

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JULIAN LIM TIU, DEFENDANT AND APPELLANT.*G. R. No. 10287. September 27, 1915*

Ponente: CARSON, J.

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The accused in this case was found guilty of having in his possession and under his control a quantity of opium and various pipes and other utensils used by opium smokers, and was sentenced to ten months' imprisonment and to pay a fine of P500.

The questions raised on this appeal relate to the sufficiency of the evidence and to certain matters of procedure in the trial of the case below.

During" the progress of the trial the court adjourned the trial to the premises where the contraband articles were seized, and while there conducted a brief examination of one of the witnesses, the chief of police, in order, as it appears, to clear up some obscure statements which had been made in the course of the trial and to have the record set forth an accurate description of the premises. Counsel for the accused offered no objection whatever to the examination of this witness and cross-examined him on his testimony in chief. It is now urged, on appeal, that the trial judge lost jurisdiction over the case by conducting any part of the trial on the premises in question away from the place where the court regularly held its sessions. In the absence of any objection by counsel, and of any showing that the substantial rights of the accused were prejudiced by the proceedings complained of, we find no ground for reversal in the action of the court in this regard, which appears to have had for its object merely the clarification of the record and an attempt to develop the material and essential facts upon which his judgment was based.

In the case of the United States vs. Mercado (4 Phil. Rep., 304), a somewhat similar question was ruled upon by this court. In that case the defendant was tried in Bilibid Prison, apparently for the reason that the defendant and most of the witnesses were confined there as prisoners. On appeal it was claimed that the trial was illegal on the ground that there was no provision of law authorizing a judge to conduct the trial in Bilibid Prison. No objection was offered in the court below and this court held that the accused could not be heard to raise the objection for the first time on appeal.

It is further urged as a ground of reversal that the trial court erred "in actively assisting the prosecution, with an apparent desire to secure the conviction of the accused, and in subjecting some of the witnesses for the defense to so severe a cross-examination from the bench as to intimidate them."

In making these charges, which are not supported by the record, the zeal of counsel has evidently outrun his discretion. A severe examination by a trial judge of some of the witnesses for the defense in an effort to develop the truth and to get at the real facts affords no justification for a charge in counsel's brief on appeal that he has assisted the prosecution with an evident desire to secure a conviction, or that he had intimidated the witnesses for the defense. We have had occasion to hold (U. S. vs. Hudieres, 27 Phil. Rep., 45) that it is not only the right but

ofttimes the duty of a trial judge to examine witnesses when it appears to be necessary for the elucidation of any point at issue or with a view to the clarification of the record. Under the system of legal procedure in vogue in this jurisdiction, where the trial court is judge of both the law and the facts, it is oftentimes expedient or necessary in the due and faithful administration of justice for the presiding judge in the exercise of a sound discretion to reexamine a witness in order that his judgment when rendered may rest upon a full and clear understanding of the facts. An examination of the record in the case at bar fails to disclose that the trial judge exceeded his discretion in this respect.

It remains now to consider the sufficiency of the evidence adduced in the court below upon which the judgment of conviction rests.

It appears that the chief of police of Aparri in the Province of Cagayan was informed that the premises occupied by the defendant were being used for the purpose of selling and smoking opium, and on the 26th day of June, 1913, after having procured a search warrant from the justice of the peace, he entered the premises in company with a squad of policemen and there and then instituted a thorough search for the contraband drug.

These premises consisted of a two-story building with its outhouses under the control and in the possession of the accused as lessee. The first floor was used as a tienda and warehouse. The entrance to the second floor was by means of a stairway from a small room back of the tienda. This stairway was boxed up at the sides and had a door at its foot. At the top of this stairway, entrance to the room above was effected by means of a sort of trap door.

When the police officials entered the tienda and sought admission to the upper floor of the building they found the door at the foot of the stairway closed; and they testified that when they first entered the tienda some one pulled a bell cord which was followed by the ringing of a bell upstairs and the noise of people hurrying and scurrying about on the second floor. It does not definitely appear who pulled the bell cord; but under all the circumstances it would appear that the bell must have been rung by some one in the tienda and in the employ of the accused. According to the testimony of the police officials it was nearly half an hour before the door leading to the stairway was opened by the accused. It would appear that he came from the second story. No one else was found on the second floor when the officers went up but the police officers testified that they detected the fumes of opium smoke about the premises. A one-story addition at the end of the building, the roof of which was not more than 7 or 8 feet from the ground, made it possible to escape from the second story over this roof, without coming down the stairs into the tienda.

A search of the premises was made and a quantity of opium and opium paraphernalia was found hidden away in various places about the premises, principally in the warehouse room on the first floor.

The following articles found on the premises were offered in evidence. Exhibit A, a tin box containing five opium pipe bowls, a small empty bottle, and a piece of paper containing a small amount of opium. Exhibit B, three opium vessels or utensils of horn with some opium in one of them. Exhibit C, a round tin can, about 15 inches in height and 10 or 12 inches in diameter, about half full and estimated to contain about a gallon of opium. Exhibit D, a package of opium ashes, estimated to be about a half pound. Exhibit E, a large tin or lead vessel, apparently so constructed as to protect the contents from outside moisture, and, as the court observed, it was such a receptacle as is frequently used as a lining for a box into which it fits. This receptacle contained 25 or 30 small tin boxes such as are usually used in the opium traffic, and two frames which the officers testified were the kind used for the purpose of straining opium. Some lamps were offered in evidence which had been thrown from the second story and seized by the officers before admission had been gained to the upper part of the building.

As soon as the articles had been seized, the accused approached the chief of police and offered to bribe him by the payment of P50 if he would not take the articles away and would not file a complaint against him. The chief of

police pretended to agree to this and the accused handed him P50 and also gave 95 to another policeman who was present. The chief of police then ordered the contraband goods to be taken away and when his assistants began to carry out this order, the accused attempted to prevent them from doing so, and it became necessary to call in additional members of the police force.

All of the foregoing facts are abundantly supported by the evidence of record, nor is there any attempt on the part of the defense to controvert the facts thus established by the prosecution.

The accused insisted that these articles belonged to a Chinaman who had previously worked for him and who died in the warehouse in question several months before the seizure was made. The evidence shows that this Chinaman was an ordinary laborer or cargador. The court observed that the warehouse in question was a dark and damp storeroom and wholly unfitted for dwelling purposes. But even admitting that this Chinaman may have formerly slept there, the effort to connect him with the ownership of such a large quantity of opium and opium paraphernalia is not supported by satisfactory evidence sufficient to relieve the accused of criminal responsibility. The value of the articles in question is estimated by the trial court to be P400 or P500, and it is quite unreasonable to believe that an ordinary day laborer would have had the means to engage in the opium traffic upon such a wholesale character. The evidence attempting to connect the ownership of the articles with this dead Chinaman is wholly unsatisfactory and fails absolutely to carry conviction as to its truth.

The somewhat severe penalty imposed by the court below would seem to be justified by peculiar circumstances of the case which leave no room for doubt that the accused had the opium unlawfully in his possession for use in connection with an opium joint which he conducted in the room over his store. (U. S. vs. Lim Sing, 23 Phil. Rep., 424.)

The judgment convicting and sentencing the appellant should be affirmed, with the costs of this instance against the appellant. So ordered.

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

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