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That there was alleged delay in reporting the crime, subject matter of the instant prosecution, hardly finds support from the evidence on record. It has been indubitably shown that the incident was immediately reported on the very day it was committed, to the barrio Captain of Barrio Angarian. This is not seriously controverted by the appellant although his version is — that what was reported was merely a kissing incident. With respect to Gil Santos, (a witness for the prosecution) being allegedly a professional witness and therefore should not be believed, We find nothing on record that would support such a view.

In convicting the accused-appellant, the court merely imposed upon him the obligation to indemnify the complainant in the amount of ₱12,000.00; that should now be increased to ₱30,000.00.

WHEREFORE, and except as thus modified, the judgment appealed from is hereby AFFIRMED, with costs against appellant.

SO ORDERED.

Aquino (Chairman), Concepcion Jr., Abad Santos, Escolin, and *Alampay, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-31733. September 20, 1985]

COMMISSIONER OF CUSTOMS, *petitioner, vs.* **COURT OF TAX APPEALS and JOSE PASCUAL,** *respondents.*

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SYLLABUS

1. **TAXATION LAW; TARIFF AND CUSTOMS CODE; FORFEITURE; FORFEITURE PROCEEDINGS ARE IN THE NATURE OF PROCEEDINGS *IN REM*.**— Pursuant to the aforesaid provision, the vessel is clearly subject to forfeiture in favor of the Government. Forfeiture proceedings are in the nature of proceedings *in rem* and are directed against the *res*. The fact that private respondent has allegedly no actual knowledge that M/B "Maria Victoria-P" was used illegally does not render the vessel immune from forfeiture. This is so because the forfeiture proceedings in this case was instituted against the vessel itself. Private respondent's defense that he has no actual knowledge that the vessel was used illegally is personal to him but cannot absolve the vessel from liability of forfeiture.

2. **ID.; ID.; ID.; ID.; WHEN FORFEITURE IMPOSED.**— Moreover, the aforequoted provision prescribes in an unequivocal term the imposition of the penalty of forfeiture in cases of unlawful importation of foreign articles regardless of whether such importation occurred with or without the knowledge of the owner of the vessel.

3. **ID.; ID.; ID.; ID.; ID.; THE INNOCENCE OF THE OWNER IN THE ILLEGAL IMPORTATION OF FOREIGN ARTICLES, IMMATERIAL.**— In *United States vs. Steamship* "Rubi" (32 Phil. 239), this Court, in resolving the question of whether or not the innocence of the owner in the illegal importation of foreign articles can withdraw the ship from the penalty of confiscation, said: "The vessel which commits the aggression is treated as the offender, without any reference whatsoever to the character or conduct of the owner. x x x this is done from the necessity of the case, as the only adequate means of suppressing the offense or wrong. x x x The doctrine also is familiarly applied to cases of smuggling and other misconduct under our revenue laws; and x x x embargo and non-intercourse acts. x x x The same thing applies to proceeding *in rem* or seizures in admiralty. x x x the acts of the master and crew, in cases of this sort, bind the interest of the owner of the ship, whether he be innocent or guilty."

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DECISION

MAKASIAR, *C.J.*:

This is a petition for review on *certiorari* of the decision dated September 30, 1969 of respondent Court of Tax Appeals which modified the decision of petitioner Commissioner of Customs by ordering only the payment of a fine in lieu of the forfeiture of private respondent Jose Pascual's vessel M/B "Maria Victoria-P," used in the illegal importation of blue seal cigarettes.

Private respondent Jose Pascual is the registered owner of the M/B "Maria Victoria-P", a motor boat of 63.25 gross tonnage duly licensed by the Bureau of Customs to engage in coastwise trade. On December 16, 1963, the said vessel was apprehended by the elements of the Philippine Navy five miles off the coast of Naic, Cavite for carrying untaxed 105 cases and 90 packs of Salem cigarettes and 414 cases of Union cigarettes. The authorities turned over the vessel, its crew and its cargo of blue seal cigarettes to the Small Craft Unit of the Philippine Navy for disposition. Thereafter, Seizure Identification Case Nos. 8006 and 8006-A against the vessel and the cargo of blue seal cigarettes, respectively, were instituted before the Collector of Customs.

For failure of anybody to claim ownership over the cigarettes, the same were forfeited in favor of the Government.

On the other hand, during the forfeiture proceedings against the vessel, private respondent claimed that on December 4, 1963, his vessel with fourteen (14) crew and a captain went to Bulalakao, Mindoro to catch fish; that after three days of fishing, all the fishing nets were destroyed; that Jose Joloc, captain of the boat, notified private respondent in Manila about the nets and the latter ordered the former to bring the boat back to Manila; that for failure of the boat to arrive in Manila on the date expected by private respondent, he sent a telegram addressed to the captain reiterating his previous order, but no answer was received; that private respondent sent a certain

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Artemio Buenvenuto to Mindoro on December 13, 1963 to fetch the boat; that on even date Buenvenuto sent a telegram to private respondent that the boat had left Mindoro; that after receiving the telegram on the same date, private respondent notified the Philippine Navy that his boat was missing and expressed fear that it might be used illegally.

Jose Joloc, captain of the vessel claimed that he was not able to bring the boat back to Manila due to bad weather; that while in Mindoro, Fructuoso Maniego, whom he knew since 1962 approached and asked him if he could load the former's fishes on board M/B "Maria Victoria-P" for a fee of ₱20,000.00; that the fishes were out in the sea aboard a disabled boat; that he agreed and upon reaching the place where the boatload of fishes is located, they found a *kumpit* with seven armed Muslims on board and that the *kumpit* was loaded with blue seal cigarettes; that at gun points, he was forced to load the blue seal cigarettes which allegedly belong to one Datu Jacob of Jolo, Sulu.

On July 3, 1964, the Collector of Customs rendered a decision declaring the vessel forfeited in favor of the Government. The Collector of Customs ruled that since it was established that the vessel was hired for a fee of ₱20,000.00 thru its captain, to ferry the untaxed cigarettes, there was a contract of carriage entered into between Jose Joloc and the owner of the cigarettes; that Jose Pascual, owner of the vessel, is bound by the acts of his agent.

On appeal by herein private respondent, the decision was affirmed by the Commissioner of Customs. Private respondent appealed before the Court of Tax Appeals and on September 30, 1969, the said Court, as already stated, modified the decision of the Commissioner of Customs and ordered private respondent to pay a fine of ₱5,000.00 instead of the forfeiture of the vessel.

Respondent Court stated that there is no question that the vessel was used in the illegal importation of blue seal cigarettes; hence, subject to penalty imposed by Section 2530 of the Tariff and Customs Code. However, the penalty of forfeiture appears to be excessive since herein private respondent took all the

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necessary action to prevent the vessel from being used illegally by notifying the Philippine Navy of the disappearance of the vessel.

From the aforesaid decision, petitioner instituted the present petition.

The imperative question presented to Us in this appeal is whether or not the motor boat M/B "Maria Victoria-P" is subject to forfeiture under the Tariff and Customs Code, particularly paragraphs (a) and (b) of Section 2530.

After the petition was given due course, private respondent in his answer stated that during the pendency of the case before the Court of Appeals, the vessel M/B "Maria Victoria-P" was sold at public auction by the Auction and Sales Division of the Bureau of Customs.

WE find merit in the petition.

M/B "Maria Victoria-P" was a vessel duly authorized to engage in coastwise trade. It is undisputed and, in fact, established that it was used in the illegal importation of blue seal cigarettes. Thus, the law applicable is paragraphs (a) and (b), Section 2530 of the Tariff and Customs Code which states:

"SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Law. — Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture:

> "a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and or transporting contraband, or smuggled article in commercial quantities into or from any Philippine port or place, and any vessel which, being of less than thirty tons capacity shall be used in the importation of articles into any Philippine Port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture: Provided, That the vessel, vehicle, aircraft or any other craft is not used as a duly authorized common carrier and as such a carrier it is not chartered or leased;

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"b. Any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported."

Pursuant to the aforesaid provision, the vessel is clearly subject to forfeiture in favor of the Government. Forfeiture proceedings are in the nature of proceedings *in rem* (*Vierneza* vs. *Commissioner of Customs*, 24 SCRA 394) and are directed against the *res*. The fact that private respondent has allegedly no actual knowledge that M/B "Maria Victoria-P" was used illegally does not render the vessel immune from forfeiture. This is so because the forfeiture proceedings in this case was instituted against the vessel itself. Private respondent's defense that he has no actual knowledge that the vessel was used illegally is personal to him but cannot absolve the vessel from liability of forfeiture.

Moreover, the aforequoted provision prescribes in an unequivocal term the imposition of the penalty of forfeiture in cases of unlawful importation of foreign articles regardless of whether such importation occurred with or without the knowledge of the owner of the vessel.

In *United States vs. Steamship "Rubi"* (32 Phil. 239), this Court, in resolving the question of whether or not the innocence of the owner in the illegal importation of foreign articles can withdraw the ship from the penalty of confiscation, said:

"The vessel which commits the aggression is treated as the offender, without any reference whatsoever to the character or conduct of the owner x x x this is done from the necessity of the case, as the only adequate means of suppressing the offense or wrong. x x x The doctrine also is familiarly applied to cases of smuggling and other misconduct under our revenue laws: and x x x embargo and non-intercourse acts. x x x The same thing applies to proceeding *in rem* or seizures in admiralty. x x x the acts of the master and crew, in cases of this sort, bind the interest of the owner of the ship, whether he be innocent or guilty."

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The claim of private respondent that while the crew members of the vessel were fishing, all the fishing nets were destroyed and that he was even notified in this regard is hardly convincing. It may be possible that while in the course of catching fish, one or two fishing nets may be destroyed. But the destruction of all the fishing nets at the same time is highly improbable. Furthermore, private respondent reported to the Philippine Navy instead of the Coast Guard that his vessel was missing, only after a lapse of six (6) days from the time he was informed of the alleged destruction of all the fishing nets. Could it be that all those notification of destruction of fishing nets and eventually of the loss of vessel are just a part of a scheme to prevent the vessel from any liability should, as it happened in this case, it be intercepted by the authorities?

The insistence of Jose Joloc, captain of the vessel that the boat could not be brought back to Manila due to bad weather is not supported by evidence. No weather report in Mindoro was ever presented during the hearing of the case. His insistence becomes even more dubious by the fact that he agreed with Fructuoso Maniego to load the latter's fishes on board M/B "Maria Victoria-P" when the alleged fishes were even out at sea aboard an alleged disabled boat, It is unbelievable that he could risk going out to sea to load the fish cargo of Maniego in the midst of the storm, but could not sail back to Manila.

Taking all these circumstances, the conclusion is inevitable that the vessel was not used in catching fish but was used in the smuggling of blue seal cigarettes.

WHEREFORE, THE QUESTIONED DECISION DATED SEPTEMBER 30, 1969 OF RESPONDENT COURT OF TAX APPEALS IS HEREBY SET ASIDE; AND THE VESSEL M/B "MARIA VICTORIA-P" IS HEREBY ORDERED FORFEITED IN FAVOR OF THE GOVERNMENT. COSTS AGAINST PRIVATE RESPONDENT.

SO ORDERED.

Aquino (Chairman), Concepcion Jr., Abad Santos, Escolin, Cuevas, and *Alampay, JJ.*, concur.