

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DOMINGO SIASETO, DEFENDANT AND APPELLANT.

G.R. No. 10289. February 11, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with a violation of section 31 of the Opium Law. The complaint alleged: "That on or about May 25, 1913, in the municipality of Abulug, Province of Cagayan, P. I., the said Domingo M. Siaseto (Chinese) did willfully, unlawfully, and criminally and without authorization, keep, hold, and have in his possession a certain quantity of opium and opium ashes, in violation of said Act."

Upon said complaint the defendant was duly arrested, arraigned, tried, found guilty, and sentenced to pay a fine of P800 and costs, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of the law.

From that sentence the defendant appealed to this court and alleged that the lower court committed an error in finding that the facts adduced during the trial of the cause show that he was guilty of the crime charged, and also that the lower court committed an error in imposing too severe a penalty.

An examination of the facts contained in the record shows that in the month of May, 1913, two policemen went to the house occupied by the defendant, and there found a small amount of opium, opium ash, two opium-pipe heads, one opium-pipe stem, and a lamp, as well as some other paraphernalia used as containers of opium and for smoking opium; that after finding said articles, the policemen took the defendant to the police station; that at the police station the defendant offered to compromise by paying to the revenue officers the sum of P300; that said offer was accepted and the money was paid; that later the money was sent to the chief of the internal revenue department, who refused to accept said offer and the money was later returned to the defendant. It was at that time the complaint in the present case was presented.

The lower court, after hearing the evidence, found that the defendant was illegally in the possession of opium. The record shows that there was "a small amount of opium" and "a small quantity of opium ash, together with an opium pipe and various opium containers, and various other articles of opium paraphernalia for smoking." There is no proof in the record showing just what amount of opium and opium ash was found, further than the statement that there was "a small quantity." The lower court in his decision said:

"The quantity of opium and opium ashes found shows that the possessor in this case was engaged in handling the drug for profit, as the amount in evidence appears to be more than sufficient for the personal use of a victim of the opium habit."

For the reason that the lower court believed that the defendant had been trafficking in opium for profit, he imposed a fine of P800 and costs. There is not a single word of proof in the record showing that the defendant had been trafficking in opium; neither is there a word of proof in the record showing that the defendant was a victim of the opium habit; neither does the record contain any proof sufficient to justify the conclusion that the defendant

was engaged in the traffic of opium; neither do we believe that the "small quantity of opium and opium ash" found in the room of the defendant is sufficient to justify the conclusion that the defendant was trafficking in opium. The severe penalty imposed by the lower court seems to have been based upon a wrong assumption. While we hesitate to modify the decision of a lower court, imposed within its discretion, yet, we do not hesitate to do so when the penalty is based upon what appears to us to be a false assumption. This court has generally regarded the trafficking in opium as an aggravating circumstance, which justifies us in imposing a heavier penalty. Under the provisions of the Penal Code, if the lower court should consider an aggravating circumstance, which in fact did not exist or was not an aggravating circumstance, this court does not hesitate to modify the penalty based thereon. So, in the present case, considering that the severe penalty imposed by the lower court was imposed by virtue of a misconception of the existence of an alleged aggravating circumstance, we do not hesitate to modify the penalty thus imposed. In our opinion, considering the facts and circumstances, the penalty of a fine of P300 is more in harmony with justice than the penalty imposed by the lower court. Therefore, the sentence of the lower court is hereby modified and it is hereby ordered and decreed that a sentence be entered against the defendant, ordering and directing him to pay a fine of P300 and the costs, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of the law.

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

MORELAND, J., dissenting:

I do not agree to a reduction of the penalty. (U. S. vs. Tan Chia, 13 Off. Gaz., 138.)

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