

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BENITO SIY CONG BIENG AND CO KONG, DEFENDANTS. BENITO SIY CONG BIENG, APPELLANT.

G.R. No. 8646. March 31, 1915

Ponente: CARSON, J.

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CARSON, J.:

Benito Siy Cong Bieng and Co Kong, the defendants in this action, were convicted in the court below of a violation of section 7 of Act No. 1655 of the Philippine Commission, known as the Pure Food and Drugs Act, and each of them was sentenced to pay a fine of P10 and one-half of the costs of the proceedings. From this judgment the defendant Benito Siy Cong Bieng alone appealed. The only error assigned by counsel for the appellant in his brief on this appeal is as follows:

"The court erred in holding that the accused Benito Siy Cong Bieng had violated the provision of Act No. 1655 and was criminally responsible, in the same way as his agent Co Kong, notwithstanding the fact that he had never had any knowledge of the acts performed by the latter, which are the subject matter of the complaint, to wit, sale of adulterated coffee or of any kind of coffee."

The record discloses that Co Kong, while in charge of appellant's tienda (store) and acting as his agent and employee, sold, in the ordinary course of business, coffee which had been adulterated by the admixture of peanuts and other extraneous substances. The circumstances under which the sale was made clearly appear from the following statement of facts which was read into the record under an agreement signed by both defendants and by all the attorneys in the case:

"It is hereby stipulated and admitted by both parties that the defendant Benito Siy Cong Bieng is the owner of tienda No. 326, Calle Santo Cristo, and that Co Kong is his agent duly installed therein and performing the services of his employment; that on July 2, 1912, the defendant Co Kong in the ordinary course of the business sold a certain food product designated by the name of coffee; that said coffee was adulterated and falsely branded, as alleged in the complaint; 'that the defendant Benito Siy Cong Bieng really had no knowledge that his agent Co Kong would sell said coffee or any special brand of coffee, such as the aforesaid adulterated and falsely branded coffee, as is specified in the complaint; it was not manufactured or put up by or with the knowledge of the defendant Benito Siy Cong Bieng;' and the defendants Benito Siy Cong Bieng and Co Kong furthermore agree that this stipulation shall have the effects of, and may be used by the prosecution as, an admission of the facts herein established."

The only questions, therefore, which need be considered on this appeal are: first, whether a conviction under the Pure Food and Drugs Act can be sustained where it appears that the sale of adulterated food products charged in the information was made without guilty knowledge of the fact of adulteration, and without conscious intent to violate the statute; and second, whether a principal can be convicted under the Act for a sale of adulterated goods made by one of his agents or employees in the regular course of his employment, but without knowledge on the part of the principal of the fact that the goods sold were adulterated.

While it is true that, as a rule and on principles of abstract justice, men are not and should not be held criminally responsible for acts committed by them without guilty knowledge and criminal or at least evil intent (Bishop's New Crim. Law, Vol. I, sec. 286), the courts have always recognized the power of the legislature, on grounds of public policy and compelled by necessity, "the great master of things," to forbid in a limited class of cases the doing of certain acts, and to make their commission criminal without regard to the intent of the doer. (U. S. vs. Go Chico, 14 Phil. Rep., 128; U. S. vs. Ah Chong, 15 Phil. Rep., 488.) In such cases no judicial authority has the power to require, in the enforcement of the law, such knowledge or motive to be shown. As was said in the case of State vs. McBrayer (98 N. C., 619, 623):

"It is a mistaken notion that positive, willful intent, as distinguished from a mere intent, to violate the criminal law, is an essential ingredient in every criminal offense, and that where there is the absence of such intent there is no offense; this is especially so as to statutory offenses. When the statute plainly forbids an act to be done, and it is done by some person, the law implies conclusively the guilty intent, although the offender was honestly mistaken as to the meaning of the law he violates. When the language is plain and positive, and the offense is not made to depend upon the positive, willful intent and purpose, nothing is left to interpretation."

In the case of United States vs. Go Chico (14 Phil Rep., 128, 138) it was said that: "Care must be exercised in distinguishing the difference between the intent to commit the crime and the intent to perpetrate the act."

The intent to commit an act prohibited and penalized by statute must, of course, always appear before a conviction upon a charge of the commission of a crime can be maintained. But whether or not the existence of guilty knowledge and criminal or evil intent, that is to say, the conscious intent or will to violate the statute, must also appear in order to sustain a judgment of conviction is a question which must be determined in each case by reference to the language of the statute defining the offense.

The growing interest manifested during the past decade on the subject of pure food has been reflected in the passage of the Federal Pure Food and Drugs Act of June 30, 1906, and in the passage of similar acts by a number of the state legislatures. The Philippine Pure Food and Drugs Act (No. 1655) is, with some slight modifications, substantially identical with the Federal act. Its prohibitions of the sales of adulterated foodstuffs and drugs are absolute and general. Indeed, they could hardly be expressed in terms more explicit and comprehensive. The statutory definition of the offense embraces no word implying that the forbidden act shall be done knowingly or willfully, and if it did, the design and purpose of the Act would in many instances be thwarted and practically defeated. The intention of the Legislature is plain that persons engaged in the sale of drugs and food products cannot set up their ignorance of the nature and quality of the commodities sold by them as a defense. We conclude therefore that under the Act proof of the fact of the sale of adulterated drugs and food products as prohibited by the Act is sufficient to sustain a conviction without proof of guilty knowledge of the fact of adulteration, or criminal intent in the making of the sale other than that necessarily implied by the statute in the doing of the prohibited act.

Counsel for appellant has cited a number of cases touching the various phases of the question now under discussion, but it will be sufficient for our purposes to limit ourselves to some reference to the cases wherein prosecutions have arisen upon charges of violations of pure food laws. In some of these statutes guilty knowledge and criminal intent is made essential to the commission of the offense prohibited, and of course where such is the case guilty knowledge and criminal intent must appear before a conviction can be sustained. But the overwhelming weight of authority construing statutes, generally known as pure food laws, is to the effect that in the absence of language in the statute making guilty knowledge and criminal intent an essential element of the acts prohibited thereunder, it is not necessary to charge or to prove that prohibited sales of food products are made with guilty knowledge or criminal intent in order to sustain convictions under such statutes.

Supported by numerous citations of authority, Thornton in his work on "Pure Food and Drugs," says with reference to the Federal act of June 30, 1906: "The intent with which these several violations of the statute is done is immaterial. There may be no intention to violate the statute, yet if the act produces the result forbidden by the statute, an offense has been committed." (Sec. 119, p. 202.)

And again: "Repeated statements have been made in this work that an intent to violate the statute is not necessary in order to incur the infliction of a penalty for the sale or keeping for sale [of] adulterated or impure food or drugs. An act performed with no intent to violate a pure-food statute is just as much a crime under this Federal Pure Food and Drugs Act of June 30, 1906, as if a criminal design to violate it was intended and entertained at the time of its performance. This rule extends to sales or other acts by servants." (Sec. 512, p. 613.)

And again, at section 559, the same author, citing numerous authorities, shows that in prosecutions for the sale of adulterated milk it has been quite uniformly held that it is no defense that the accused had no knowledge of the fact of adulteration, and that it need not be alleged or proven that he had such knowledge, in the absence of special words in the statute requiring the sale to be made with knowledge of the adulteration.

In the case of *People vs. Kibler* (106 N. Y., 321), the court said: "It is notorious that the adulteration of food products has grown to proportions so enormous as to menace the health and safety of the people. Ingenuity keeps pace with greed, and the careless and heedless consumers are exposed to increasing perils. To redress such evils is a plain duty but a difficult task. Experience has taught the lesson that repressive measures which depend for their efficiency upon proof of the dealer's knowledge and of his intent to deceive and defraud are of little use and rarely accomplish their purpose. Such an emergency may justify legislation which throws upon the seller the entire responsibility of the purity and soundness of what he sells and compels him to know and to be certain."

Upon the question of the liability of the master for the violation of a pure food law by his clerk, committed without his knowledge or consent, the leading case would seem to be *Groff vs. State* (171 Ind., 547). In that case the court said:

"The distribution of impure or adulterated food for consumption is an act perilous to human life and health; hence, a dangerous act, and cannot be made innocent and harmless by the want of knowledge or the good faith of the seller.

"Guilty intent is not an element in the crime hence, the rule that governs in that large class of offenses, which rests upon criminal intent, has no application here. Cases like this are founded largely upon the principle that he who voluntarily deals in perilous articles must be cautious how he deals.

"The sale of oleomargarine in an adulterated form, or as a substitute for butter, is a crime against the public health. Whoever, therefore, engages in its sale, or in the sale of any article interdicted by the law, does so at his peril, and impliedly undertakes to conduct it with whatever degree of care is necessary to secure compliance with the law. He may conduct the business himself, or by clerks or agents but if he chooses the latter the duty is imposed upon him to see to it that those selected by him to sell the article to the public obey the law in the matter of selling; otherwise, he, as the principal and the responsible proprietor of the business, is liable for the penalty imposed by the statute."

See also the cases of *State vs. Bockstruck* (136 Mo., 335), and *Commonwealth vs. Vieth* (155 Mass., 442).

Labatt in his work on Master and Servant (vol. 7, sec. 2569) discusses the general rule as to liability of the master for criminal conduct of his servant as follows: "Although the courts are in accord as to the master's liability when he participates in the criminal conduct of his servant, there is a decided conflict of opinion as to his responsibility when the act of the servant is without the master's knowledge or connivance and against his express orders. These cases can be reconciled to some extent by the difference in the language employed in the statutes to define the

various offenses, and the policy of the statutes themselves. Wherever guilty intent is an essential ingredient of the crime, it would be impossible to fix responsibility upon the master for his servant's transgression of the law, if the master did not harbor such an intent. In most instances where the master is held to be responsible criminally for the wrongful conduct of his servant, it is on the theory that the act complained of is positively forbidden, and therefore guilty intention is not essential to a conviction of the offense."

And in section 2573, supported by numerous citations from cases dealing with infringement of liquor laws and pure food laws, he says: "If certain acts are positively forbidden by statute, and it is the policy of the law to prohibit them, irrespective of what the motive or intent of the person violating the statute may be, no principle of justice is violated by holding the master responsible for the conduct of his servant on the same theory that he is held responsible civilly."

Upon the reasoning and the authority of the cases there referred to, we are of opinion that even in the absence of express provisions in the statute, the appellant in the case at bar was properly held criminally responsible for the act of his agent in selling the adulterated coffee, and indeed it seems quite clear that his liability is expressly contemplated under the provisions of section 12 of Act No. 1655 of the Philippine Commission, which is as follows:

"The word 'person' as used in this Act shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, associations, and other commercial or legal entities. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, association, or other commercial or legal entity, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, association, or other commercial or legal entity, as well as that of the person."

It is contended that the express provisions of this section, referring as they do to the liability of any "corporation, society, association, or other commercial or legal entity," do not include cases of agency of a private individual. We are of opinion, however, that the words "commercial or legal entity" as used in this provision is sufficiently comprehensive to include a private individual engaged in business who makes use of an agent or agents, employee or employees, in the conduct of his business; and even if this position could be successfully controverted we would still be of opinion that the provisions of this section clearly and definitely indicate the policy of the statute to prohibit and penalize the acts forbidden thereunder, irrespective of what the motive or intent of the person violating the statute may be, and to hold the master in all cases responsible for the act, omission or failure of his servant, within the scope of his employment, whether he be a private individual, a corporation, company, society, association, or other commercial or legal entity.

We conclude that the judgment of conviction entered in the court below should be affirmed, with the costs of this instance against the appellant. So ordered.

Torres, Johnson, and Trent, JJ., concur. Arellano, C. J., and Araullo, J., dissent.

MORELAND, J., dissenting:

I do not agree to a conviction under Act No. 1655, it not being applicable to the case.

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