

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TO LEE PIU, DEFENDANT AND APPELLANT.

G.R. No. 11522. September 26, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment convicting the appellant of the crime of using a false name and sentencing him to 2 months and one day of arresto mayor, to pay a fine of 325 pesetas, with subsidiary imprisonment in case of nonpayment of the fine, and the costs of the trial.

The appellant was charged with using a false name. The evidence is to the effect that he came to the Philippine Islands in 1911 and presented a section six certificate, which is attached to the record as Exhibit A, wherein his name appears as To Lee Piu. Thereafter, he attached to an application for a passport the name of Toribio Jalijali. Said application was accompanied by the affidavits of two witnesses and by a baptismal certificate showing that a person by that name was born in the Philippine Islands in 1878. On the trial there was no denial of the fact that appellant signed the name Toribio Jalijali to the application for a passport; and the only evidence which may be regarded as having been contradicted in the case is that given by the defendant himself when he testified that he was born in the Philippine Islands, that his name is Toribio Jalijali, that he went to China at an early age, and, feeling doubtful as to his ability to prove his right to reenter, applied to the American consul at Canton for a section six certificate; that, on such application, he stated to the consul that his name was Toribio Jalijali, and that, upon being told by the clerk of the consulate that it was not necessary to put his surname in such application, wrote therein the Christian name Toribio alone.

The charge is prosecuted on the theory that To Lee Piu is appellant's correct name and that the name Toribio Jali-jali is false.

Counsel for appellant maintains that the Government, in order to maintain the action, must prove (a) that the two names in question were different, and (b) that the name alleged to be false was in fact false; and that the failure of the Government to meet these, or either of these, requirements must result in an acquittal.

It is contended on this appeal that the Government did not meet either of these requirements. Counsel says:

"Upon the issue as to whether the two names were identical the evidence is to the effect that To Lee Piu is the nearest that the word Toribio can be written in Chinese characters, and that it is the way in which a Chinese interpreter would naturally write such a word."

With respect to the charge that the name used in the application for a passport was a false name, counsel contends that the allegation upon which that charge is based was not proved by the Government. He says in his brief:

"Even were the testimony upon this issue contradictory or doubtful, conceding for the sake of argument that the two names are legally different, the burden would be clearly upon the Government to show which was the true and which was the false name; and having made their election and alleged that one of the two names is

false, affirmative proof must be introduced in support of this issue."

We are satisfied on the whole case that the conviction must stand. From the fact and circumstances in evidence it appears established beyond a reasonable doubt that the appellant used the name of another person for the purpose of deceiving the Government and, by that deception, to obtain a passport. He came to the Philippine Islands as a Chinese person traveling for curiosity and pleasure. He so represented himself to the American consul at Canton and, by that representation, obtained a section six certificate. In his application for that certificate he stated that he was a Chinese person, and that his name was To Lee Piu. He came to the Philippine Islands upon those representations; and, by virtue of the certificate obtained thereby, was permitted to enter the country. Desiring to return to China, or travel in other parts of the world and, at the same time, be permitted to return to the Philippine Islands at will, he sought to obtain a passport as a citizen of the Philippine Islands under the sovereignty of the United States. In order to accomplish his purpose it was necessary for him to show to the authorities of the Philippine Islands issuing passports that he was in fact a citizen of the Philippine Islands and as such entitled to a passport. He thereupon took unto himself a Filipino name, one not his own, and made his application for a passport attaching to his application the name Toribio Jalijali.

As to the difference between the two names, To Lee Piu and Toribio Jalijali, a mere glance at, or a single pronunciation of, the two names serves to demonstrate beyond question their complete unlikeness. It is true that the name Toribio when pronounced by a Chinaman may sound like To Lee Piu. But it must be observed, in the first place, that the name assumed by the appellant and signed to the application for a passport is not Toribio but Toribio Jali-jali; and, in the second place, that the name assumed by the appellant in China and that under which he presented himself to the American consul at Canton, was not Toribio nor Toribio Jalijali, but To Lee Piu, thus clearly implying that he belonged to the family or tribe of To, and, therefore, was not of Philippine origin or birth. The claim of the appellant that the clerk of the American consulate at Canton told him that, in making an application for a section six certificate it was unnecessary to give his surname, cannot be accepted. Such a contention is so unusual and so opposed to universal experience that it must fall of its own weight. It seems incredible that an American consul, or any of his responsible employees, would give such information to a Chinese person applying for the privilege of entering American territory. It cannot be accepted without strong corroborative proof that an American consul, or his accredited representative, would inform the appellant that the most important of his two names, his family name, could be omitted or entirely disregarded in a proceeding having for its main purpose his identification. The surname is the only name by which identification is rendered possible. The Christian name, while being the specific and individual name, is of no value whatever for identification purposes. One of the most important duties of American officials engaged in permitting the entry of Chinese persons into American territory is to establish and preserve the identity of the particular individual to be admitted. Without the ability to identify all control over the admission of Chinese is lost. It is not to be believed that an American official whose duty it is to enforce the laws pertaining to Chinese exclusion and to protect the territory of the United States from an invasion of Chinese laborers, would inform a Chinaman desiring to enter American territory that he might dispense with the only evidence upon which an identification of him could be based. The Christian name is without value for the purposes of identification until after the surname is known.

That the name Toribio Jalijali was a false name as applied to the appellant in this case is in our judgment beyond question in the record. It is undoubted that To Lee Piu was the name by which the appellant was known in China. It is the name he gave to the American consul and it is the only name he gave. He alleged that he was born in China in October, 1878, and applied for a certificate which is required of Chinese persons only. Upon his own statements and the statement of his government he was given a section six certificate. It would seem to us that these facts are sufficient to establish, prima facie at least, that the appellant is a Chinese person and a Chinese subject; that he was born in China in October, 1878; and that his name is To Lee Piu. These facts being

established it is incumbent on the appellant to relieve himself of the charge that, when he stated under oath in his application for a passport that his name was Toribio Jalijali and that he was born in Santa Cruz, Manila, on the 27th of April, 1878, he did not tell the truth; or to give such proof with reference thereto as would raise in the mind of the trial court a reasonable doubt as to his true name. The only evidence offered by the appellant in this connection was a certificate of baptism of an infant named Toribio Jalijali, born in Santa Cruz, Manila, in April, 1878. The names of several witnesses appear in this certificate. None of them were produced on the trial; nor was it shown that these witnesses, or any of them, were dead, or that the appellant was unable to procure their presence at the trial. No effort was made to find or offer as a witness his alleged father or mother.

On the trial the appellant testified in the Chinese language by means of a Chinese interpreter. He showed no familiarity with the Spanish language or with any of the Philippine dialects; and the trial court said, with reference to his personal appearance, that "so far as could be judged from all surface characteristics the defendant is in truth and in fact a Chinese person as he describes himself in the Philippine Carnival certificate Exhibit A; and adds: "A comparison of the two documents, the certificate Exhibit A and the application for passport, is alone sufficient to show that the defendant's statements are unworthy of credence, that his claim that he was born in the Philippine Islands is false, and that the name Toribio Jalijali now claimed by the defendant is false and assumed."

The judgment appealed from is affirmed, with costs against the appellant.

So ordered.

Torres, Carson, and Araullo, JJ., concur.

Trent, J., concurs in the result.

Johnson, J., reserves his vote.

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