

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAN GEE AND LUIS ORTIZ DE TARANCO VY CHAVO, DEFENDANTS AND APPELLANTS.

G.R. No. 3475. March 12, 1907

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila taken by Luis Ortiz de Taranco Vy Chavo, wherein the court below, on November 25, 1905, found the accused Tan Gee and Luis Ortiz de Taranco Vy Chavo guilty of bribery and sentenced each of them to imprisonment for three months, together with a fine of 400 dollars, and the payment of one-half of the costs. The trial court also ordered, in its judgment, the confiscation of the money offered and handed by the two accused to the secret-service officer of the customs, Juan Silerio.

The facts in this case are as follows:

That the steamer Don Engracio arrived in this port on October 27, 1905, on her trip from Zamboanga to this city, having on board the two Chinamen, Tan Gee and Luis Ortiz de Taranco Vy Chavo, the first coming from Cotabato and the second from Jolo; that upon their disembarkation from the said steamer and arrival on the customs landing, they were stopped by Juan Silerio, an agent of the customs secret police, who requested the former, Tan Gee, to produce for inspection his certificate of entrance into these Islands, to which request and requirement Tan Gee replied that he had no such certificate, whereupon, as is shown in this case, the said Luis Ortiz de Taranco Vy Chavo offered and handed to the said Juan Silerio, the said customs secret-service agent, the sum of 40 pesos, Philippine currency, which sum was made up of various bills of paper money and which was intended as a bribe to the said customs secret-service agent for allowing the said Tan Gee to go on his way without the formality of being conducted before the customs authorities for examination, or arrested and detained. The said customs agent, however, took the said Chinaman Tan Gee to the customs authorities and thereafter also complained of Luis Ortiz de Taranco Vy Chavo for the attempted bribery. The money offered as a bribe was first deposited in the office of the custom-house and afterwards, under an order of the court, with the court.

The facts, as proven in this case, are as follows:

The accused and appellant in this cause, Luis Ortiz de Taranco Vy Chavo, was convicted of the crime for which he was tried, that of the act of bribery, punishable as prescribed under article 387 of the Penal Code in relation to article 383 of the same code, the object of the gift being to influence a public official and to cause him to refrain from carrying out and performing acts which he, the said public official, should perform in the proper exercise of the official duties of his office. According to the law the finding of the court below that the offense was punishable under section 333 of the Customs Administrative Act was not proper, for the reason that the attempted bribery was not made for the purpose of bribing a customs official in the performance of such customs official's duties as prescribed in the said act, but as a public official charged with carrying out the provisions of Act No. 702

of the Philippine Commission enacted for the purpose of carrying into effect section 4, act of Congress of April 29, 1902, entitled "An act to prohibit the coming into and to regulate the residence within the United States, its Territories, and all territory under its jurisdiction, and the District of Columbia of Chinese persons and persons of Chinese descent."

Juan Silerio was, in fact, a legitimate public official, whose appointment in the character of a secret-service agent is authorized by Act No. 367, section 20, providing for the detection and discovery of infractions of the same; and the form or manner, more or less correct, of the appointment as well as the manner, more or less lawful, of the arrest, in no way or manner affects the essential elements of the offense charged, it being evident that by reason of the office and the authority exercised at that moment by Juan Silerio, he was offered the 40 pesos for the purpose of refraining from arresting the Chinaman Tan Gee and reporting said Tan Gee's presence in these Islands without the certificate as required by said act.

The act of the accused while criminal in itself can not be considered to have been more than that of an attempt to commit the offense, and, inasmuch as the crime of bribery is punishable by *arresto mayor*, while attempted bribery, the offense committed by the accused, is punishable only by the imposition of a fine, a lesser penalty than that prescribed by articles 66 and 92 of the Penal Code with respect to consummated crimes of bribery, and, taking into account and consideration articles 83 and 94 of the same code, therefore, we reverse the judgment appealed from, with respect to the appellant, and find Luis Ortiz de Taranco Vy Chavo guilty of the crime of attempted bribery and sentence him to pay a fine of 60 pesos, confiscation of the 40 pesos, the amount of the attempted bribe, together with the payment of one-half of the costs of both instances.

After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter let the cause be remanded to the court below for proper action. So ordered.

Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

Willard, J., concurs in the result.

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