

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LIM HO ALIAS SIA SUAN TEE AND RAFAEL KOA ALIAS GAO AH
ALIAS LI CHIAN, DEFENDANTS AND APPELLANTS. THE PEOPLE OF
THE PHI...**

G.R. Nos. 12091-92. January 28, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

In an information filed by the Provincial Fiscal of Rizal in the Court of First Instance of the province, Lim Ho alias Sia Suan Tee, Gao Ah alias Li Chian, alias Rafael Koa and John Doe were charged with violation of Republic Act No. 265 in connection with Circulars Nos. 20 and 21 of the Central Bank, for having—

* * * in their possession, custody and control, with the manifest and unmistakable desire and purpose of exporting them to Hongkong, four (4) pieces of gold, weighing approximately 740.614 grams, valued at P1,666.00 more or less, contained and concealed in the baggage of the accused, which the said accused did in fact export (the gold in question) by having them loaded in the Philippine Air Lines, flight 300; (and) that after the said plane was (already taking) about to take off, it was purposely stopped and delayed, and (that) upon reinspection of the baggage in question, the said four (4) pieces of gold were (found therein and) confiscated from the accused, (without previously securing) who had not previously secured the requisite license and authority from the Central Bank of the Philippines (criminal case No. 5161).

and in another amended information filed by the same Fiscal, the same persons were charged with violation of Republic Act No. 265 in connection with Circulars Nos. 20 and 42, the last as amended by No. 55, of the Central Bank, for failing—

* * * to declare various forms and kinds of foreign exchange consisting of U. S. Currency of different denominations, U. S. Dollar Checks, XJ. S. Postal Money Orders, Bank Checks, Traveller's Checks, all of which are negotiable dollar instruments, amounting to \$52,769.15, which were ingeniously concealed by the above-named accused in the luggage of the accused Lim Ho alias Sia Suan Tee, which luggage together with the accused Lim Ho alias Sia Suan Tee, were already aboard Philippine Air Lines plane, flight 300, about to take off, bound for Hongkong, without the corresponding authority or license from the Central Bank of the Philippines (criminal case No. 5162).

After a joint trial, the Court found them guilty as charged in the two informations and sentenced the two known defendants as follows:

In Criminal Case No. 5161 the defendants are hereby sentenced each to six (6) months imprisonment, to pay a fine of P1,000.00, with subsidiary imprisonment in case of insolvency, and to pay the costs. The forfeiture and confiscation of the gold bars described in the information to the government are hereby ordered.

In Criminal Case No. 5162 the defendants are hereby sentenced each to an indeterminate penalty of from two (2) years, four (4) months, and one (1) day, as minimum, to three (3) years of imprisonment, as maximum, to

pay a fine of P10,000.00, with subsidiary imprisonment in case of insolvency, and to pay the costs. The forfeiture and confiscation of the U.S. dollar currency and exchange amounting to \$52,769.15 mentioned in the information are hereby ordered.

Both defendants have appealed to this Court.

The trial court found that:

At about noon of November 15, 1954, the Chief of the Investigation Division of the National Bureau of Investigation received confidential information that a big amount of money in U. S. dollar currency was about to be smuggled out of this country on a Philippine Air Lines plane scheduled to leave for Hongkong from the Manila International Airport, Paranaque, Rizal, at 1:00 o'clock in the afternoon of the same day. Mr. Arturo Xavier, the Chief of the NBI Investigation Division, acting upon said information, called by telephone the management of the PAL office and requested it to delay the departure of the plane in question for at least one hour. At the same time, he dispatched several of his agents to the Manila International Airport to observe the conduct and act of the suspects and to guard its premises.

Upon receipt of the request of Mr. Xavier, the PAL management ordered the pilot of the plane in question, who was already leading the said craft to the runway at about 12:50 P.M., to stop engines. The passengers, together with all their luggage, were at that time already on board the plane. Because of the delay in the departure of their plane, the passengers left the plane and stayed in the waiting station.

At about 1:00 o'clock that afternoon, Mr. Xavier, Acting NBI Director Lukban, and other agents arrived at the Manila International Airport, and from vantage positions they vigilantly watched the conduct of the passengers and the persons in the premises. Mr. Xavier noticed that a Chinese woman, who was later identified as the accused Lim Ho and a Chinaman, also, later identified as the accused Rafael Koa, were visibly perturbed for they uneasily paced to and fro the airport restaurant and the baggage room, and talked to each other in a whisper.

At about 2:00 o'clock in the afternoon, Mr. Xavier and his informer boarded the plane in question to check the luggage which they believed had the smuggled dollars and checks. The informer singled out a luggage, now marked as Exhibit "B", which had a tag bearing No. 22684, Exhibit "B-1" and the name of Lim Ho. This luggage was brought out of the plane and taken inside the office of the customs officials at the airport. The luggage, Exh. "B", was placed on a table, and, in the presence of Mr. Agoncillo, the customs man in charge at the airport, and two of his men, Mr. Xavier opened the said luggage. At first he began running his fingers on the sides of the luggage covered with linings. Convinced that they were false sides, he pried open one of the sides to verify if there were really U. S. dollars hidden inside. The opened false side revealed hidden U. S. currency. Mr. Xavier then called inside Lim Ho and showed her the hidden dollars. Immediately, Lim Ho became pale and nervous. He then asked Lim Ho to come with him to his office on Taft Avenue, Manila. On their way out of the Customs room, Lim Ho remarked that she was only asked by someone to take the luggage with her. Mr. Xavier, Lim Ho, and three lady agents then proceeded to Mr. Xavier's NBI office on Taft Avenue, bringing along with them the said luggage.

Upon reaching his office, Mr. Xavier contacted representatives of the Office of the Secretary of Finance and the Central Bank so that they could witness the examination of Exhibit B. Later, in the presence of representatives of the Department of Finance, the Central Bank, the Bureau of Customs, NBI officials, and Lim Ho, the examination of the contents of Exhibit B was begun with Mr. Xavier and some of his men prying open all the false sides. Inside all the false sides were found four gold bars which were later photographed and the picture marked as Exhibit Q, with a total weight of 740.614 grams and valued at P1,666.00. Also found inside the false sides were U. S. checks (Exhibits "O" to "O-195") and U. S. currency of various denominations (Exhibits "O" to O-33) amounting to \$52,769.15. After making an inventory of all those checks and dollar bills and after weighing the four gold bars, Mr. Xavier caused to be prepared a certification (Exh. C) of said articles found inside the false sides which was signed by all the representatives of the aforementioned offices who

were present in the examination of Exhibit B. On November 18, 1954, a receipt (Exhibit E-1) was issued by the Central Bank certifying to the fact that the said dollars, checks, and gold bars were turned over to it after proper verification.

On the same afternoon of November 15, 1954, soon after Mr. Xavier, Lim Ho, and other agents had left the airport, Agents 11 and 3 and other companion-agents saw accused Rafael Koa alias Gao Ah alias Li Chian leaving in a hurry the airport in a taxi. These agents, after overtaking the said accused, held said accused and brought him to their NBI office on Taft Avenue for questioning. At first he denied any knowledge or participation in the smuggling of the said articles nor any connection with accused Lim Ho. But when he was later confronted with Lim Ho, and Lim Ho pointed to him as the person who gave her the luggage, Exhibit B, said Rafael Koa finally admitted that he knew Lim Ho and that he really delivered said luggage to Lim Ho, and that he even accompanied her from her residence on Oroquieta Street, Manila, to the Manila International Airport. Rafael Koa then gave a statement which is now marked as Exhibit R.

Appellants claim that Circulars Nos. 20, 21, 42 and 55 of the Central Bank have not been approved by the President of the Philippines pursuant to section 74 of Republic Act No. 265; by the International Monetary Fund pursuant to the Articles of Agreement of the International Monetary Fund of which the Republic of the Philippines is a signatory; and by the President of the United States of America pursuant to article V of the trade and related matters agreement entered into by and between the Republic of the Philippines and the United States of America in 1946. Hence they contend that the circulars in question were not validly promulgated.

This Court has held that Circular No. 20 was approved by the President of the Philippines and such approval of the other circulars was not necessary because they are just implementations of Circular No. 20.[1] As regards the necessity of approval by the International Monetary Fund and the President of the United States of America, this Court said in *People vs. Koh*, *supra*:

As to the international aspect, it is not incumbent upon the prosecution to prove that the provisions of Circular No. 20 complied with all pertinent international agreements binding on our Government. The Central Bank and the President certify that it accords therewith, and it is presumed that said officials know whereof they spoke, and that they performed their duties properly. It is rather for the defense to show conflict, if any, between the Circular and our international commitments.

Executive regulations are valid only when they are not contrary (they are subject) to the laws and the Constitution. Yet none would think of requiring the Fiscal to prove that this rule or Circular does not conflict with the Constitution or the laws. The onus probandi rests with defendants.

Appellees' counsel have quoted here some provisions of the International Monetary Fund Agreement. But none of them may be interpreted to prohibit the action taken by our Central Bank. In fact, there are of record the annual reports of the International Monetary Fund of April 30, 1950 and 1951, commenting on the exchange controls of the Philippines without any criticism or opposition.

We are quoting in this connection the following provision in the Agreement between the Philippines and the United States concerning Trade and Related Matters:

"The value of Philippine Currency in relation with the United States dollar shall not be changed, and the convertibility of Philippine pesos in United States dollars shall not be suspended, and no restriction shall be imposed on the transfer of funds from the Philippines to the United States except by agreement with the President of the United States.

But there is an official statement of the American Embassy in Manila wherein it is said that the United States "would concur" in the adoption of such temporary measures (exchange controls) by the Philippine Government as might be deemed appropriate for safeguarding the dollar reserves of the Philippines. From the tenor of the statement, one could conclude that the U. S. Government did not object to, even approved the imposition of

dollar exchange restrictions.

Anent the claim that the Central Bank has no power to issue the four circulars in question, this Court said in *People vs. Jollife*, *supra*:

Lastly, the legality of Circular No. 21 is assailed upon the ground that the grant of authority to issue the same constitutes an undue delegation of legislative power. It is true that, under our system of government, said power may not be delegated except to local governments. However, one thing is to delegate the power to determine what the law shall be, and another thing to delegate the authority to fix the details in the execution or enforcement of a policy set out in the law itself. Briefly stated, the rule is that the delegated powers fall under the second category, if the law authorizing the delegation furnishes a reasonable standard which "sufficiently marks the field within which the Administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will." (*Yakus vs. United States*, 88 L. ed. 848.) Referring to the case at bar, section 74 of Republic Act No. 265 conferred upon the Monetary Board and the President the power to subject to licensing all transactions in gold and foreign exchange "in order to protect the international reserve of the Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such crisis." The Board is, likewise, authorized "to take such appropriate remedial measures as are appropriate" to protect the international stability of the peso, "whenever, the international reserve is falling, as a result of payment or remittances abroad which, in the opinion of the Monetary Board, are contrary to the national welfare" (section 70, Republic Act No. 265). It should be noted, furthermore, that these powers must be construed and exercised in relation to the objectives of the law creating the Central Bank, which are, among others, "to maintain monetary stability in the Philippines," and "to promote a rising level of production, employment and real income in the Philippines." (Section 2, Republic Act No. 265.) These standards are sufficiently concrete and definite to vest in the delegated authority the character of administrative details in the enforcement of the law and to place the grant of said authority beyond the category of a delegation of legislative powers * * *.

Appellants argue that "The imperative condition, therefore, to the exercise and continued exercise of the authority conferred by section 74 is the existence of an 'exchange crisis'" and that the prolongation of the effectivity of the circulars in question from 9 December 1949, when Circular No. 20 was promulgated, to the present without a declaration by Congress that there exists an exchange crisis, is illegal. Said this Court again in *People vs. Jollife*, *supra*:

It is urged, however, that the authority of the Monetary Board to suspend or restrict the sale of exchange by the Central Bank and to subject all transactions involving foreign exchange to license, is temporary in nature and may be exercised only during an exchange crisis, as an emergency measure to combat such crisis, and that the context of the circular in question, as amended, does not indicate that it was a temporary emergency measure. It is not necessary, however, for the legality of said circular that its temporary character be stated on its face, so long as the circular has been issued during an exchange crisis, for the purpose of combating the same. In the absence of evidence to the contrary, which has not been introduced or offered in the present case, it is presumed that the provision of section 74 of Republic Act No. 265, under the authority of which the aforementioned circular was issued, has been complied with. Besides, the fact that there has been an exchange crisis in the Philippines and that such crisis, not only existed at the time of the issuance of said circular in 1949 and 1950, but also, has remained in existence up to the present, may be taken judicial cognizance of.

The appellants' contention that the attempted or frustrated exportation of gold and various forms and kinds of foreign exchange consisting of United States currency, dollar checks, postal money orders, bank checks and traveller's checks, are not punishable, cannot be sustained. In *People vs. Jollife*, *supra*, this Court held that section 4 of Circular No. 21 "explicitly applies to 'any person desiring to export gold' and, hence, it contemplates the situation existing prior to the consummation of the exportation. Indeed, its purpose would be defeated if the penal sanction were deferred until after the article in question had left the Philippines, for jurisdiction over it, and over

the guilty party, would be lost thereby."

As found by the trial court, Gao Ah alias Li Chian, alias Rafael Koa admitted that he knew Lim Ho alias Sia Suan Tee to whom he gave the luggage containing the gold and United States securities that they tried to smuggle out of this country to Hongkong on board a plane of the Philippine Air Lines, and that he accompanied her from her residence at Oroquieta street, Manila, to the Manila International Airport. Their claim that they did not intend to smuggle out of the country the gold, United States currency, bank and traveller's checks and postal money orders in dollars, cannot be believed, because under the circumstances they were discovered and found the intent to export them cannot be doubted. The fact that, as found by the trial court, Gao Ah alias Li Chian, alias Rafael Koa, whom Lim Ho had known since childhood, bought for her an airplane ticket for Hongkong, as testified to by the latter, is a strong proof that there was a conspiracy between her and her co-accused to smuggle out of the country the gold bars and United States securities in question.

Two violations were committed by the appellants, to wit: exportation of gold without license prohibited by Circulars Nos. 20 and 21 of the Central Bank and punishable under section 34 of Republic Act No. 265, and failure to declare foreign exchange before departure for abroad and its exportation without license prohibited by Circulars Nos. 20 and 42, the last as amended by Circular No. 55 of the Central Bank and punishable under the same section of the same Act. One is not a necessary means to commit the other. Although they were committed on the same occasion, the offenders should be charged and prosecuted under two separate informations and if found guilty, meted out separate penalties for each offense.

In *People vs. Jollife*, supra, this Court held:

Under the fifth assignment of error, appellant maintains that Article 45 of the Revised Penal Code authorizing the forfeiture of the proceeds of a crime and the instruments or tools with which it was committed, does not apply to the case at bar, the crime involved herein being covered by a special law. However, pursuant to section 10 of the Revised Penal Code, the provisions of said Code shall be "supplementary" to special laws, "unless the latter should specifically provide the contrary", and there is no such provision to the contrary in Republic Act No. 265 * * *.

However, the Solicitor General has called the attention of this Court to the fact that the gold bars and United States securities in question were seized by officers of the Bureau of Customs under Seizure Identification No. 2194 on 15 November 1954 (now pending appeal in the Court of Tax Appeals, C.T.A. Case No. 326), whereas these criminal proceedings were filed in the Court of First Instance of Rizal on 16 November 1954. As the Collector of Customs has acquired prior jurisdiction over the gold bars and securities in question, and they were not introduced as evidence in the criminal proceedings, those parts of the judgments ordering their forfeiture in favor of the Government should be stricken out.

With the foregoing modification, the judgments appealed from are affirmed, with costs against the appellants.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

[1] *People vs. Jollife*, 105 Phil., 677; *People vs. Henderson*, 105 Phil., 859; and *People vs. Koh*, 105 Phil., 925.

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