

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. WONG HSIAO FONG, DEFENDANT AND APPELLANT.

G. R. No. 16777. February 18, 1921

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal from a judgment of the Court of First Instance of Manila finding the defendant and appellant Wong Hsiao Fong, lieutenant-commander of the Chinese Navy, guilty of the illegal importation of 14 kilos of opium, in violation of section 4 of the Opium Law, and sentencing him to suffer the penalty of two years' imprisonment, and to pay a fine of P4,000, with subsidiary imprisonment in case of insolvency, and to pay the costs.

On June 25, 1920, Wong Hsiao Fong, an officer in the Chinese Navy, arrived in Manila from Shanghai, China, on the steamship Empress of Russia, in charge of four Chinese naval cadets. Lieutenant-Commander Wong and his party were sent by the Government of China to the Philippine Islands for the purpose of having the four junior officers instructed in the art of aviation. Following the arrival of the steamship, the party went almost immediately to the aviation field at Paranaque and there spent practically the entire day. In the evening they returned to the Chinese Consulate where they participated in a banquet held in their honor.

During the afternoon of the day of the ship's arrival, the, Chinese Consul-General solicited and obtained from the Insular Collector of Customs, an order for the courtesies of the port, the effect of which would be the landing of the baggage without examination. Late in the afternoon of the same day, an employee of the Chinese Consulate was sent to the ship to get the baggage. While it was being taken from the ship to pier No. 5, the customs inspectors noticed that one of the grips was heavy and suspecting that it might contain contraband, they required that it should be opened for examination. This was refused by the person in charge of the baggage, who insisted on taking the grip to the consulate. When the Insular Collector of Customs, Mr. Aldanese, was informed of what had occurred, he countermanded the order granting the courtesies of the port.

Major Arlegui, in charge of the customs secret service, and his assistant, Mr. Aguado, went that same evening to the Chinese Consulate, where they found the aviation party sitting at a banquet. The baggage still remained in the middle of the lower hall of the Consulate. Lieutenant-Commander Wong was required by the customs agents to identify his baggage. Whether he did, in fact, separate his own grips including the grip containing the opium, as claimed by the customs agents, or whether he merely looked at the tags, saying, "This is mine," or "This is ours," as claimed by Lieutenant-Commander Wong and the Chinese Consul-General, is debatable. At any rate, the Consul-General refused to permit Major Arlegui to open the grip in question in the Consulate. It was then decided to take the baggage back to the pier for safety.

The next day, Lieutenant-Commander Wong and his companions went with the Chinese Consul-General to the office of the Insular Collector of Customs to demand the delivery of their baggage without examination. The Collector refused and ordered them to identify their own baggage. Lieutenant-Commander Wong, who had

entered on his baggage declaration that he had three bags or valises, sorted out three bearing his tags, and his companions did likewise as to their baggage. The grip containing the opium was left unclaimed in the middle of the room. It had attached to it a tag with the name of Lieutenant-Commander Wong. The grip was opened and 67 tins containing 14 kilos and 740 grams of opium were found therein.

Predicated on these occurrences, the city fiscal charged Wong Hsiao Fong, as already stated, with the illegal importation of opium. Due trial was had, at which the principal witnesses for the prosecution were Mauro Arlegui, the chief of the customs secret service, and Pedro R. Aguado, assistant chief of the customs secret service; and for the defense, the defendant Wong Hsiao Fong, and the Chinese Consul-General, Kwei Chih. The trial judge rendered a judgment convicting the accused.

Prior to the expiration of the fifteen days allowed for appeal, counsel for the defense claimed to have discovered that the real importers were Tarn Ye Kong, Cheung Kun Yan, and Kong Kwai Jim. Cheung Kun Yan made an affidavit before Hartford Beaumont, notary public, of the following tenor:

"AFFIDAVIT.

"CITY OF MANILA,

}ss.

PHILIPPINE ISLANDS.

"Cheung Kun Yan, being first duly sworn on oath, deposes and says that:

"Prior to the arrival of the Empress of Russia at this port I received a letter from Tarn Ye Kong, in which he said that he was bringing 314 tins of opium to Manila with him, and asked me to help him in landing it. As soon as the vessel arrived I went on board, having a pass for the purpose, although it was not made to me by name. The first time I went to the ship I was unable to find Tarn Ye Kong, who had taken passage under some different name, I do not know what it was. Later I went there a second time, but was also unsuccessful. Finally I received a telephone message from him, asking me to come to the ship for the third time, which I did. Tarn Ye Kong met me on board and told me that he had already arranged with a friend of his named Kong Kwai Jim, who was a young man employed at the Chinese Consulate, to land the opium. Tarn Ye Kong desired to land the entire 314 tins which he had brought with him, but I told him that it would not be safe to land so much, so Tarn Ye Kong took a dress suit case belonging to himself, and placed 67 tins of opium in it, together with an old overcoat which had been abandoned on the ship by some American passenger. Kong Kwai Jim had been promised P3,000 by Tam Ye Kong if he would take the opium ashore safely and take it to my house. It was arranged that, as soon as this had been accomplished, Kong Kwai Jim would arrange to have Tam Ye Kong temporarily released on bond, so that he would dispose of the opium to customers that he knew in the city of Manila.

"I asked Kong Kwai Jim how he expected to get the opium past the customs guards, and he told me that it was very easy, because he could get it passed as part of the baggage of the Chinese aviators, who had, or were to receive the courtesies of the port, and he showed me a shipping tag which he had picked up, and which, I understand, had originally been attached to the sword of Lieutenant-Commander Wong, and upon which his name was written with a pen. He told me that he intended to fasten this on to the dress suit case, so that it would be passed as the baggage of Lieutenant-Commander Wong. I asked him whether he had arranged this matter with Lieutenant-Commander Wong, and he said that he had not, he did not know nor had ever seen Lieutenant-Commander Wong, and did not dare to speak to him, but that it was not necessary, because as soon as the grip had passed through the customs guards he would take it direct to my house, and Lieutenant-Commander Wong would never know anything about it.

"I was on board the ship when Kong Kwai Jim left it, waiting in the passageway in front of the stateroom of Tam Ye Kong, who was a second-class passenger, having his stateroom upon that side of the ship, which was away from the pier. After waiting for a few moments, I went down the gangplank where my pass was taken up. I saw Kong Kwai Jim surrounded by secret service men, and I was afraid, so I slipped away for fear that I might be blamed, in case anything went wrong. Later Kong Kwai Jim telephoned to me saying that the opium had been seized and was now at the customhouse, and that Lieutenant-Commander Wong was probably in trouble, because he had identified the bag as his, while he was drunk, and he wanted me to notify Tarn Ye Kong, which I was unable to do.

"Neither Lieutenant-Commander Wong nor the Consul knew of my connection with the matter and they did not know that I could give any testimony in regard to it. I did not at once volunteer to give any testimony, because I was afraid, and knowing that Lieutenant-Commander Wong was entirely innocent, I did not think there was any danger of his being convicted. When the Chinese community began to investigate the case, I told them the facts in regard to it, and I now make this statement at their request freely and voluntarily and without any inducement, whether of threats or promises, whatsoever.

"That all the facts stated above are true, being interpreted to me word by word and being fully understood by me.

(Sgd.)

"FERMIN V. C. BLO GUAN.

"CHEUNG KUN YAN.

"Subscribed and sworn to before me this 5th day of August, 1920, at the city of Manila, Philippine Islands, affiant exhibiting his cedula No. F-23689, issued on March 10, 1920, Manila, P. I.

(Sgd.) "HARTFORD BEAUMONT,

"Notary Public,

"My commission expires on Dec. 31, 1920.

"Reg. Not. No. 166.

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The motion for a new trial predicated on the above-quoted affidavit was denied by the trial court. Appeal followed.

Three courses are open to the appellate court. Judgment can be affirmed; a new trial can be granted; or judgment can be reversed and the defendant acquitted.

In the first place it is to be noted that both the trial court and the Attorney-General are of the opinion that the accused was not the importer of the opium in question, but that he merely rendered assistance to the real importer. In this connection the trial judge said:

"The court is absolutely certain that Lieutenant Wong was not the owner, nor was he the person who wanted to speculate with the said tins of opium. The court is also very firmly convinced that so distinguished and so learned an official of the Corps of Engineers of the Chinese Navy as Lieutenant Wong, did not attempt to traffic and enrich himself quickly, by violating the law and by misusing a courtesy granted by this port. There is not the least doubt that he did nothing but please one of the merchants who are engaged in the traffic of opium in these Islands, who, knowing that the accused and the four cadets who accompanied him would, at the

request of the Chinese Consul, enjoy the courtesies of the port, desired to take advantage of the opportunity, in order to effect the admission, with the baggage of Lieutenant Wong and under his name, of the suit case which, had it not become suspicious by reason of its excessive weight and been discovered later by the alert eye of the customs agents, would have permitted of the introduction in these Islands of a considerable quantity of opium."

The most damaging evidence against the accused relates to his actions when on the insistence of the customs authorities, he was made to separate his grips from the rest of the baggage. Both Arlegui and Aguado testified that the accused identified as belonging to him the grips bearing tags on which his name was written by himself including the grip containing opium. This, however, is categorically denied by the accused and he is corroborated in this by no less a personage than the Consul-General for China. Putting aside for the moment this contradiction between the witnesses for the prosecution and the defense, in all other respects Lieutenant-Commander Wong related a perfectly clear, straightforward, and consistent story. He said that he had never seen the grip containing the opium until he saw it in the office of the Insular Collector of Customs on the day after the arrival of the ship, and that he identified his grips in the consulate by the tags only.

As evidence strongly indicative of the innocence of the accused, certain prominent facts can properly be mentioned. Thus it has not been shown that the accused knew that he was to be extended the courtesies of the port before he arrived in Manila. It was the first time that he had ever been in the city and he had no acquaintances here. His baggage declaration, moreover, was made out before the courtesies of the port were granted him and on it he declared three grips, not including the grip containing opium. The presence of his tag on the fourth grip is explained by the fact that he had such a tag for his sabre and someone must have secured the tag and placed it on the grip.

It is also proper to recall certain biographical facts relative to the accused. Lieutenant-Commander Wong Hsiao Fong, the evidence shows, had been connected with the Chinese Navy since he was 14 years of age. He was a graduate of various technical schools in his own country and in the United States. It is a preposterous thought that a man of such superior education, of distinguished family, and with a notable career would endanger all by lending himself to illicit traffic in opium.

It may be that the accused was a passive agent in the importation, but of this we have no certain knowledge. Much more logical is the assumption, that, just as on another occasion advantage was taken of the arrival of Resident Commissioner Earnshaw to place in his baggage a considerable quantity of opium, so was advantage taken of the arrival of Lieutenant-Commander Wong to place opium in his baggage, relying on some confederate in the office of the Chinese Consul-General later to secure the opium. The lieutenant-commander appears to have been the innocent victim of an ingenious plot concocted by artful and experienced players in the opium game. At least, if what is said in the affidavit is true, then the affiant and his confederates are guilty and lieutenant-commander Wong is not guilty.

It is our finding that the defendant and appellant Wong Hsiao Fong has not been proved guilty of a violation of the Opium Law, and that he be fully exonerated of the charge laid against him. The attention of the fiscal shall be invited to the affidavit made by Cheung Kun Yan in order that proper criminal action may be taken against him and others.

Judgment is reversed, and the defendant is acquitted, with all costs de officio.

Mapa, C. J., Aravtto, Street, and Villamor, JJ., concur.

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