

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHINOS VICENTE DELGADO ET AL., DEFENDANTS. CHINO VICENTE DELGADO AND CHINO MARIANO SEVILLA, APPELLANTS.

G. R. No. 16416. February 08, 1921

Ponente: MALCOLM, J.

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MALCOLM, J.:

Counsel for the defendants and appellants in this case begin their brief with the following rather startling sentence: "There has been something mysterious about the whole history of this case." The mystery suggested concerns the delay in the trial; for while the unlawful occurrence took place on October 11, 1914, and while the original information was filed on February 5, 1915, it was not until six years later that the case reached this court. Such intolerable delay in the presentation and decision of criminal cases must be severely condemned. Justice delayed is indeed nearly equivalent to justice denied.

The case involves an alleged violation of Act No. 2381, the Opium Law, by three defendants, Vicente Delgado, Mariano Sevilla, and Ong Tengco, all Chinese. One of the defendants, Ong Tengco, died before the trial. Another defendant, Mariano Sevilla, on being arraigned, pleaded guilty. The third defendant, Vicente Delgado, pleaded not guilty, and stood trial. The judgment of the Court of First Instance of Ambos Camarines was that Mariano Sevilla and Vicente Delgado shall each be sentenced to four months' imprisonment, to pay a fine of P500, with subsidiary imprisonment in case of insolvency, and to pay onehalf of the costs. The opium and the utensils for its use were ordered confiscated.

The appellants assign the following errors:

"1. That the lower court erred in overruling the demurrer.

"2. That the lower court erred in finding that the evidence established the guilt of defendant Vicente Delgado beyond a reasonable doubt and in convicting the said Vicente Delgado of the crime charged in the information.

"3. That the penalty imposed by the trial court is too severe."

The demurrer mentioned in the first assignment of error was one filed by the defendants in which they alleged that Act No. 2381 had been repealed by the Act of Congress of December 17, 1914. This contention has heretofore been adversely resolved by decisions of this court. (U. S. vs. Tan Oco [1916], 34 Phil., 772; U. S. vs. Wayne Shoup [1916], 35 Phil., 56; U. S. vs. Jao Li Sing [1917], 37 Phil., 211.)

The second assignment of error goes to the merits of the case and concerns the sufficiency of the evidence and the credibility of the witnesses. If we are to believe the witnesses for the prosecution, then we must rule that the evidence adduced at the trial establishes the guilt of the defendant Vicente Delgado beyond a reasonable doubt. We have scrutinized the evidence of the witnesses of the prosecution with great care, and fail to agree with the defense that there was in effect a plan to convict the defendant irrespective of the actual facts. The discrepancies in the evidence pointed out by counsel are all easily explainable.

The trial court found, and we believe properly, that the defendant Vicente Delgado was found lying on his bed by Sergeant Cariaga of the Constabulary. Delgado, on seeing the Constabulary man enter his room, got up to meet him. Lieutenant Lawrence of the Constabulary, following Cariaga, entered the room and took possession of the opium utensils lying on the table and surrounding the defendant on his bed. (These utensils, the trial court said, were of such a nature that they could only have been possessed by a well-to-do person.) A strong odor of opium permeated the room at that moment. The container of the opium pipe was still warm, and a small lamp was lighted. When Captain Pate, also of the Constabulary, came into the room, Vicente Delgado is said to have gone to him and exclaimed: "Culpable, culpable, senior capitan, qu6 mas quiere Vd. tiene Vd. bastante prueba."

The remaining assignment of error is addressed to the sentence rendered by the trial court. A plea is made for the imposition of the minimum penalty permitted by law. The Attorney-General joins in this request and recommends that the practice of the court in imposing the minimum penalty upon persons who have violated the Opium Law for the first time be followed.

Advantage is taken of this opportunity to say something about the Opium Law, the spread of the opium evil in the Philippines, the attitude which the Supreme Court should assume in considering appeals involving the violation of the Opium Law, and the penalties which should be imposed.

The Philippine Commission, and later the Philippine Legislature, enacted Acts Nos. 1461, 1761, and 2381, for the purpose of restricting the use of opium and other prohibited drugs and eventually of eradicating their use. The primary object of such legislation was the protection of society from the evils believed to be incident to the widespread use of poisonous drugs other than as medicine or for scientific purposes. In the legitimate exercise of the police power, and in the discharge of their duty as guardians of the public welfare, the legislators adopted these laws to regulate the disposition and use of dangerous drugs, which the weak and unwary, unless prevented, may use to their physical and mental ruin. Opium and other drugs of a similar character are regarded by the medical profession as active poisons which cannot be used legitimately except for medicinal purposes. Indulgence in this loathsome, disgusting, and degrading habit generates disease, pauperism, and crime. Its usual concomitants are degeneration, neglect of appearance, of family, and of duty, abject poverty, and criminal propensities. (See *Ex parte Yung Jon* [1886], 28 Fed., 308; *Territory of Washington vs. Ah Lim* [1890], 1 Wash., 156, 9 L. R. A., 395; *Ex parte Mon Luck* [1896], 29 Ore., 421, 32 L. R. A., 738; *U. S. vs. Lim Sing* [1912], 23 Phil., 424; *Aschaffenburg, Crime and its Repression*, pp. 88, et seq.)

It is common knowledge, however, that instead of the illicit traffic in prohibited drugs in the Philippines decreasing, the number of victims firmly in the clutches of the insidious vice is increasing day by day. Not less than one thousand cases for violation of the Opium Law are filed annually and no one can even surmise how many other delinquents escape unnoticed. Twenty per cent of the criminal cases on the last calendar of this court were for violation of the Opium Law. The tremendous proportions of the opium trade, said to be organized as carefully as any other business, and the number of addicts to the habit who now include not only the unfortunate Chinese but natives of the country as well, is appalling.

The pertinent questions then are: What shall be done to save these unhappy victims from themselves? What shall be done to stop the spread of the opium traffic? The legislature has done its part by putting on the statute books a drastic and comprehensive law. Executive officials must do their part by vigilant investigation and fearless enforcement of the law. And lastly, in so far as is within their power, the courts must cooperate with the other two departments of the Government by an application of the Opium Law of such severity as will serve to repress the evil.

In the imposition of penalties under the Opium Law, it must be frankly admitted that there has existed

considerable confusion. This situation has come about through a misunderstanding of the decision of this Court in *United States vs. Lim Sing*, supra, followed later almost too literally, by the constant dissent therefrom in numerous cases of Mr. Justice Moreland, and by the growing tendency of newer members of the court to depart from the doctrines of the *Lim Sing* case.

The attitude taken by Mr. Justice Moreland with which certain other members of the court seem to concur, was announced in numerous dissenting opinions. Possibly, as succinct a statement of this view as any is that found in the dissenting opinion in the case of *United States vs. Valera Ang Y* ([1914] 26 Phil., 598), where it was said:

"I am in accord with the result in this case. I object, however, to the reference made to *United States vs. Lim Sing* (23 Phil., 424). That case, in so far as it sought to limit the trial court in the use of its discretion in the imposition of penalties under the Opium Law, has been repeatedly overruled by the practice of this Court. While it has been followed in some instances, it has been disregarded in more. It has been and is utterly discredited as an authority. A case which has been disregarded and rejected as often, if not oftener than it has been followed, I do not consider an authority relative to the doctrine as to which it has been disregarded.

"If the reference to the case were confined to some of the general principles therein referred to, I would have no objection; but an attempt to reaffirm a doctrine, already thoroughly discredited, which takes away from Courts of First Instance the discretion which the legislature expressly gave them, which deprives them of the power to represent their districts judicially, which prohibits them from administering the law according to the needs of their provinces and thereby makes their knowledge of those provinces and of the history and status of crime therein utterly valueless, which takes from them the right of informing themselves relative to the criminal before them, his mental and physical condition, his antecedents and history, and make proper use of such information, which prevents them from considering the personal needs of the criminal with the object of uniting curative and punitive treatment, which denies them the right to use the faculty of observation at trials and of making deductions therefrom, which puts discretion in bonds and judgment in stocks, which makes trial courts not trial courts but referees to take testimony for submission to the Supreme Court, which makes them automatons moving and acting by the substituted judgment of the Supreme Court, which, while it does not relieve them of the grave responsibility of properly administering the Law in their districts placed upon them by the legislature, robs them of the ability to meet and discharge that responsibility adequately, which repeals the law establishing discretionary penalties and substitutes in its place a courtmade law instituting the system of fixed penalties, which overrules the doctrine universally accepted that an appellate court will not interfere with a trial court acting in the exercise of its discretion unless a clear abuse thereof is affirmatively shown and that the judgment of a trial court imposing a criminal penalty which is within his discretion is not subject to review by an appellate court, which lays down the proposition that a court which is expressly authorized by statute to impose, in its discretion, a fine of from P300 to P10,000, commits a reversible error when it imposes P400; an attempt to reaffirm a doctrine doing or tending to do these things meets my instant opposition."

Recently, in the case of *United States vs. Ngo Hiok*, R. G. No. 15992 [decided January 23, 1920, not published], Mr. Justice Street, speaking for the first division of this Court, said:

"The practice in this Court has for several years undoubtedly been to modify the sentence where the trial court has imposed a heavier penalty than the minimum on a first offender against the Opium Law. For sometime, however, there has been a growing indisposition among the judges of this Court to apply that rule in a hard and fast way, and doubts have arisen as to the wisdom of continuing to enforce it. The fact that some judges of First Instance not infrequently impose heavier sentences than the minimum in defiance of the practice adopted by us evinces a belief in some quarters that the minimum is not always adequate. This is perhaps accredited in some degree by the fact, patent to the observation of all, that the law against the use of opium is still violated by many persons with impunity.

"We are now disposed, therefore, in cases of this kind to permit a little more latitude of discretion to the judges of First Instance in such matters; and the result is that whenever the penalty imposed does not appear to us to

be illegal, arbitrary or unreasonable in itself, it will be allowed to stand."

The Opium Law, as was properly said in the decision in *United States vs. Lim Sing*, previously referred to, confers upon the courts an exceptionally wide range of discretion in the imposition of the penalties prescribed for violations of the provisions of the Opium Law. The reasonable exercise of the discretion which the Legislature has expressly given to Courts of First Instance should ordinarily be left free from interference. The judge of first instance is in a better position to mete out a just punishment than is the appellate court because the former can take into consideration the peculiar conditions existing in his district.

Inasmuch, however, as there are numerous Courts of First Instance and it is desirable to have uniformity in penalties, certain observations for general guidance relative to the penalties which should be imposed for violations of the Opium Law may not be inappropriately made.

The most usual crime for which offenders of the Opium Law are prosecuted is for the illegal possession and use of prohibited drugs. It has been customary to impose the minimum penalty provided by law of three months' imprisonment and a fine of P300 upon a person convicted for the first time of having a small quantity of opium in his possession intended merely for his personal use. But as was well said by Mr. Justice Villamor, speaking for the first division of this court in the case of *United States vs. Alvarez Ching*, R. G. No. 16168 [decided July 22, 1920, not published]:

"The appellant was sentenced to the minimum penalty provided in section 2 of said Act No. 2381. Other than the discretionary power of the court to impose a penalty within the limits fixed by law, we do not find in the case any circumstance which may mitigate the responsibility of the accused. Because of the necessity of eliminating the opium vice in order to avoid the evils which it produces in society—this being the purpose which the legislature had in mind in enacting the Opium Law—we are of the opinion that, in cases of violations of said law, the judicial discretion should be exercised by imposing a penalty above the minimum, except when sufficient reasons exist warranting another course of action/

For the suppression of the opium vice, especially where it is shown that the accused had in his possession a considerable or a large quantity of the drug, or where he is a person of standing in the community, or where he is a public employee, or where he attempts to exploit the vice, or where the evidence discloses other strong or compelling circumstances, a penalty above the minimum, dependent upon the nature of the case, should be imposed.

The most serious offenses coming under the purview of the law are those of maintaining an opium dive, of unlawful importation of prohibited drugs, and of their unlawful sale or delivery. Corresponding rigor in enforcement should accordingly be used in order to stamp out the illicit traffic at the source.

Section 2 of the Opium Law having to do with the illegal possession and use of prohibited drugs and the maintenance of opium dives, section 4 concerning unlawful importation of prohibited drugs, and section 5 having to do with the unlawful sale or delivery of prohibited drugs, provide, in effect, that in case of recidivism incident to the commission of a second or subsequent offense under the provisions of this section, the delinquent may be deported if not a citizen of the United States or of the Philippine Islands. On the other hand, section 3 of the Opium Law pertaining to serving as a guard or look-out of an opium dive and visiting an opium dive, and section 6 relating to the possession of opium apparatus, do not authorize deportation. With these provisions of the law in mind, we would impress on fiscals the necessity of avoiding a rather common mistake in their drafting of informations alleging recidivism. For example, to convict one of recidivism under section 2 of the Opium Law, it is essential that the information contain allegations relative to the commission of a second or subsequent offense, under the provisions of section 2 of Act 2881, and the citizenship of the delinquent. Unless the accused shall plead guilty to the information, the fiscal must introduce the record, in the previous case or cases in evidence or

otherwise prove recidivism.

Scrupulous care should be exercised by the fiscals and the courts to ascertain the guilt or innocence of accused charged with a violation of the provisions of the Opium Law. The rewards which informers may gain is such that it is extremely easy for them either to blackmail a person or to fix the badge of guilt upon him. Only the constant vigilance of the courts can guard against the danger arising from such abuses.

With all the foregoing before us, we are of the opinion that there has been shown no unreasonable exercise of the discretion vested in the Court of First Instance of Ambos Camarines in this case. Consequently, judgment is affirmed, with costs against the appellants. So ordered.

Mapa, C. J., Araullo, Street, Villamor, and Avanceña, JJ., concur.

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