

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. IGNACIO AZTIGARRAGA (ALIAS SIA SEE SEND) AND LIM TIONG TIM, DEFENDANTS AND APPELLANTS.

G.R. No. 12596. September 21, 1917

Ponente: MALCOLM, J.

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MALCOLM, J.:

The defendants and appellants were charged in the Court of First Instance of the city of Manila with the unlawful importation of 680 grams of morphine. Separate trials were had. The defendant Ignacio Aztigarraga alias Sia See Send was found guilty by the Honorable George R. Harvey and sentenced to two years' imprisonment, to pay a fine of P1,000, or to suffer subsidiary imprisonment in case of insolvency, and to pay one-half of the costs. The defendant Lim Tiong Tim was found guilty by the Honorable M. V. del Rosario and sentenced to three years' imprisonment, to pay a fine of P2,000, or to suffer subsidiary imprisonment in case of insolvency, and to pay one-half of the costs. Both have appealed, making various assignments of error.

Through advice of employees of the Bureau of Posts, the secret service of the Bureau of Customs received information that contraband was being imported into the Philippines through the mails. Thereupon thirty or more suspicious packages arrived per Steamship Carmartenshire from Hongkong were distributed according to their addresses in various post-office boxes. Secret service agents were detailed to observe and apprehend the person or persons calling for the packages. A brief narration of what then happened is as follows.

The accused Aztigarraga came twice alone to the post-office, city of Manila, during the early evening of July 6, 1916, to reconnoiter. About 9.30 of the same evening, Aztigarraga came again accompanied by the other accused Lim Tiong Tim. Both examined the ten boxes in which the packages had been deposited. Finding no ground for suspicion, Lim Tiong Tim took station at the entrance of the post-office, Aztigarraga remaining near the boxes. Lim Tiong Tim gave a sign to Aztigarraga, who opened box 1167 and took therefrom three packages of papers which were later found to contain morphine. The secret service men at once arrested the two defendants and took them into the post-office. Papers in Chinese evidencing a code for illicit operations with other parties in Hongkong were found in the pocket of Lim Tiong Tim. The key to box 1167 was taken from Aztigarraga. At the same time Aztigarraga confessed, although later he claimed that the last four words "na meron lamang morfina" (containing morphine) were added after he signed and without his consent.

The following morning, July 7, secret service agents visited the rooms occupied by the two defendants. Various articles and documents of an incriminating nature, including a receipt in Aztigarraga's name for post-office box 1167, were found in the room of Aztigarraga.

The purpose of each defendant is plainly to attempt to make out that the other is alone responsible. Thus, Aztigarraga claims that Lim Tiong Tim was the master and that he, Aztigarraga, was only an innocent agent who had no knowledge of the contents of the packages; on the trial of Lim Tiong Tim he went on the stand to testify against him. Lim Tiong Tim on the contrary claims that Aztigarraga is a deliberate perjurer; that the only evidence

against him, Lim Tiong Tim, was the fact that he was seen to enter the post-office at the same time as Aztigarraga and that there were found in his pockets certain papers in Chinese which are some sort of a code; and finally stress is laid on the point that various exhibits offered in evidence were found in the possession of Aztigarraga. But notwithstanding these efforts to transfer culpability from one to the other, it is impossible to escape the conclusion that as found by two judges after fair trials both defendants are responsible before the law. Both were apprehended during the accomplishment of the criminal act, one as look-out who gave a sign to the other, and the other who in response to that sign took the packages containing morphine from the post-office box. Aztigarraga confessed, and we have no reason to question this confession or the memorandum of the witness Scott narrating the statements of Aztigarraga. Both lived together, Lim Tiong Tim as master and Aztigarraga as servant, in a house in which various incriminating things were found including a receipt for post-office box 1167 in the name of Aztigarraga, the servant.

As to the conviction of Aztigarraga, the assignments of error are covered by what we have already said. Greatest emphasis by counsel is laid on the point that the relation of master and servant existed between Lim Tiong Tim and Aztigarraga and that following the doctrine of this court in *U. S. vs. Chan Guy Juan* ([1912], 23 Phil. Rep., 105), the principal who employs an innocent agent is liable but not the agent. But that Aztigarraga had knowledge that the package contained morphine is shown by his conduct on the night on which apprehended, by his admission to the witness Scott, by his voluntary confession, and by what was found in his room.

As to the conviction of Lim Tiong Tim it is contended that the court erred in admitting the testimony of his co-accused Aztigarraga. (*U. S. vs. Raymundo* [1909], 14 Phil. Rep., 416.) But the proof demonstrates that the acts of Aztigarraga were performed in aid or execution of a conspiracy with Lim Tiong Tim to violate the Opium Law. In addition, as said, in the recent decision of the United States Supreme Court in the case of *Valdez vs. V. S.* (Sup. Ct. of U. S., No. 361, October Term, 1916) the "testimony or confession of an accomplice is not to be summarily discarded but to be judged of by confirming or opposing circumstances as well as by his character and the influences that may invest him." (See also *U. S. vs. Soriano* [1913], 25 Phil. Rep., 624.)

It is contended further that the lower court erred in holding that the three packages containing morphine were imported from a foreign country. (*U. S. vs. Jose* [1916], 34 Phil. Rep., 840.) The Steamship *Carmartenshire*, containing mail bags in which these papers arrived, was admitted to have come from Hongkong to Manila on July 6, 1916. The code found on the person of Lim Tiong Tim shows that he was engaged in the illicit business of importing morphine from Hongkong. And, it is a general rule that from its post-mark, in this instance Hongkong, the fact that a letter or package was mailed from this place may be inferred. (*Uhlman vs. Arnholdt & Schaefer Brewing Co.* [1893], 53 Fed., 485, 489, and other cases.)

It is contended further that the lower court erred in admitting over objection of counsel the record in case No. 9578, being a former criminal proceeding, in which the defendant Lim Tiong Tim with others was found guilty of the illegal importation of opium. Looking to our records to find this case, we discover it reported under the caption, *U. S. vs. Ah Tung, Hao You Tee, and Lim Tiong Tim* ([1913], 26 Phil. Rep., 321). There also, somewhat curiously, the following assignment of error was made, "The court erred in allowing the defendant Lim Tiong Tim to be cross-examined in reference to another criminal case in which he had been convicted, and in allowing the introduction in evidence of the sentence in that case after the defendant had admitted his prior conviction/" In discussing the point, Mr. Justice Carson in part said:

"We conclude that in this jurisdiction, where all trials in criminal cases are had without the aid of a jury, the evidence as to a former conviction is properly introduced at the trial of the subsequent charge, and that the trial judge must be relied upon to hear all the evidence without being swayed by prejudices, which might readily affect a body of jurors less experienced and skilled in the administration of justice than he must be presumed to

be.

"Of course, in such cases, the best evidence of a prior conviction is a certified copy of the original judgment of conviction, and such evidence is always admissible and conclusive unless the accused himself denies his identity with the person convicted at the former trial."

To prove one a recidivist under the Opium Law, it is, therefore, essential that the information contain an allegation to this effect and that the record in the previous case be introduced in evidence or otherwise proved. The information herein charges, "That the accused Lim Tiong Tim is neither a citizen of the United States nor of the Philippine Islands and has heretofore once been convicted of violation of section 4 of the said Act No. 2381 of the Philippine Legislature; hence a recidivist." The record in case No. 9578 shows, it is said, that the charge was filed prior to the passage of Act No. 2381. However, the law reads "may be deported," and since the lower court did not see fit to order deportation we are not inclined to overrule this finding. But the lower court was clearly authorized in taking into consideration the prior conviction in arriving at a decision as to the proper penalty.

Having considered the important assignments of error and having found no basis which, from any aspect of the case, would justify us in interfering with the findings of the trial courts, and the sentences imposed by the two trial judges being within their discretion and in accordance with law, it results that the two judgments must be affirmed with proportionate costs of this instance against each of the appellants. So ordered.

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

Carson, J., concurs in the result.

Johnson, J., did not take part.

October 22, 1917.

DECISION ON MOTION FOR RECONSIDERATION.

MALCOLM, J.:

This is a petition for rehearing and reconsideration. Ordinarily, it is the practice to deny such motions without opinion. The obvious reasons are that a court cannot permit itself to enter into a joint debate with counsel for the losing side who is naturally supercritical, and that a court cannot permit litigation to stretch out to infinity. As herein counsel assumes the attitude of one who has not received sufficient consideration of the points advanced in his admirable brief, a word of explanation may be permitted.

Ground 1. "The trial court erred in admitting in evidence Exhibit H—being thirty one newspaper packages, most of them containing morphine—which packages were never withdrawn from the post office, and with which the accused was not shown to have any connection whatsoever."

Answer. Exhibit H was not considered in arriving at the judgment of this court. It was therefore unnecessary to consider this assignment of error.

Ground 2. "It was alleged as error that the prosecution failed to show that Exhibits A-1, A-2 and A-3, the newspapers extracted from P. O. Box 1167, contained any morphine when offered in evidence. The corpus delicti was not established in that positive manner required by the decision."

Answer. The decision reads: "Lim Tiong Tim gave a sign to Aztigarraga, who opened box 1167 and took therefrom three packages of papers which were later found to contain morphine." In the record, p. 260, is found

this statement: "El acusado admite que el contenido de los paquetes Exhibits A-1 a1 A-3 y el Exhibit H es morfina en la cantidad alegada en la querella." (The accused admits that the contents of the packages Exhibits A-1 to A-3 and Exhibit H is morphine in the amount stated in the information.)

Ground 3. "Attention is also invited to the fact that this Honorable Court, by its decision, brands the testimony of Aztigarraga as false in all that respects his own defense, and holds it to be true in that part where he implicates this defendant. We do not believe the testimony of such a witness a sufficient basis to send a man to prison for three years, with subsidiary imprisonment in the amount of P2,000 fine.

"Stress is laid upon the fact that a secret cable code was found in the pocket of this defendant, evidently relating to the importing of opium or morphine from Hong Kong. There is absolutely nothing of record showing any connection between such cable code and the charge here in question. That it had such connection is an 'inference' which should not be drawn under established rules of criminal jurisprudence.

"That this Honorable Court has treated and considered such two cases and the two appeals as one case and one appeal and has rendered but one decision as against both defendants. That this is error, and a deprivation of the rights accorded this defendant by law."

Answer. These statements present a mere difference of opinion. The judgment of the Supreme Court affirms the two judgments appealed from.

GROUND 4. "As stated by the Supreme Court of the United States in *Clyatt vs. United States* (197 U. S., 207, 222).

" 'Only in the exact administration of the law will justice in the long run be done, and the confidence of the public in such administration be maintained.' "

Answer. This quotation appears in many briefs filed in this court. It is in the nature of a maxim which all should remember. "The exact administration of the law" demands, among other things, the conviction of those proved guilty of a violation of the criminal law, without hesitation, without quibbling over minor points which merely serve to becloud the main issue, and without unnecessary delay.

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

Johnson, J., did not take part.

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