed as the daughter of Tan Ping Co she was taken to the house of Yap Ah Huan in Gotamco Street, Pasay, where she was engaged in prostitution; that Tan Ping Co used to come there for the purpose of collecting money from Yap Ah Huan, and collected a total of P750.

Upon the conclusion of the investigation of Tan Kim, the board of special inquiry, after reviewing the evidence, recommended that she be deported, and that Tan Ping Co be investigated with a view to taking the proper action against him.

On February 6, 1934 the Insular Collector of Customs, after reviewing the record and considering all the facts and circumstances of the matter, found that the said Tan Kim (alias Chiu Ay Kim) was¹ landed by a board of special inquiry on March 13, 1933 as a minor daughter of Tan Ping Co, a resident Chinese merchant; that she had gained her admission into this country on that date by posing as the daughter of said Tan Ping Co, when as a matter of fact she was not his daughter; that she was a prostitute and was actually engaged in prostitution; that she had no right to remain in the Philippine Islands, and was subject to deportation in accordance with section 19 of the Act of Congress, approved February 5, 1917; and in accordance with section 20 of said Act of Congress ordered that she be deported from the Philippine Islands to the place whence she had come.

Tan Ping Co was called before a board of special inquiry for investigation on January 31, 1934. He was represented by an attorney, who requested the board to stop the investigation, because it was of a criminal nature and Tan Ping Co was exempt from testifying against himself. The board overruled the objection, but Tan Ping Co refused to answer most of the questions put to him. Tan Kim was then called as a witness. She identified Tan Ping Co as her alleged father, who appeared before the board of special inquiry on March 13, 1933, and as the same person referred to in her testimony before the board on January 30, 1934. She testified that she came to the Philippine Islands as the daughter of Tan Ping Co, but that she was not in fact his daughter; that she never saw him until after she had arrived in the Philippines; that she had never lived with him; that since she was landed she has been living with Yap Ah Huan; that Tan Ping Co came to the house of Yap Ah Huan in Pasay, but she did not know the purpose of his visit; that it was true as she stated in her investigation on January 30, 1934 that Tan Ping Co went to the house of Yap Ah Huan to collect P750. After being warned that she was testifying under oath and that false testimony is punishable, she requested that no further questions be addressed to her, stating that she was willing to go to jail for what she had done if it deserved punishment, provided that she be deported after her imprisonment.

The board of special inquiry then made a note in the record to the effect that the record of the proceedings in the matter of Tan Kim, alleged daughter of Tan Ping Co, was made a part of the proceedings as to Tan Ping Co.

The attorney for Tan Ping Co did not cross-examine Tan Kim or ask permission to examine the record of her investigation, or ask leave to present any further evidence.

The board of special inquiry then made the following findings and recommendation:

"This is a sequel to the special proceedings of Tan Kim (alias Chu Ay Kim).

"Tan Ping Co, the respondent herein, was brought to this office under Warrant of Arrest No. 4459. He is charged with being in connivance with a certain Yap Ah Huan (alias Juana Yap y Medina) for the prostitution of Tan Kim. He denied the charge.

"We find that the respondent is really the person responsible for the illegal entry and admission of Tan Kim into this country, altho he denied any connection tending to her alleged prostitution. He admitted here, however, that Tan Kim is his daughter. Later on, he refused to answer, thru the advice of his counsel, the questions subsequently propounded to him to ascertain the veracity and good intentions of the serious implications made by Tan Kim made under her oath in the investigation conducted on January 30, 1934. Notwithstanding this, however, we find the records pertinent to this case under consideration to be wholly against him, and we believe that he is equally culpable in the absence of a reasonable showing to warrant adverse conclusion.

"In the investigation of Tan Kim, referred to above, Tan Ping Co's picture attached to his merchant papers was fully identified by the former to the satisfaction of the board. Again in this hearing she made a vivid confirmation of the fact when confronted by the person of Tan Ping Co. She pointed him, without fear nor doubt, to be the same Tan Ping Co who posed as her alleged father when she came Here for the first time. It was he, she said, whom she implicated in her investigation on January 30, 1934. She also told us, point blank, that he (referring to Tan Ping Co) is not her real father. She further identified him to be the same person whom she saw when she was being prepared for investigation in Dasmarinas Street prior to her investigation on March 13, 1933. And it was he, she told us finally, who came to the house of Yap Ah Huan in Pasay to collect the amount of P750.

"The respondent herein was repeatedly asked to identify Tan Kim in return, but, afraid less he courts self-incrimination by his answer, he refused to do so. There could be no surer index of truth than a momentary reaction observed when two persons of the same blood are placed before each other after prolonged separation. This is especially true between a father and daughter. On the contrary, there was noted, to our surprise, an eloquent and palpable, as they confronted each other, that the girl is a stranger to him. Fatherly enthusiasm and passionate attachment usually found in true fathers who meet daughters after a long absence and separation were not noticeable here. One was just the 'North Pole' to the other.

"Tan Ping Co claims, thru his learned attorney, the constitutional right not to incriminate himself, and believing perhaps that he was safely secured and guarded by such constitutional provision, he failed and refused even to recognize his own sworn statement, his child (if it is really true) and all other things of his own creation which were presented to him by the board. This was evidently resorted to, to foil the discovery of the naked truth which was, nevertheless, revealed in spite of his cemetery-like-silence and hostility. The constitutional provision invoked by counsel is only applicable in criminal cases.

"Tan Ping Co has on file in this office two merchant affidavits, Nos. 18453 and 16934, respectively, and two notarial documents, Nos. 913 and 13241, respectively, which narrate the circumstances of his wife and children. He was formerly a duly indorsed merchant and due to business reverses, he is at present connected with a broker's office. All these documents above-mentioned have been presented to him, but for the same reason stated above, he refused to recognize. He has his photographs attached to the merchant documents, and the board has fully identified them to be his perfect reproduction. C. B. R. No. 401345 in the matter of Tan Kim has been examined and he is reported to have appeared as witness in that investigation.

"Under the above facts and circumstances, it is evident that the respondent is directly responsible for the fraudulent fabrication of facts and proofs to effect the admission of Tan Kim in this country, who is a prostitute. In view thereof, the undersigned hereby recommend that he be deported to China and step be taken to cause prosecution if such step is deemed advisable."

On February 8, 1934, the attorney for Tan Ping Co applied to the Insular Collector of Customs for a rehearing of the case of Tan Ping Co (or Tan Kim) to give said attorney an opportunity to cross-examine Tan Kim. This request was denied, and on the same date the respondent Insular Collector of Customs rendered a decision finding Tan Ping Co to be a resident of the Philippine Islands and indorsed as a merchant; that as a resident Chinese merchant he imported and claimed Tan Kim (alias Chiu Ay Kim) to be his daughter when as a matter of fact she was not his daughter, his object being to engage her in prostitution in this country; that the said Tan Kim (alias Chiu Ay Kim) was permitted to land by a board of special inquiry as the daughter of Tan Ping Co, and that she, a Chinese woman, was found actually engaged in prostitution; and ordered that since Tan Ping Co had imported the said Tan Kim (alias Chiu Ay Kim) for the purpose of prostitution in violation of section Id of the Act of Congress, approved February 5, 1917, the said Tan Ping Co should be deported from the Philippine Islands to the place whence he came.

The errors assigned rest upon the assumption of facts not sustained by the record, and are without merit.

It appears from the record that Tan Kim, whose true name is Chiu Ay Kim, was landed by a board of special inquiry on March 13, 1933, as a minor daughter of Tan Ping Co, a resident Chinese merchant; that she gained her admission into the Philippine Islands by falsely representing herself to be the daughter of said Tan Ping Co, who in turn falsely claimed that she was his daughter; that she was a prostitute prior to her coming to the Philippine Islands, and that she has been engaged in prostitution since she was landed; that Tan Ping Co visited the house of prostitution in Pasay where Tan Kim was kept. The petitioner refused to testify, and presented no evidence in his behalf. It does not appear from the record that there was any abuse of authority or discretion on the part of the board of special inquiry or the respondent. The decision appealed from is affirmed, with the costs against the appellants.

Street, Abad Santos, Hull, and Diaz, JJ., concur.

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