

REGINA -v- JANG RANG

AND

LIM KUEN CHIK, LIM LOI FATT, LIM KUEN PAO, LIM KUEN SENG,
HUNG NANG SHIONG, CHENG SWEE MING

High Court of Solomon Islands
(Palmer J.)

Hearing: 2 June 1995
Sentence: 2 June 1995

Criminal case No. 11 & 12 of 1995

DPP for Crown
A. Radclyffe for all Defendants

PALMER J. Before I consider the sentence of these seven Defendants, a preliminary point of law has been raised as to the meaning of the term in section 214(e) of the Customs and Exercise Act and I quote "... *shall for each offence incur a penalty of treble the value of the goods or two hundred dollars at the election of the comptroller*"

Mr Radclyffe submits that where the comptroller elects, and it is not disputed that he had elected the penalty of treble the value of the goods, that it should not be viewed as a mandatory sentence but like other penal provisions it should be read as indicating the maximum fine which should be imposed, and that the court may impose any lesser fine.

In analysing this term, I accept that on first reading, it gives the impression of a mandatory penalty. On closer scrutiny, I am not satisfied that that interpretation would be correct. The mandatory word "*shall*" should be read in its context with the use of the word "*incur*".

The word "*incur*" in turn is defined in Black's Law Dictionary 6th Edition as:

"To have liabilities cast upon one by act or operation of law, as distinguished from contract, where the party acts affirmatively. To become liable or subject to, ... and to become through one's own action liable or subject to."

When we consider in turn the use of the word to "*become liable to*", that is the very words often used in the Penal Code to express maximum penalties of imprisonment or fines.

The words "*shall incur*" therefore in my view should be read as more or less equivalent to the words "*shall be liable to*". In that sense, Section 214(e) merely expresses the maximum penalty which the court can impose.

Further, there is the provision in section 25 of the Penal Code at paragraph (b) which reads: "*where the sum to which the fine may amount is expressed, any lesser fine may be imposed.*"

The fine or penalty under section 214(e) has been clearly expressed to an amount; treble the value of the goods. It is therefore clearly within the power of the Court to impose a lesser fine.

Finally on this point, it would be totally unnecessary to have to make such election and then to require the Court to pass sentence. It would be inconsistent with the normal powers vested in the Courts to be able to hear mitigation and consider all relevant factors before passing an appropriate sentence. In the absence of clear empowering words, it is my view that the penalty in section 214(e) expresses the maximum amount which the Court can impose.

I will now deal with the Defendants. All are captains of fishing vessels licensed to fish in Solomon Islands waters under specific terms and conditions set out under the Fishing Agreement entered into between their company and the Solomon Islands Government, and the licences attached to those agreements.

All of them have been found to be in breach of various conditions as set out under their permits granted under section 7(2) of the Fisheries Act and for breaching section 214(e) of the Customs Act; in fraudulent evasion of customs duties in the loading and exporting of those fish to Taiwan, on high seas contrary to the conditions imposed, without clearance by Customs Personnel.

Mr Radclyffe has pointed to difficulties in communication and understanding of the requirements imposed. It appears that all do not speak or understand English. To a certain extent that is accepted but the responsibility really lies on their employers or the owners of these ships, i.e. the Company which entered into the Agreement with the Solomon Islands Government to ensure that all its workers and captains of its ships understand properly the terms of their permits, and to comply.

Too often the plea of ignorance and language difficulties is prayed to cover up or to excuse what really may be seen to be blatant breaches.

Those agreements in my view should not be taken lightly by any foreign-owned company. They are there to protect their activities within the country, but also to protect the harvesting of the natural resources, in this case the fish resources of this country. And when one takes into account the fact that those fish resources are but some of the major income earning revenue of the Country, then it is vital that whatever conditions are imposed that they be complied with and respected.

To a large extent, those vessels cannot be monitored on a daily basis. The only way that can be done is by ensuring that they adhere to those requirements imposed under the permits granted.

I think the requirements imposed that certain things be recorded in English could be amended so that suitable alternative ways of recording are done; may be in the language of these Defendants but then can be translated as and when required.

I give credit for all guilty pleas. I accept that this has saved considerable court time but also expense on all side. I also accept that these are fishermen who spend most of their time on the high seas and that they do not have any previous convictions whatsoever in the jurisdiction of this country, that none is expected in future.

I also take into account the favourable response of the Government as expressed in the memo of the Hon. Minister of Agriculture and Fisheries, that the Government is willing to give the company a second chance. I will deal with the other 6 Defendants first, apart from Jang Rang.

All accused are convicted and fined as follows:

On Count 1	-	\$3,000.00
each		
Count 2	-	\$3,000.00
Count 3	-	\$3,000.00

And also pursuant to section 214(e), it is a mandatory requirement that all the goods, that is the fish which have been involved in the commission of the Offence are hereby ordered to be forfeited in favour of the Solomon Islands Government. I am aware that these have been sold and on that basis the sale proceeds should be forfeited to Solomon Islands Government. In case there is doubt about the applicability of that section and the manner given, also under section 16 of the Fisheries Act, it is ordered that all proceeds of sale of such fish which have been the subject of the commission of these offences, and as expressed in the statements of Facts without dispute, shall be forfeited to the Government.

For Jang Rang; he is also convicted and fined;

Count 1	-	\$ 200.00
Count 2	-	\$ 200.00
Count 3	-	\$ 200.00
Count 4	-	\$ 200.00
Count 5	-	\$ 200.00
Count 6	-	\$3,000.00
Count 7	-	\$ 200.00
Count 9	-	\$3,000.00

And also under section 214(e) all the fish the subject of the offences is forfeited. This would include the proceeds of sale under s.16 of the Fisheries Act.

I have taken into account the totality of the sentences, in particular the effect of the forfeiture orders, which would give rise to the loss of thousands of dollars.

Fines payable in 7 days.

Indefinite 6 months in prison each.

(Total fines due \$61,200.00).

ALBERT R. PALMER

(A.R. Palmer)
JUDGE