

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. QUE SIANG, DEFENDANT AND APPELLANT.

G.R. No. 10666. February 14, 1916

Ponente: CARSON, J.

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CARSON, J.:

The appellant in this case was found guilty in the court below of the unlawful possession of opium and sentenced to three months imprisonment, and to pay a fine of P300 and the costs of the trial.

The accused was arrested in the barrio of Mambulac, municipality of Silay, Occidental Negros, on the 8th of August, 1914, by Julian Malijan, the chief of police of Silay, upon a charge that he was found in possession of a bundle which contained a glass tube full of a liquid preparation of opium.

Two questions are raised by the record on appeal: First, did the bundle in question belong to the accused, and, second, did the glass tube contain a preparation of opium? If both of these questions can be answered in the affirmative, the judgment of conviction must be sustained, but if either should be answered in the negative, the judgment must be reversed and the accused acquitted.

Malijan, the chief of police of Silay, testified that having been reliably informed that the accused had opium in his possession, he obtained a search warrant from the justice of the peace of Silay and went to the house where the accused was staying, for the purpose of making a search of the person of the accused and of the premises in which he lived; that as he approached the house the accused was leaving it in a vehicle going in the direction of the barrio of Mambulac; that he secured a bicycle and followed after; that upon reaching Mambulac he called another policeman, Felix Abela, to his assistance and that together they arrested the accused just as he was on the point of embarking in a banca; that he read the search warrant to the accused and then examined a bundle which he was carrying and found in it a glass tube containing a preparation of opium; that he was satisfied that the substance in the tube was opium from its color and smell; that he immediately took the accused to the justice of the peace and there formally charged him with the illegal possession of opium. The testimony of the policeman Abela substantially corroborates that of the chief of police with reference to the circumstances under which the arrest was made.

The accused, testifying in his own behalf, denied that the bundle belonged to him or that he was carrying it at the time of his arrest. He swore that he was sitting on a table waiting for the arrival of a boat for Iloilo when a child (chiquillo) came by and left a bundle on the table; that immediately thereafter the policeman Julian Malijan asked if the bundle belonged to him; that he replied that it did not, but that, notwithstanding his denial of ownership, he was arrested by the two policemen and taken before the justice of the peace; that it was true that a glass tube containing a liquid substance which the policemen said was a preparation of opium was found in the bundle on the table, by his side, at the time of his arrest.

The accused testified further that on the way to the office of the justice of the peace, Malijan offered to let him go if he would give him P300 and he swore that later on he did in fact give Malijan P300 under a promise that the

matter would be "fixed up;" and that on several occasions thereafter Malijan had attempted unsuccessfully to extort more money from him and that he took from him a roll of cloth for which he had never paid. The whole theory of the defense is that Malijan planned the arrest of the accused on the fictitious charge of the unlawful possession of opium for the sole, purpose of extorting money under threat of pressing the prosecution if the victim proved obdurate.

Potenciano Brodit, a witness called for the defense, testified that he was present at the time of the arrest; that just prior thereto he saw a child leave a bundle on the table on which the accused was sitting; that the accused denied that the bundle belonged to him but was led away by two policemen. In explanation of his presence on the witness stand this witness swore that on the day before that on which he was testifying, the accused asked him what he had seen on the occasion of the arrest and that the accused then for the first time learned that this witness had noted the incident with reference to the bundle, to which he testified. He swore that he had not discussed the matter with the accused prior to that occasion, and if we are to accept his testimony in this regard as true, we must believe that although the accused had had more than four months in which to prepare for trial, he had only recalled the important fact that this witness was present at the time of his arrest when they happened to meet on the morning of the trial in a local tienda.

Jose Agasan, another witness for the defense, also claimed to have been present when the accused was arrested and his testimony is a substantial corroboration of that of Brodit. Neither of these witnesses, however, was able to recall anything except the barest details of the arrest, though they were positive in their testimony corroborating the claim of the accused that a bundle had been left by an unknown child (chiquillo) on the table upon which the accused was sitting just prior to the arrest. The court below, with whom we are inclined to agree, placed no credence in the testimony of these witnesses, and accepted the testimony of the two policemen as the correct version of the facts and circumstances under which the arrest was made.

It appears that the accused waived a preliminary hearing and gave bond for his appearance in the Court of First Instance, whereupon the justice of the peace forwarded the record of the proceedings had before him, together with the bundle seized at the time of the arrest of the accused, to the clerk of the Court of First Instance at Bacolod; and the record discloses that the bundle was received by the clerk of the Court of First Instance on the 14th day of August, 1914. An information was filed by the fiscal on the 12th of the following September; and on the 28th of September he filed a motion praying that he be allowed to send the tube containing the alleged preparation of opium to Manila for chemical examination and analysis. This motion was granted, but the opium does not appear to have been sent to Manila, because on the 17th of October the fiscal moved the court to suspend the hearing of the case to the 16th of November or until such time as an analysis of the contents of the tube could be secured. The hearing of the case was further postponed on the 27th of November until the December session of the court on the motion of the fiscal, who said that up to that time he had not been able to "verify the identity of the opium found in the possession of the accused."

When the case was finally called for trial on the 14th day of December, 1914, the fiscal admitted that the glass tube in the possession of the clerk of the court, which was supposed to be the one forwarded to the clerk of the Court of First Instance by the justice of the peace of Silay, did not contain a preparation of opium, the contents of the tube being a dark liquid resembling to some extent an opium preparation, but was in fact a mixture of molasses with other substances unknown. The fiscal further advised the court that he would undertake to show that the contents of the original tube submitted in the court of the justice of the peace at the time of the arrest of the accused was a preparation of opium, and that the tube and its contents filed with the clerk of the Court of First Instance had been substituted therefor at some time after it left the court of the justice of the peace.

In addition to the testimony of the two policemen, the record contains the testimony of the justice of the peace,

municipal president and municipal treasurer of Silay who swore that they had carefully examined the original tube while it was in the hands of the justice of the peace, and that it then contained a liquid substance which, from its appearance, color and smell, they identified as a preparation of opium. Upon being shown the tube in the possession of the fiscal, they testified that this tube was not the same one which they had examined at Silay and that its contents were wholly different from the contents of the original. All of these witnesses claimed to have some knowledge of opium, though none of them were experts in chemical analysis, and though their testimony would doubtless be of little value to sustain a finding that a common substance does not contain a preparation of opium, we are of the opinion that in this case, wherein they affirmatively testified as to the presence of opium in the preparation carefully examined by them, their testimony sufficiently and satisfactorily establishes the fact that the substance contained in the original tube was a preparation of opium, under our ruling in the case of *United States vs. Sua Tua* (11 Off. Gaz., 43). Evidence was introduced at the trial as to the manner in which the original tube was wrapped and sealed when it was forwarded by the justice of the peace to the clerk of the Court of First Instance, including the testimony of several local officials, who claimed to have some knowledge of its dispatch by the justice of the peace and its receipt in the office of the clerk of the Court of First Instance.

The justice of the peace testified that he delivered the record and the tube of opium to the chief of police, Julian Malijan, for dispatch to the clerk of the Court of First Instance at Bacolod; that the tube turned over to the chief of police, Malijan, for dispatch to Bacolod was the same tube that had been delivered to him by Malijan at the time of the arrest; and that while it was in his possession he kept the tube in a locked drawer of his desk, and that he alone carried the key to this drawer.

Malijan testified that he wrapped the tube in the presence of the justice of the peace and sealed and delivered it to a municipal policeman named Juan Panaguton, who immediately set out with it in the direction of Bacolod. The clerk of the Court of First Instance at Bacolod testified that the record of the proceedings before the justice of the peace and the bundle containing the tube were personally delivered to him by a policeman in his office at Bacolod on the same day they were shown to have been forwarded by the justice of the peace; that the tube was wrapped, and sealed with wax at both ends; that he did not unwrap it but delivered it, together with the record, to the docket clerk; that he did not notice any impression on the surface of the wax, but that the paper in which the tube was wrapped bore the seal (timbre) of the justice of the peace of Silay. The record discloses that the paper in which this tube was wrapped bore the following indorsement: "Causa No. 2163 contra Que Siang por opio." The record shows further that this indorsement was written by the docket clerk to whom the record of the proceedings before the justice of the peace and the tube were delivered by the clerk of the Court of First Instance at the time when they were turned over to him by the messenger. There is some evidence tending to show that the seal of the justice of the peace on the wrapper of the exhibit was stamped with a different colored ink from that used by him in forwarding the original package, and the chief of police, Malijan, who sealed the package, testified that he made an impression on the wax with his hands, and that the wax seals on the wrapper of Exhibit C were not the same as those on the package which he delivered to the policeman, Juan Panaguton, for dispatch to Bacolod. Upon all the evidence of record we are satisfied that the original tube and its contents submitted in the court of the justice of the peace was substituted by a different tube, containing a different substance, after it left the office of the justice of the peace, and probably before the record of the proceedings in the court of the justice of the peace was delivered to the clerk of the Court of First Instance.

A thorough examination of all the evidence of record satisfies us that nothing disclosed thereby would justify us in disturbing the conclusions of the trial judge as to the guilt of this accused of the offense with which he is charged. That some of the witnesses called at the trial testified falsely, in whole or in part, cannot be doubted. But the trial judge, who saw and heard them testify, was satisfied beyond a reasonable doubt as to the truth of the testimony which points conclusively to the guilt of the accused, and our examination of the record raises no

reasonable doubt as to the correctness of his findings in that regard.

We are satisfied that a substance containing opium was found in the possession of the accused in a small tube or bottle wrapped in a bundle; that after his arrest this tube and its contents were submitted for examination to the justice of the peace, and by him forwarded to the Court of First Instance; that the tube and its contents submitted at the trial in the Court of First Instance is not the same tube with its contents which was submitted to the justice of the peace; and that some person or persons substituted the one for the other.

The evidence of record in this case strongly points to the police officer, Malijan, as the person who made the substitution, but as he is not on trial at this time, we deem it proper to make no definite finding in this regard, since it is not of vital importance, for the purposes of this opinion, that the identity of the person who made the substitution be definitely fixed. It is sufficient for the purposes of this opinion to sustain the finding of the trial judge that a substitution was in fact made; because, having arrived at that conclusion, the fact that the substance submitted at the trial did not contain opium, does not put in doubt the strong and convincing evidence as to the nature of the contents of the tube submitted to the justice of the peace.

In affirming the judgment of conviction we are not forgetful of the fact that the evidence tending to disclose the responsibility of Malijan for the substitution of the tubes and their contents tends very strongly at the same time to discredit his testimony as a witness for the prosecution. But the trial judge was fully advised as to this aspect of the case, and yet he was satisfied from all the evidence that the tube containing opium was in fact found in the illegal possession of the accused. On the whole record we are unable to say that he erred in this finding, and we think that the testimony of the accused with reference to bribes demanded and taken by the police officer furnishes the key to the apparent inconsistencies in some of the testimony. It not infrequently happens that where thieves fall out, honest men get their dues and rogues their deserts; and the mutual suspicions of the bribe-giver and the bribe-taker in this case seem to have thrown a flood of light on the incidents developed by the testimony, without which the truth as to all that occurred might never have been disclosed.

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

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

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