

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. S. MIYAMOTO, DEFENDANT AND APPELLANT.

G.R. No. 12536. August 18, 1917

Ponente: MALCOLM, J.

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MALCOLM, J.:

The defendant and appellant S. Miyamoto, a Japanese living in Zamboanga, was accused in the Court of First Instance of the illegal importation into the Philippine Islands of eighty-two cans of opium. The trial judge, the Hon. George N. Hurd, found the defendant guilty as alleged in the information, and in view of the value of the opium imported (between P5,000 and P7,000) and the fact that the defendant was the principal culprit, sentenced him to four years imprisonment, the payment of a fine of P4,000, and the costs. The opium presented in evidence had already been confiscated in the case of the other accused. From this judgment the defendant has appealed, making three assignments of error all of which relate to the sufficiency of the proof. Subsequently, attorneys for appellant have filed in this court a motion for what is called a reopening and rehearing of the case based upon newly discovered evidence material to appellant's defense. The court has resolved to decide the motion for a new trial with the principal case.

The newly discovered evidence consists of a letter from one Adzuma and an affidavit by the same Adzuma, said to be the principal witness against the accused and now confined in the San Ramon Penal Colony under sentence on the same facts on which the accused herein is charged.

The translation from the Japanese into English of the letter of the Prisoner Adzuma and of his affidavit, as submitted by appellant, are as follows:

"Department of Public Instruction,

"Bureau of Prison.

"[No. 1902 Adzuma.]

"[Prisoner's letter, dated at Chief Clerk's Office, February 27, 1917.]

"To Mr. S. Hama,

"Address of P. O. Box 181, Zamboanga.

"Sunday, February 25, 1917.

"Messrs. Sadakichi Hama, Juntaro,

"Kamiye, and Yoshitaro Sakauye.

"CONFESSIONS.

"Dear Messrs. Kamiye and Sakauye: It should be still fresh in your memories that I was sentenced to two years imprisonment and a fine of three hundred pesos by the court at Zamboanga on July 10th last, after the trials have been made following the arrest on my having smuggled a contraband-opium—in the month of May, last year. I hereby like to reveal the secret I have, confess the crime I have committed, and at the same time to apologize to Mr. Miyamoto through kindness of you, two dearest friends of mine. Please be kind enough to consent in doing so.

"Since the sentence was given, I have been under hard labour obediently in the San Ramon Prison, with the Bible as my only companion, every morning till evening, but I have always been in agonies, troubled every day and night by my conscience, having committed a false witness in the trials. Finally, however, I have been saved from these agonies by means of reading the Bible. I have realized what He teaches that 'Repent ye! Confess! and all manner of sin shall be forgiven.' Now, having regained my purest conscience thus, I felt I have to make these confessions to you.

"It was absolutely on my own personal business that I visited Sandakan last year. On my way back, prior to my departure, I had been approached by one Chinaman, Leong Kam Hoi by name, who asked me, through the proprietor of the Fujiya Hotel acting as an interpreter, to bring opiums into Zamboanga on conditions that he would pay me the sum of three hundred pesos as compensation upon safe delivery of same. He gave me one hundred pesos that time in Sandakan, which I have remitted to my mother who has long time been sick in our home hoping it might serve as a part of her treatment fund. It was agreed to pay me the balance of two hundred pesos on delivery of the goods at destination, but this was not accomplished, as the vinta was overturned by Moros, losing the consignments consequently. At first, I have had not a bit of such defiled intention, but became tempted as I had been hard up for money. I was then requested to get one more Japanese as my companion, because some kind of dangers having been anticipated during the voyage if the party consists of only Moro members, so I have tried to find out, but there was none. Then Mr. Morita came right after his deportation from Zamboanga, and the Chinaman asked me a few times to arrange with him but as I did not know him well at that moment I told the hotel proprietor about this matter. The hotel proprietor asked Mr. Miyamoto, the old man, to hire him, and Mr. Miyamoto did so on his request. And again at the time of hiring a vinta, as nene of us—the Chinaman, the hotel owner, and myself—was unable to speak intelligibly to Moros, the hotel owner asked Miyamoto to hire it, and the vinta was hired by him. Such having been the case, Mr. Morita and Moros might have misunderstood that the contrabands belonged to Miyamoto and testified in that way, but in fact Mr. Miyamoto has only mediated to hire them, and has no connection whatsoever.

"When I was inquired by Captain Elarth I related the tact to him as it was, but for some reason or other he did not believe what I said. Later at Constabulary quarters the same Captain asked me similar questions, and denying all what I answered told me to put me in jail for ten years, and then I was confined in a storeroom, adjacent to the kitchen, with only the clothes on my back, handcuffed, even my feet locked with chains, giving me nothing to eat for one whole day and night. I was very much troubled moreover by a bunch of mosquitoes at night. In that same evening another chain tied my feet to boxlike (?) thing. I was so worried that I could not take a sleep at all. On the following day I was completely fatigued but I was compelled to appear before the captain in his office where I was told that I would be confined in a dark room of concrete structure at the police station, should I continue to tell him untrue so far as Mr. Morita and the Moros have confessed. But I made up my mind not to tell anything which may lead a person who is not complicated with to a false charge, and I went so far as to express my determination in this way. And then Mr. Morita was called in to be cross-examined with me. Undoubtedly Mr. Morita considered it was Miyamoto's business, and urged me to confess. I found at last that it would be vain to

speak the truth so far as the captain does not confide in my words, even uttered a thousand times. For the old man (Miyamoto) it was a pity I felt, but finally I have confessed falsely. At that time the captain promised again and again to send me back to Japan, giving me money, as soon as Miyamoto's case is decided, but until now he does not let me go home. There is no other way than to abandon any hope though myself is so suffering with a sensation of excruciating pains that I may not be able to bear any longer, as I should have been punished by Heaven for I have committed a false witness. Whenever I think of my old father and diseased mother in home, I hear a voice from unknown direction that tells me just to confess all. I am at last convinced of the punishment by Heaven to one's mind being far severer than any bodily pains. I confessed hereinbefore with my pure conscience, and I entreat you to apologize for me to Mr. Miyamoto, and redeem him.

"When we lost the contrabands, I went to the old man's boat (pearling vessel) at the same night, I took a meal on board, and asked the old man, through one of the crew, to write to Sandakan reporting the loss of consignment. The old man then came aboard and told me he will send a letter as I want, but requested me to move myself to some other place on the ground that, if I hide myself within his boat or house, it may lead to make the Sandakan people believe that the goods should be under Miyamoto's usurpation and that moreover he would be troubled much in case the authorities hear about it. I had least idea that the Moros have taken the goods into their possession, but in belief that they should be still in the bottom of the sea, I got the boat by coercion to search the place where the goods have been lost. I asked the old man to write to Sandakan because I was too sorry to report by myself. At that time the old man advised me to surrender myself to the authorities to which I agreed, but having had no satisfactory sleep for more than three or four days, I fell asleep. Then Mr. Sakauye was absent in Sibuco, wasn't he? Right that time secret-service men came and I was arrested. The fact is no other than this relation, but I have testified before the court the things entirely contrary, which led the old man to be charged against.

"Prior to the opening of trials of the old man, we have been put together in the prosecuting attorney's office, with Mr. Morita and the Moros, the captain also being present, and tried to make all of our testimonials alike. At the beginning this has not proven success it being a false testimony, but after the rehearsals for about seven or eight times we gradually became accustomed so well that we could make testimonials alike in that way.

"The captain's work is only responsible for making me to testify such false things.

"Such being the case, kindly act for me accordingly.

"This is my true confession.

(Sgd.) "D. Adzuma, San Ramon.

"When Mr. Kamiye visited me with lawyers last time, he advised me to confess, but I did not have enough courage to do so that time, now I do by the just precepts of God.

"United States of America,

Philippine Islands, ss.

Province of Zamboanga.

"D. Adzuma, without personal cedula for the reason that he is confined in San Ramon prison, being first duly sworn deposes and says:

"That the Japanese letter hereto attached was written and signed by him in San Ramon prison, and that he has heard read the translation of said letter which is hereto attached, and that the same is true and correct.

"That he wrote said letter without advice, intimidation, threat, or promise of reward, from any person or persons whatsoever, and for the purpose of doing justice and correcting his false testimony heretofore given. That prior to the writing of said letter he has never talked with Miyamoto or with his attorneys, except once with his attorneys P. J. Moore and J. F. Yeager in San Ramon prison in the presence of the superintendent, Mr. J. B. Cooley.

"That the contents of the letter and the statements therein contained are absolutely true and correct, and that S. Miyamoto was in no way connected with the importation, purchase, or sale of the opium for which he was convicted, and that this affiant was induced to swear falsely before the court by Captain H. H. Elarth, and the prosecuting attorney's office in Zamboanga, P. I.

"Further affiant sayeth not.

(Sgd.) "D. Adzuma.

"In the presence of three witnesses.

"Subscribed and sworn to before me this 9th day of March, 1917. (Sgd.) P. J. Moore, notary public. My commission expires Dec. 31, 1918, notarial No. 107, Page No. 23, Int. Rev. 20¢."

If we are to believe the affidavit of Adzuma, then Miyamoto had no connection with the importation of the opium. But, when we read carefully this affidavit and contrast it with the circumstances surrounding the trial of Miyamoto and the clear and consistent testimony of Adzuma at the trial, we are forced to the conclusion that Adzuma told the truth at the trial and now, for some hidden reason at which one can only guess, desires to acquit his employer. To say, for instance, that Captain Elarth coerced Adzuma into testifying as he did, while a claim not unusual after conviction, is far from establishing the fact. However, for the purpose of disposing finally of the case, let us assume that a new trial has been had and the affidavit of Adzuma has been admitted in evidence and given its proper weight—would there then be sufficient proof to convict Miyamoto?

To resolve this question, we could easily make an analysis of the evidence. We could, however, not improve on the remarkably clear and well-reasoned decision of the trial court. We can, therefore, do no better than to quote the material parts of this decision. The court says that the evidence establishes the following facts:

"On or about the 25th of May, 1916, two Japanese, Adzuma and Morita, set sail from Sandakan, British North Borneo, for Zamboanga in a vinta manned by three Moros named Balhani, Banzani, and Indasan. The Japanese had in their possession 82 tins of opium and intended to land the same in the Philippine Islands near Zamboanga.

"Sometime about 2 o'clock on the night of the 30th or the 31st of May, 1916, when the vinta was about 40 meters from the shore at Batolampon or Baturampon in the municipality and Province of Zamboanga, near the city of Zamboanga, the craft was overturned probably by the connivance of the Moros, and a valise with 77 cans of the opium was carried ashore to the Zamboanga mainland by one of the latter and buried. It was afterwards removed by the Moros to the neighboring island of Santa Cruz where a portion of it was again buried. The customs officers received notice of the landing of the opium and arrested the three Moros and the two Japanese, Adzuma and Morita. The Moros pointed out the place where the opium was concealed and 36 cans of it were found where it had been buried on the Island of Santa Cruz, Province of Zamboanga, to which place it had been surreptitiously removed by the Moros."

Up to this point, however, the facts would not connect Miyamoto with the illegal importation. But the court continues :

"From the investigation of the Moros and the Japanese, Adzuma and Morita, it appeared that they were all acting as agents for some one else, and, their declarations implicating the defendant, Miyamoto, the

prosecution of the present case was instituted.

"The defendant is a Japanese who has been engaged in diving for pearls and pearl shells and in operating pearl fishing luggers for a number of years. He had acquired considerable property but for some time prior to May, 1916, had been in financial difficulties, his property having been turned over to a trustee who was collecting the rents and applying them in the payment of the defendant's debts.

"The Japanese, Adzuma, had for a long time prior to April, 1916, been an employee or retainer of Miyamoto. Adzuma testifies that the defendant ordered him to go to Sandakan and wait there for his (Miyamoto's) arrival, that his passage was paid by Miyamoto, that he, Adzuma, went to Sandakan as instructed by Miyamoto about April 20 or 22, 1916, and waited there for the defendant who came on the same steamer with the other Japanese Morita, a few days later and that the three were lodged in the same hotel in Sandakan. The defendant admits that he went to Sandakan at this time but asserts that he went there for the purpose of purchasing a pearling lugger. He also admits that his baggage was at the same hotel where the other two Japanese were stopping but asserts that he (defendant) lived at another place.

"Notwithstanding defendant's denials of all connection with the opium and his denial of having paid Adzuma's traveling expenses while there, the evidence is convincing that he did pay such expenses and that he, defendant, procured 82 tins of opium in Sandakan; that he, defendant, in Sandakan, engaged the three Moros, Balhani Banzani and Indasan, to transport said opium in their vinta from Sandakan to a point in the Province of Zamboanga, Philippine Islands, near the city of Zamboanga; that in Sandakan he engaged the Japanese, Morita, to accompany his agent Adzuma on said voyage as an additional safeguard against treachery upon the part of the Moros; that he paid the Moros a sum in cash for this service in transporting the opium, promising them, through his agent, Adzuma, an additional sum upon the successful landing of the contraband; that he entrusted the 82 cans of opium to Adzuma and Morita in Sandakan for the purpose of having it transported under their supervision to the Philippine Islands. This is the opium which was actually brought into the Philippine Islands at Batulampun, landed there and a portion of which (36 tins) was exhibited as evidence in the case and identified as opium.

"The connection of the defendant Miyamoto with the obtaining of the opium in Sandakan is established by the testimony of Adzuma, Morita, and Balhani; his intervention in the hiring of the vinta to bring the opium to the Philippine Islands by the declarations of Adzuma, Morita, Sahani, and Balhani.

"We are satisfied from the evidence that the defendant went to Sandakan for the purpose of procuring the opium and paid the expenses of Adzuma on the voyage, and while there, with the intention of employing him, as he did employ him, to bring the opium into the Philippine Islands.

"The defendant's connection with the transaction is further substantiated by the fact that his two Japanese agents, Adzuma and Morita, after seeking in vain for the lost opium where the vinta capsized in Batulampun, returned to Zamboanga, went to the pearl lugger under defendant's control and sent word to the defendant to come to them there. Both Adzuma and Morita declare that Miyamoto came out to the lugger the same night and that Adzuma told him of the disaster of the loss of the opium. The defendant admits that they went for him and that he went as far as the wharf where he heard some unknown Japanese talking of the bringing in of opium.

"Whereupon he says he went to the house of Mr. Langford and told him about it the same night. Langford says he told him the next morning.

"Adzuma and Morita remained on board the defendant's lugger that night and the next day this same lugger (at defendant's orders, according to Adzuma's testimony) was taken to the waters wherein the opium was supposed to have been lost and search was made for the lost opium."

Leaving out the portion of the decision which mentions Adzuma, we would still have present the testimony of the

other agent, the Japanese Morita, the Moro Sahani, the three Moros Balhani, Banzani, and Indasan who transported the opium in their vinta, the admitted presence of Miyamoto in Sandakan at the same hotel with Adzuma and Morita, his intervention in the hiring of the Moros' vinta, and his dispatching of his lugger to the waters where the opium was supposed to have been lost to search for it.

The court next takes up the defense and the evidence of good or bad character of the accused as follows:

"The chief defense of the accused consists of testimony to the effect that he reported to the customs authorities certain facts in regards to the capsizing of the boat and the fact that it had opium aboard, the morning after the arrival of the two Japanese aboard his lugger. At this time however he gave no names of the culprits and what information he did give was already in the possession of the collector of customs before the defendant made his disclosure. It seems very evident therefore that the defendant gave his information to the customs authorities in order to divert suspicion from himself.

"The defendant stated on oath that on the night when Adzuma sent word to him from the lugger, he (Miyamoto) gave orders that the two Japanese be put off the boat. We find however that, when the names of the Japanese culprits were finally ascertained, he asked that they be not prosecuted and a few days later he secured cedula for the Japanese Morita, who testifies that this favor was part of the consideration for his agreeing to assist in the importation of the opium. He, Morita, further says that the defendant at the time he secured the cedula for him paid him fifty pesos and wanted him to leave the country. The defendant's intervention in procuring the cedula is undenied and is corroborated by the signature of defendant to a form of affidavit on file in the Municipal Treasurer's office.

"This evidence is important as showing the relations between the defendant and Morita, and is corroborative of the story of Morita that he was employed by defendant to assist in bringing in the opium. If, as the defendant insists, he (defendant) was only interested in bringing the smugglers to justice, it is strange that he would thus intervene in the affairs of one of them. If, on the other hand, we accept the story of Adzuma and Morita, to the effect that the defendant secured the services of Morita in importing the opium, it is clear that the irresponsible Morita would have a hold upon the defendant, who would be interested in placating him and in getting him out of the way so that he might not divulge the conspiracy and the defendant's participation therein.

"The defense presented evidence of the good character of the defendant which was rebutted by evidence that he (defendant) had the reputation of being an opium smuggler and an importer of Japanese women.

"Disregarding the latter, and giving to the testimony of good character all of the weight to which it is entitled, we are still convinced beyond a reasonable doubt of the culpability of the defendant as disclosed by the evidence."

This defense even though bolstered up by the belated affidavit of Adzuma is weak. On a just view of the entire matter, we must perforce deny the motion for a new trial as merely tending to delay and as not affecting the outcome. We must then give due weight to the findings of the trial court, which have particular interest as the case in the main turns on the credibility of witnesses. The result is to hold the accused guilty as charged.

The lower court, as before stated, imposed a heavy prison sentence and fine. We believe that in so doing the court was entirely justified. If we may be permitted to use the figure of speech, the opium traffic from other countries into the Philippine Islands and in the Islands is like unto a large tree with infinite branches and leaves. Constantly the courts are cutting off the twigs of the tree by punishing the poor Chinamen who use opium, only to see these twigs renew themselves and grow into large branches. When an opportunity presents itself to cut the opium tree at the base by convicting the instigator of the crime, who, as in this case, was a crafty leader in the illegal importation of opium and a grave menace to the well being of the country, the courts should not hesitate in the performance of their

duty.

The judgment of the lower court is affirmed with the addition of subsidiary imprisonment in case of insolvency, and the costs of this instance. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, and Street, JJ., concur.

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