

TAN KUY, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 49107. April 21, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

Certiorari to the Court of Appeals to review its decision affirming that of the Court of First Instance of Manila whereby the above-named petitioner was found guilty of hoarding, in violation of section 6 (d) of Executive Order No. 157, and sentenced to pay a fine of P20,000.

Hoarding, especially in times of general scarcity, is undoubtedly one of the manifestations of human selfishness.

As a recognized public evil, it far antedates the Christian Era and is probably coeval with history itself.[1] To provide against that evil which had been rampant in the present acute scarcity of prime commodities brought about by the war and which had caused, and is still causing, untold suffering to the population of the Philippines, the Executive Commission, through its Chairman, promulgated Executive Order No. 157.

But precisely because public opinion and, along with it, our own personal feeling have been indignantly rising in revolt against the evil of hoarding and profiteering, we as members of the Court should take special care, before we adjudged anyone accused under that law, to depose our hostile personal attitude and to consider the case with complete detachment from the biased environment in order that passion may not obscure our reason and that our judgment may be the unquestionable utterance of the traditionally blindfolded symbol of Impartial Justice. Just as it would be hard for anyone to swim against a strong current, it would be difficult for any court composed of human beings to ignore a strong public opinion if it should ever forget in an unguarded moment that its sworn duty is to obey only the mandate of law and justice and never the will or whim of the populace. As the highest tribunal of the land and the court of last resort, we should (and we hope we do), by our courage, independence, impartiality, and perspicacity, insure all litigants before us against any undue deprivation of life, liberty, or property under all circumstances. Chiefly in this manner does a court like this distinguish itself from Pontius Pilate, from the French revolutionary court that sent Louis XVI, Marie Antoinette, and thousands of innocent citizens to the guillotine in obedience to the clamor of the populace, or from the tribunal that sentenced Rizal to death at the behest of his enemies.

On May 15, 1943, the Military Administration issued an order prohibiting the removal or sale from May 16 to May 20, 1943, of cotton and rayon manufactured goods and cotton and rayon textiles then existing in the City of Manila, and requiring every dealer concerned to submit a list of his stock of said goods on or before the 27th of the same month. On May 18, 1943, the Chairman of the Philippine Executive Commission issued Executive Order No. 157, which was approved by the Director General of the Japanese Military Administration on the same date, authorizing the Commissioner of Agriculture and Commerce to fix from time to time the maximum prices at which any and all commodities may be sold or purchased and prohibiting among others the following :

"Sec. 6.—The following acts are also prohibited:

* * * * *

" (d) Cornering or hoarding commodities for the purpose of obtaining unjustifiable profits therefrom, even if maximum prices have not been fixed for such commodities. For the purposes of this Order, 'cornering' shall mean the acquisition of commodities with the intent of creating, or tending to create, or effecting artificial scarcity thereof in the market, in order to alter prices; arid 'hoarding' shall mean the keeping or concealing of commodities in amounts or quantities in excess of the ordinary demands of trade or business."

Section 8 of the Executive Order prescribes as penalty for violation of said prohibition imprisonment not exceeding five years or a fine not exceeding P50,000, or both, in the discretion of the court, with subsidiary imprisonment in case of insolvency, aside from confiscation of the commodities involved in the offense..

Previous to May 18, 1943, the petitioner had acquired cotton and rayon textiles valued at from P40,000 to P50,000 and had kept them on the ground floor of his residence at 188 Juan Luna, Manila, but had not sold or disposed of them up to June 4, 1943.

On June 2, 1943, the petitioner prepared an inventory of his stock of textiles (exhibit D) and delivered it to the Chinese Retailers Association, which in turn delivered it to the Philippine Prime Commodities Distribution Control Association on the following day, June 3.

On June 4, 1943, certain agents of the Economic Division of the Metropolitan Canstabulary searched the petitioner's premises and seized his stock of textiles, arresting him at the same time. Investigated after his arrest, the petitioner declared among other things that he had begun acquiring the merchandise in question by purchase from different Chinese agents more than one year before June 4, 1943, and had kept it to be sold at a future time; that he had not sold any part of it because it was only on the morning of the day of his arrest that he procured a license. When asked why he had not reported his stock before June 3, 1943, notwithstanding the military order requiring such report on or before May 27, 1943, he replied that he had been unable to do so because he was in Tanauan, Batangas, suffering with a boil and that he returned to Manila only on June 2, 1943 (Exhibit E).

On June 8, 1943, an information was filed by the fiscal against the petitioner, charging him with a violation of section 6 (d) of Executive Order No. 157 in that on or about the 4th day of June, 1943, and for some considerable length of time prior to said date, he did voluntarily, wilfully, and feloniously corner cotton and other cloths, all valued at P50,814.36, in quantities far in excess of the ordinary demands of his unlicensed business as cloth dealer and did hoard the same at 188 Juan Luna, Manila, instead of selling them to the public.

The trial court found the petitioner guilty of the offense charged and sentenced him to pay a fine of P20,000, with subsidiary imprisonment in case of insolvency, and to pay the costs. The merchandise seized was ordered confiscated. The Court of Appeals affirmed that sentence with the only modification that the subsidiary imprisonment shall not exceed six months.

There would be no question that the petitioner was guilty of cornering and hoarding if an ex post facto law were permissible and the courts could give the said executive order a retroactive effect. But, needless to explain, that is entirely beside the point; and in spite of our personal attitude against the petitioner's antisocial and reprehensible conduct, we cannot and must not take it into account for the purpose of determining his guilt or innocence of the offense with which he is charged, namely, hoarding in violation of Executive Order No. 157, The petitioners hoarding of the merchandise in question before May 18, 1943, altho antisocial and reprehensible, was not felonious or unlawful. To consider it as evidence of intention on his part to continue keeping or concealing the goods after the prohibition was made on May 18, is to beg the question. The question is clear-cut and simple: Did the petitioner violate section 6 (d) of Executive Order No. 157 by continuing to keep his dry goods from May 18, when the prohibition was made, until June 4, 1943, when they were seized by the Economic Police ?

The Court of Appeals found the petitioner guilty because he acquired a great quantity of textiles and did not dispose of even a portion thereof. But the petitioner's acquisition and failure to dispose of said textiles before May 18, 1943, as we have indicated, cannot be charged against him, because there was then no law prohibiting and punishing cornering and hoarding. The consideration, therefore, must be confined to his failure to dispose of the goods between May 18, and June 4, 1943. But inasmuch as Executive Order No. 157 did not require the immediate disposal of all existing stock of textiles, the petitioner's failure to dispose of his stock between May 18 and June 4, 1943, is material only insofar as it may evince an intention on his part to hoard, or to continue keeping or concealing, said merchandise in spite of the prohibition.

We are persuaded that no such intention can be deduced from the petitioner's failure to sell or dispose of his stock of textiles between May 18 and June 4, 1943, for the following reasons:

(1) It appears that the sale or removal of textiles from May 16 to May 20 was absolutely prohibited by Military Administration Order No. 12, and the official statement accompanying said order announced that beginning May 21, 1943, the ration-card system was to be adopted in the distribution to the public of cotton and rayon textiles and other cotton and rayon manufactured goods. Accordingly, the Government devised a "system of distributing and rationing cotton and rayon clothing," which was published in the May 1943 issue of the Official Gazette and which among other things provided that:

"4.—The distribution of ration tickets for cotton and rayon clothing shall be done in the following manner:

"Ration tickets printed and issued by the Primco (Philippine Prime Commodities Distribution Control Association) shall pass through the City Hall, district chiefs, district presidents, and then neighborhood association leaders to each member of the associations." (2 Off. Gaz., 484.)

It does not appear when the ration tickets were actually distributed among the individual members of the different neighborhood associations of Manila; they may not have been actually distributed in time to enable the petitioner to sell and the public to buy such commodities in a few days after May 21. In the absence of such showing, it would be unjustifiable and unfair to conclude that the petitioner could and should have disposed of his goods or part thereof between May 21 and June 4, considering that there is no provision in the executive order from which it may be inferred that such haste was required, and considering further that no sale could be lawfully made without a ration ticket.

(2) Neither is there any showing that between May 21 and June 4, 1943, anyone attempted to buy textiles from the petitioner by presenting a ration ticket and that the petitioner refused to sell.

(3) The fact that the petitioner reported his stock of merchandise to the Primco on June 3, 1943, before it was seized from him, negatives any intention on his part to violate the law, inasmuch as by submitting such report he placed his stock of merchandise within the control of the authorities in accordance with the laws and regulations on the subject. Even if he should reject the petitioner's explanation for the delay in submitting his report, as the lower courts apparently did, such delay could not be considered incriminatory because Executive Order No. 157 did not require the presentation of such report and Military Administration Order No. 12, which required it, imposed no punishment for the delay or failure to submit it. It has been suggested that the petitioner probably delayed the presentation of his report so that he could dispose of his goods unlawfully in the meantime. But such supposition runs counter to the finding of the Court of Appeals that the petitioner did not dispose of any part of his stock of textiles.

In order to convict the petitioner of hoarding under section 6 (d) of Executive Order No. 157 it is not enough to show that he failed to sell or dispose of his large stock of textiles within 17 days after May 18, 1943, when said order was promulgated; it must be shown that he kept or concealed—hoarded—the commodities "for the purpose of

obtaining unjustifiable profits therefrom." The facts of this case do not establish such illicit purpose. On the contrary it appears that from May 18 to May 20 the sale of textiles was prohibited, and thereafter it could be made only with ration tickets and at prices fixed and controlled by the Government. And inasmuch as the petitioner reported his stock of said commodities to the authorities, thereby placing the same within their price control, "the purpose of obtaining unjustifiable profits therefrom" cannot be imputed to him.

The judgment is reversed and the accused-petitioner is acquitted, with costs de oficio. The merchandise seized and confiscated is hereby ordered returned to him.

Horrilleno, Paras, and Bocobo, JJ., concur.

DISSENTING

MORAN, J.,

On May 15, 1943, the Military Administration issued Military Order No. 12, prohibiting the movement and sale in the City of Manila of cotton and rayon manufactured goods and textiles between May 16 and May 20, 1943, and requiring every dealer thereon to file on or before May 27, 1943, a complete report of his stock on hand. On May 18, 1943, the Philippine Executive Commission issued Executive Order No. 157, section 6 (d) of which reads:

"Sec. 6.—The following acts are also prohibited:

* * * * *

"Cornering or hoarding commodities for the purpose of obtaining unjustifiable profits therefrom even if maximum prices have not been fixed for such commodities. For the purposes of this Order, "cornering shall mean the acquisition of commodities with the intent of creating, or tending to create; or affecting artificial scarcity thereof in the market ; in order to alter prices; and "hoarding" shall mean the keeping or concealing of commodities in amounts or quantities in excess of the ordinary demands of trade or business."

As found by the Court of Appeals, petitioner has been acquiring large quantities of cotton and rayon goods and textiles worth P40,000 to P50,000 with no open store where to sell them, and up to the time when they were seized by the Government he had then concealed in a warehouse with two cemented doors, the upper part of one of them being closed with a padlock and blocked in front by piles of firewood.

Notwithstanding the issuance of Executive Order No. 157, petitioner continued concealing in said warehouse the goods aforementioned, his purpose being to defer their sale at some future time undoubtedly to take advantage of the continued rising of prices of clothing materials. And notwithstanding the Military Order No. 12, petitioner failed to file his report on or before May 27, 1943, he having done so only on June 3, 1943.

On June 4, 1943, a group of officers of the Economic Division of the Metropolitan Constabulary raided petitioner's warehouse and seized all the cotton and rayon textiles stored therein. In the investigation conducted thereafter by the Constabulary, petitioner stated that he had then no present intention to sell the goods thus seized from him, and that he was keeping them for resale at some future time.

At the trial of the case, petitioner, by way of explanation of his acquisition and keeping of the goods, stated that he intended to open a tailoring shop, but this explanation was rejected by the Court of Appeals because it was in conflict with his affidavit, Exhibit E, and because among the goods there were great quantities of ready-made undershirts. These, in sum, are the findings of facts of the Court of Appeals, and in the determination of the

several questions of law propounded by petitioner, we cannot consider but the facts thus found, I, therefore, reject as unwarranted and devoid of legal authority (section 23, Ex. Order No. 157; Comm. Act No. 3, as amended by Comm. Act No. 259) the interpolation of new facts in the majority's decision, and to the extent that those new findings have influenced their determination of the final outcome of the case, their judgment is, I regret, in violation of the jurisdiction conferred by law upon this Court.

Two elements constitute the offense of hoarding under Executive Order No. 157; (1) the keeping or concealing of commodities in amounts or quantities in excess of ordinary demands of trade and business (2) for the purpose of obtaining unjustifiable profits therefrom. The first element requires evidence of actual fact of concealment; the second, of mere intent, to obtain unjustifiable profits. Petitioner's case, therefore, presents the sole inquiry of whether he has actually concealed the commodities and whether he had intended to obtain unjustifiable profits therefrom.

It is undisputed, and the majority so admit, that petitioner is guilty of hoarding if the law could be given a retroactive effect. In other words, the majority does not deny that prior to and up to the time of the issuance of Executive Order No. 157, petitioner was actually concealing his commodities with the intent of making unjustifiable profits therefrom. If, as found by the Court of Appeals, from May 18, 1943, when the Executive Order was issued, petitioner continued keeping and concealing the same commodities up to June 4, 1943, when he was arrested and his goods seized, he should, upon the presumption of continuity, be deemed to have done so for the like purpose of obtaining unjustifiable profits, unless he clearly shows the contrary.

The fundamental reason upon which the majority's opinion is made to rest in acquitting petitioner is that he had to continue keeping the commodities because of the announcement made by the military authorities to the effect that a ration-card system would then soon be adopted for the distribution of rayon and cotton textiles to the public. This theory, however, finds no support in the record and is contradicted by several circumstances and the findings of the Court of Appeals.

The record does not disclose—neither the findings of the Court of Appeals—that petitioner had knowledge of, and intended to abide by, the announced ration-card system of distribution. He had never invoked such defense at the trial of this case, even before this Court. Upon the other hand, when petitioner was investigated by the Economic Division of the Metropolitan Constabulary, he admitted that he had been keeping the commodities with a view to reselling them in the future. And at the trial of his case, he testified, so the Court of Appeals found, that he had been keeping the commodities with a view to opening later a tailoring shop. These statements made by the petitioner which are contradictory, both exclude the theory advanced by the majority.

Another circumstance inconsistent with such theory, is the belated submission by petitioner of the report of his stock. Were it true that he was keeping the goods to place himself under the regulation of the ration-card system announced by the military authorities, it is hard to understand why he failed to comply with the Military Order requiring all dealers to file their inventory on or before May 27, 1943. According to the Court of Appeals, petitioner's inventory, which was filed on June 3, 1943, was filed too late. 'All the excuses he had given for such delay have thus been rejected by said court. Therefore, the delay having been found to be unjustifiable can evince nothing but an ulterior design to evade the law. True, the submission of the inventory was delayed for only seven days, but it is not hard to figure out the great quantities of goods which, in the meantime, may be removed from the warehouse and placed beyond government's reach.

It is a mistake to disregard petitioner's illicit act of hoarding prior to May 18, 1943, when Executive Order No. 157 was issued. Such illicit act lends the proper light in the construction of the moral significance of his subsequent acts. In other words, petitioner's prior illicit act of hoarding constitutes a legitimate evidence not only

of his bad character, but also of the continuity of his criminal intent after Executive Order No. 157 became effective. Evidence of this character—prior continuous illicit act—cannot too lightly be considered, much less ignored, for it supplies a logical basis for determining how hardly petitioner would desist from the continuation of the same illicit act to which he was used when deterrents are placed in his way. If petitioner had been hoarding commodities continuously for more than one year—this means almost immediately after cessation of hostilities in the Philippines—, could he be expected to renounce immediately his investments in the illicit trade and promptly place under control the fortunes that he had painstakingly amassed for one year? To such a man of such character, the first impulse to any regulation which will frustrate his illicit designs would be evasion. This is human experience. And if through fear he submits himself to control, it is not unreasonable to assume that he would not do so entirely, if he could manage to help it, but would reserve part of his commodities with a view to making up therewith in the black market the losses he would have sustained by his partial submission to control. This explains in part the social phenomenon in the present crisis that as government's control becomes more strict and widespread, profiteering becomes the more rampant and prices rise to more scandalously prohibitive levels.

A possibility may be claimed that petitioner, though an inveterate hoarder that he was, may have suddenly decided to be honest and abandon his unlawful trade and sacrifice his accumulations of a year's toil by the magic effect of the announced policy of government's control. But in the light of his sordid character disclosed by his prior continuous illicit act, such sudden change is hardly to be expected. And if he did, it would be an exceptional case to be shown by exceptional evidence. In the instant case, it would have been easy for petitioner to show his good faith had he really so acted. If his intention was to abandon his illicit trade and abide by the announced ration-card system, he would have so professed when he was investigated by the economic police on June 3, 1943, and when he testified later before the trial court. And to substantiate his profession to that effect by actual deeds, he would have filed his report on or before May 27, 1943, in compliance with Military Order No. 12. But petitioner did neither of these two things and instead he resorted to falsehood in trying to justify his continued concealment of the goods and the belated submission of his inventory. Under these circumstances, I am unable to understand how the majority may still attribute good faith to petitioner.

With all candor, I do not relish, even by way of contrast to this Court, the majority's historical allusion to the court that sentenced Rizal to martyrdom at the behest of his enemies, and to the tribunals of revolutionary France which had condemned thousands of innocent victims to the guillotine, as well as their biblical allusion to Pontius Pilate who condemned to the Cross the Saviour of mankind. A tribunal whose love and reputation for truth and justice have stood unquestioned needs no grim background of recorded instances of heinous injustices to show the luster of its own rectitude. The majority's revelation of the highly moral battle they have silently fought to survive a severe test of integrity in this case, is indeed commendable, and unnecessary though it may appear to add solidity to the already solid reputation of this Court for justice and uprightness, it should not be construed as a mere display of virtue or as an extra-effort to justify in the eyes of the suffering people a determination which cannot otherwise be sufficiently justified, but, upon the contrary, as a sincere expression of an earnest and undying desire to do substantial justice in this case at all cost. I voice, I hope, the pride of the majority when I say that in every great public question that has been brought to our attention for adjudication, we have suffered neither public opinion nor biased environment to bear its influence upon our judgment, and our individual votes have always represented, in the language of the majority, "the unquestionable utterance of the traditionally blindfolded symbol of Impartial Justice."

Candidly, the true difference that has split me from the majority in the determination of this case is essentially one of attitude. In having deposed, as they admit, their indignation and personal hostility with a view to maintaining their independence and impartiality, the majority, I am afraid, have fallen unconsciously into an attitude of mind parallel to the phenomenon of the pendulum. They have swayed to the opposite extreme to avoid another. For my

part, I stand unshakeably for firmness in the enforcement of the Government's policy to cope with these crimes against public welfare. Executive Order No. 157 is a measure of government control intended to cope with such evils with a view to stabilizing the normal supply of prime commodities to the public. It is designed to deal with that class of conscienceless individuals who, making capital of scarcity and want, would live in isolated abundance at the expense of the bleeding and impoverished populace. With no regard for color or creed, the law, by whomsoever it shall be enforced, must be made to bring the full weight of its force upon every and all of them who constitute now the worst enemies of the country. Wherever they may ply their trade—in open market or in any nook of their hidden quarters—they must be made to learn that they can by no means be permitted to prosper on the ruins of the suffering millions and that the law will always bestir itself to reach them everytime and everywhere to make them pay in just proportion for their crimes.

My vote is for the affirmance of the judgment rendered by the Court of Appeals.

[1] Witness this proverb of Solomon:

"He that withholdeth corn, the people shall curse him: but blessing shall be upon the head of him that selleth it."
(Prov. 12:26)

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