

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CALIXTO SURLA, DEFENDANT AND APPELLANT.

G.R. No. 6536. September 02, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Pampanga, the Hon. Julio Llorente presiding, convicting the accused of a violation of section 57 of Act No. 1189 and sentencing him to one year in prison, to the payment of the costs of the action, and confiscating in favor of the Insular Government the cigarettes sold in violation of the Internal Revenue Law, the factory, the land upon which it stands, the machinery, fixtures, and all other property located therein, and ordering the disposition of the goods and the rendition of an account of the proceeds of the same in the manner provided by law.

It is alleged in this case that between the 29th of December, 1908, and the 11th of July, 1909, Calixto Surla, the defendant in this case, being engaged in the manufacture of cigarettes, and being duly licensed thereto by the Bureau of Internal Revenue of the Insular Government, took from said factory and sold for domestic consumption in the locality where the factory was situated 42,000 cigarettes which were properly subject to the tax imposed by section 101 of the Internal Revenue Law [1189] aforesaid without paying the revenue tax thereon. It is also charged in the information that this was the second offense which the accused had committed, he having been fined for a similar act on the 20th of March, 1908.

The shortage of 42,000 cigarettes is not denied. The difference between the prosecution and the defense relates simply to the reason for such shortage, the prosecution alleging that the shortage was due, as above stated, to the secret and unlawful removal of said cigarettes from the factory by the accused for the purpose of avoiding the payment of the tax thereon, the accused asserting that the shortage was due, first, to the consumption of a large number of cigarettes by the operatives in the factory, upon which there is no tax, and, second, to the mistakes made by Eulogio Manalang, the bookkeeper, in entering on the books the number of cigarettes daily manufactured and the number taken from the warehouse and sold.

We are convinced that the following findings by the learned trial court are fully sustained by the evidence:

"That the accused is a manufacturer of cigarettes and is the owner of the factory A-5-255, situated in the pueblo of Angeles, Province of Pampanga, P. I., the license having been issued in the name of said Calixto Surla; that on the 9th day of July, 1909, Roullven and Moran, internal-revenue agents, visited the said factory for the purpose of inspecting it; that it appeared, according to the statement of Eulogio Manalang, Surla's superintendent, that Surla had possession of the key to the storehouse, and he being absent, the revenue agents were not able at that time to inspect the warehouse. They were under the necessity of waiting until they could obtain the key, Eulogio Manalang went to get the key but soon returned stating that Surla was sleeping and that he did not dare awaken him. By reason, however, of the insistence of the agents that they would enter the storehouse even though they did so by force, Manalang called Calixto Surla, who finally appeared and opened the storehouse. In the presence of the accused the agents proceeded to take an inventory of the cigarettes found

therein and also of the books of the factory. They found a shortage of 42,000 cigarettes. Surla admitted such shortage but stated that he did not know to what to attribute the shortage because ever since his first conviction he had always carried the key to the storehouse himself. He further stated that the shortage must be due to the mistakes of his superintendent, Eulogio Manalang. The agents then immediately visited the different stores in Angeles and found ten packages of cigarettes from the factory of Calixto Surla upon which the package number had been duplicated. Nine of these packages were present in evidence. On the 12th of July, 1909, the said internal-revenue agents, accompanied by Mr. Armstrong, another agent, returned to the factory and made an inventory of the materials there, finding there also a shortage of 693 kilos and 740 grams. On this occasion Eulogio Manalang stated to the agent Armstrong that he had made a mistake in the official books of the daily production of the factory and exhibited to said agent a private book which contained as he stated correct notes of the number of cigarettes produced daily by the factory. On comparing the entries in the private book with those in the official registry, great differences were found between them. They aggregate, according to the testimony of the agent, 52,500 cigarettes. If the differences in the entries on the two books had been made to appear in the official book, instead of a deficit of 42,000 cigarettes there would have been an excess of 10,500 cigarettes. On this occasion the accused again stated to agent Moran that from the day he had been convicted before he had never confided the key of the storehouse to anybody else. Agents Roullven and Moran who visited the factory frequently during working hours always found the doors of the storehouse locked with a padlock, and stated that Calixto Surla was always the one who opened the door for them."

After a further discussion of the testimony presented by the accused the court said:

"In view of all the facts presented in this case the court has arrived at the conclusion that the accused Calixto Surla maliciously and criminally transferred or consented to the transfer from his factory of the 42,000 cigarettes in question without paying the tax imposed by law on or before the moment of such transfer, and it appearing that the accused, according to Exhibit A, was convicted on the 20th of March, 1908, for a similar infraction of the law, he must by virtue of section 56 of the Internal Revenue Law be punished as a second offender."

A careful consideration of the record in the cause leads us to agree with the conclusion reached by the learned trial court. The explanation of the shortage made by Eulogio Manalang varied with the time when it was made. The explanations of the accused himself in relation to the same matter are equally unsatisfactory and unreliable. The evidence of the prosecution is clear and definite. It leaves substantially nothing to inference. It appears from the whole case that the court neglected to take into consideration nothing which would benefit the accused. No important or influential fact or circumstance was left untouched, each being given the weight and significance which it legally deserved.

The trial court also found that the accused had theretofore been found guilty of a violation of section 56 of Act No. 1189. This finding is clearly sustained by the proofs and the facts upon which it is based are not denied by the defendant.

We are, therefore, in accord with the finding of the trial court upon the facts.

The accused asserts that the Act, in declaring forfeited the factory and all of its contents and the ground upon which it stands, is unconstitutional. He also contends that the judgment of the trial court is fatally defective in that it fails to state how the property forfeited shall be disposed of and its proceeds accounted for.

Over the question involving the constitutionality of the aforesaid provision, little needs to be said. That the Act is constitutional is not open to question. (U. S. vs. Stowell, 133 U. S., 1.)

As to the form of the judgment of confiscation, it is sufficient to say that it is entirely immaterial to the defendant, legally speaking, how the property confiscated is disposed of and where its proceeds go. The property, having

been forfeited, belongs absolutely to the Government, and the proceeds arising from the disposal thereof also belong to the Government. (U.S. vs. Stowell, 133 U. S., 1, above.) Section 42 [1189] invoked by the accused for the purpose of demonstrating how the forfeited property should be disposed of, and its proceeds divided, he asserting that under the terms thereof he is entitled to have the balance returned to him after the liquidation of the unpaid taxes and expenses of sale, is entirely inapplicable to forfeited property. It relates solely to the sale of property distrained to pay taxes of delinquents and the disposition of the proceeds thereof. The title to such property remains in the delinquent until the sale. It is never forfeited and is never in the government unless it becomes a purchaser at the sale. The property being his he is entitled to whatever surplus there may be after the payment of the taxes and all the expenses of the distraint and sale. In case of a forfeiture of property for crime, however, the title and ownership of the convict are absolutely divested and pass to the Government. He ceases to have any interest therein. As a result he can have no interest in its proceeds. Section 50 [1189] prescribes the disposition of the property in such cases.

We do not here decide just when the title and ownership pass from the convict to the Government in case of forfeiture - whether at the time the criminal act is committed, or when the government takes possession under the forfeiture, or when the judgment of confiscation is entered. It is unnecessary to a decision of this case.

The judgment appealed from is hereby affirmed, with costs against the appellant.

Torres, Mapa, Johnson, and Carson, JJ., concur.

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