

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LUA CHU AND UY SE TIENG, DEFENDANTS AND APPELLANTS.

G. R. No. 34917. September 07, 1931

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The defendants Lua Chu and Uy Se Tieng appeal from the judgment of the Court of First Instance of Cebu convicting them of the illegal importation of opium, and sentencing them each to four years' imprisonment, a fine of P10,000, with subsidiary imprisonment in case of insolvency not to exceed one-third of the principal penalty, and to pay the proportional costs.

In support of their appeal, the appellants assign the following alleged errors as committed by the court below in its judgment, to wit:

"The lower court erred:

- In refusing to compel the Hon. Secretary of Finance or the Insular Collector of Customs to exhibit in court the record of the administrative investigation against Joaquin Natividad, collector of customs of Cebu, and Juan Samson, supervising customs secret service agent of Cebu, both of whom have since been dismissed from service.
- In holding it as a fact that 'no doubt many times opium consignments have passed thru the customhouse without the knowledge of the customs secret service.
- In rejecting the defendants' theory that the said Juan Samson in denouncing the accused was actuated by a desire to protect himself and to injure ex-collector Joaquin Natividad, his bitter enemy, who was partly instrumental in the dismissal of Samson from the service.
- In finding that the conduct of Juan Samson, dismissed chief customs secret service agent of Cebu, is above reproach and utterly irreconcilable with the corrupt motives attributed to him by the accused.
- In permitting Juan Samson, prosecution star witness, to remain in the court room while other prosecution witnesses were testifying, despite the previous order of the court excluding the Government witnesses from the court room, and in refusing to allow the defense to inquire from Insular Collector of Customs Aldanese regarding the official conduct of Juan Samson as supervising customs secret service agent of Cebu.
- In giving full credit to the testimony of said Juan Samson.
- In refusing to hold that Juan Samson induced the defendant Uy Se Tieng to order the opium from Hongkong.
- in accepting Exhibits E and E-1 as the true and correct transcript of the conversation between Juan Samson and the appellant Uy Se Tieng.
- In accepting Exhibit F as the true and correct transcript of the conversation between Juan Samson and the

appellant Lua Chu.

- In finding each of the appellants Uy Se Tieng and Lua Chu guilty of the crime of illegal importation of opium, and in sentencing each to suffer four years' imprisonment and to pay a fine of P10,000 and the costs, despite the presumption of innocence which has not been overcome, despite the unlawful inducement, despite the inherent weakness of the evidence presented by the prosecution, emanating from a spirit of revenge and from a contaminated, polluted source."

The following are uncontradicted facts proved beyond a reasonable doubt at the trial:

About the middle of the month of November, 1929, the accused Uy Se Tieng wrote to his correspondent in Hongkong to send him a shipment of opium.

About November 4, 1929, after the chief of the customs secret service of Cebu, Juan Samson, had returned from a vacation in Europe, he called upon the then collector of customs for the Port of Cebu, Joaquin Natividad, at his office, and the latter, after a short conversation, asked him how much his trip had cost him. When the chief of the secret service told him he had spent P2,500, the said collector of customs took from a drawer in his table, the amount of P300, in paper money, and handed it to him, saying: "This is for you, and a shipment will arrive shortly, and you will soon be able to recoup your travelling expenses." Juan Samson took the money, left, and put it into the safe in his office to be kept until he delivered it to the provincial treasurer of Cebu. A week later, Natividad called Samson and told him that the shipment he had referred to consisted of opium, that it was about to arrive, and that the owner would go to Samson's house to see him. That very night Uy Se Tieng went to Samson's house and told him he had come by order of Natividad to talk to him about the opium. The said accused informed Samson that the opium shipment consisted of 3,000 tins, and that he had agreed to pay Natividad P6,000 or P2 a tin, and that the opium had been in Hongkong since the beginning of October awaiting a ship that would go direct to Cebu.

At about 6 o'clock in the afternoon of November 22, 1929, one Nam Tai loaded on the steamship Kolambugan, which the Naviera Filipina—a shipping company in Cebu had had built in Hongkong, 38 cases consigned to Uy Se Tieng and marked "U. L. H." About the same date Natividad informed Samson that the opium had already been put on board the steamship Kolambugan, and it was agreed between them that Samson would receive P2,000, Natividad P2,000, and the remaining P2,000 would be distributed among certain employees in the customhouse.

Meanwhile, Uy Se Tieng continued his interviews with Samson. Towards the end of November, Natividad informed the latter that the Kolambugan had returned to Hongkong on account of certain engine trouble, and remained there until December 7th. In view of this, the shipper several times attempted to unload the shipment, but he was told each time by the captain, who needed the cargo for ballast, that the ship was about to sail, and the 30 cases remained on board.

The Kolambugan arrived at Cebu on the morning of December 14, 1929. While he was examining the manifests, Samson detailed one of his men to watch the ship. After conferring with Natividad, the latter instructed him to do everything possible to have the cargo unloaded, and to require Uy Se Tieng to pay over the P6,000. On the morning of November 16, 1929, Natividad told Samson that Uy Se Tieng already had the papers ready to withdraw the cases marked "U. L. H." from the customhouse. Samson then told Natividad it would be better for Uy Se Tieng to go to his house to have a talk with him. Uy Se Tieng went to Samson's house that night and was told that he must pay over the P6,000 before taking the opium out of the customhouse. Uy Se Tieng showed Samson the bill of lading and on leaving said: "I will tell the owner, and see whether we can take the money to you tomorrow." The following day Samson informed Colonel Francisco of the Constabulary, of all that had taken place, and the said colonel instructed the provincial commander, Captain Buenconsejo, to discuss the capture of the opium owners with Samson. Buenconsejo and Samson agreed to meet at the latter's house that same night.

That afternoon Samson went to the office of the provincial fiscal, reported the case to the fiscal, and asked for a stenographer to take down the conversation he would have with Uy Se Tieng that night in the presence of Captain Buenconsejo. As the fiscal did not have a good stenographer available, Samson got one Jumapao, of the law firm of Rodriguez & Zacarias, on the recommendation of the court stenographer. On the evening of December 17, 1929, as agreed, Captain Buenconsejo, Lieutenant Fernando, and the stenographer went to Samson's house and concealed themselves behind a curtain made of strips of wood which hung from the window overlooking the entrance to the house on the ground floor. As soon as the accused Uy Se Tieng arrived, Samson asked him if he had brought the money. He replied that he had not, saying that the owner of the opium, who was Lua Chu, was afraid of him. Samson then told him to tell Lua Chu not to be afraid, and that he might come to Samson's house. After pointing out to Uy Se Tieng a back door entrance into the garden, he asked him where the opium was, and Uy Se Tieng answered that it was in the cases numbered 11 to 18, and that there were 3,252 tins. Uy Se Tieng returned at about 10 o'clock that night accompanied by his codefendant Lua Chu, who said he was not the sole owner of the opium, but that a man from Manila, named Tan, and another in Amoy were also owners. Samson then asked Lua Chu when he was going to get the opium, and the latter answered that Uy Se Tieng would take charge of that. On being asked if he had brought the P6,000, Lua Chu answered, no, but promised to deliver it when the opium was, in Uy Se Tieng's warehouse. After this conversation, which was taken down in shorthand, Samson took the accused Lua Chu aside and asked him: "I say, old fellow, why didn't you tell me about this before bringing the opium here?"* Lua Chu answered: "Impossible, sir; you were not here, you were in Spain on vacation." On being asked by Samson how he had come to bring in the opium, Lua Chu answered: "I was in a cockpit one Sunday when the collector called me aside and said there was good business, because opium brought a good price, and he needed money." All this conversation was overheard by Captain Buenconsejo. It was then agreed that Uy Se Tieng should take the papers with him at 10 o'clock next morning. At the appointed hour, Uy Se Tieng and one Uy Ay arrived at Samson's house, and as Uy Se Tieng was handing certain papers over to his companion, Uy Ay, Captain Buenconsejo, who had been hiding, appeared and arrested the two Chinamen, taking the aforementioned papers, which consisted of bills of lading (Exhibits B and B-1), and an invoice written in Chinese characters, and relating to the articles described in Exhibit B. After having taken Uy Se Tieng and Uy Ay to the Constabulary headquarters, and notified the fiscal, Captain Buenconsejo and Samson went to Lua Chu's home to search it and arrest him. In the pocket of a coat hanging on a wall, which Lua Chu said belonged to him, they found five letters written in Chinese characters relating to the opium (Exhibits G to K). Captain Buenconsejo and Samson also took Lua Chu to the Constabulary headquarters, and then went to the customhouse to examine the cases marked "U. L. H." In the cases marked Nos. 11 to 18, they found 3,252 opium tins hidden away in a quantity of dry fish. The value of the opium confiscated amounted to P50,000.

In the afternoon of December 18, 1929, Captain Buenconsejo approached Lua Chu and asked him to tell the truth as to who was the owner of the opium. Lua Chu answered as follows: "Captain, it is useless to ask me any questions, for I am not going to answer them. The only thing I will say is that whoever the owner of this contraband may be, he is not such a fool as to bring it in here without the knowledge of those—" pointing towards the customhouse.

The defense attempted to show that after Juan Samson had obtained a loan of P200 from Uy Se Tieng, he induced him to order the opium from Hongkong saying that it only cost from P2 to P3 a tin there, while in Cebu it cost from P18 to P20, and that he could make a good deal of money by bringing in a shipment of that drug; that Samson told Uy Se Tieng, furthermore, that there would be no danger, because he and the collector of customs would protect him; that Uy Se Tieng went to see Natividad, who told him he had no objection, if Samson agreed; that Uy Se Tieng then wrote to his correspondent in Hongkong to forward the opium; that after he had ordered it, Samson went to Uy Se Tieng's store, in the name of Natividad, and demanded the payment of P6,000; that Uy Se

Tieng then wrote to his Hongkong correspondent cancelling the order, but the latter answered that the opium had already been loaded and the captain of the Kolambugan refused to let him unload it; that when the opium arrived, Samson insisted upon the payment of the P6,000; that as Uy Se Tieng did not have that amount, he went to Lua Chu on the night of December 14th, and proposed that he participate; that at first Lua Chu was unwilling to accept Uy Se Tieng's proposition, but he finally agreed to pay P6,000 when the opium had passed the customhouse; that Lua Chu went to Samson's house on the night of December 17th, because Samson at last agreed to deliver the opium without first receiving the P6,000, provided Lua Chu personally promised to pay him that amount.

The appellants make ten assignments of error as committed by the trial court in its judgment. Some refer to the refusal of the trial judge to permit the presentation of certain documentary evidence, and, to the exclusion of Juan Samson, the principal witness for the Government, from the court room during the hearing; others refer to the admission of the alleged statements of the accused taken in shorthand; and the others to the sufficiency of the evidence of the prosecution to establish the guilt of the defendants beyond a reasonable doubt.

With respect to the presentation of the record of the administrative proceedings against Joaquin Natividad, collector of customs of Cebu, and Juan Samson, supervising customs secret service agent of Cebu, who were dismissed from the service, the trial court did not err in not permitting it, for, whatever the result of those proceedings, they cannot serve to impeach the witness Juan Samson, for it is not one of the means prescribed in section 342 of the Code of Civil Procedure to that end.

With regard to the trial judge's refusal to order the exclusion of Juan Samson, the principal witness of the Government, from the court room during the hearing, it is within the power of said judge to do so or not, and it does not appear that he has abused his discretion (16 Corpus Juris, 842).

Neither did the trial judge err when he admitted in evidence the transcript of the stenographic notes of the defendants' statements, since they contain admissions made by themselves, and the person who took them in shorthand attested at the trial that they were faithfully taken down. Besides the contents are corroborated by un-impeached witnesses who heard the statements.

As to whether the probatory facts are sufficient to establish the facts alleged in the information, we find that the testimony given by the witnesses for the prosecution should be believed, because the officers of the Constabulary and the chief of the customs secret service, who gave it, only did their duty. Aside from this, the defendants do not deny their participation in the illegal importation of the opium, though the accused Lua Chu pretends that he was only a guarantor to secure the payment of the gratuity which the former collector of customs, Joaquin Natividad, had asked of him for Juan Samson and certain customs employees. This assertion, however, is contradicted by his own statement made to Juan Samson and overheard by Captain Buenconsejo, that he was one of the owners of the opium that had been unlawfully imported.

But the defendants' principal defense is that they were induced by Juan Samson to import the opium in question. Juan Samson denies this, and his conduct in connection with the introduction of the prohibited drug into the port of Cebu, bears him out. A public official who induces a person to commit a crime for purposes of gain, does not take the steps necessary to seize the instruments of the crime and to arrest the offender, before having obtained the profit he had in mind. It is true that Juan Samson smoothed the way for the introduction of the prohibited drug, but that was after the accused had already planned its importation and ordered said drug, leaving only its introduction into the country through the Cebu customhouse to be managed, and he did not do so to help them carry their plan to a successful issue, but rather to assure the seizure of the imported drug and the arrest of the smugglers.

The doctrines referring to the entrapment of offenders and instigation to commit crime, as laid down by the courts

of the United States, are summarized in 16 Corpus Juris, page 88, section 57, as follows:

"ENTRAPMENT AND INSTIGATION.—While it has been said that the practice of entrapping persons into crime for the purpose of instituting criminal prosecutions is to be deplored, and while instigation, as distinguished from mere entrapment, has often been condemned and has sometimes been held to prevent the act from being criminal or punishable, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation' of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him free from the influence or the instigation of the detective. The fact that an agent of an owner acts as a supposed confederate of a thief is no defense to the latter in a prosecution for larceny, provided the original design was formed independently of such agent; and where a person approached by the thief as his confederate notifies the owner or the public authorities, and, being authorized by them to do so, assists the thief in carrying out the plan, the larceny is nevertheless committed. It is generally held that it is no defense to a prosecution for an illegal sale of liquor that the purchase was made by a 'spotter,' detective, or hired informer; but there are cases holding the contrary."

As we have seen, Juan Samson neither induced nor instigated the herein defendants-appellants to import the opium in question, as the latter contend, but pretended to have an understanding with the collector of customs, Joaquin Natividad—who had promised them that he would remove all the difficulties in the way of their enterprise so far as the customhouse was concerned—not to gain the P2,000 intended for him out of the transaction, but in order the better to assure the seizure of the prohibited drug and the arrest of the surreptitious importers. There is certainly nothing immoral in this or against the public good which should prevent the Government from prosecuting and punishing the culprits, for this is not a case where an innocent person is induced to commit a crime merely to prosecute him, but it is simply a trap set to catch a criminal.

Wherefore, we are of opinion and so hold, that the mere fact that the chief of the customs secret service pretended to agree to a plan for smuggling illegally imported opium through the customhouse, in order the better to assure the seizure of said opium and the arrest of its importers, is no bar to the prosecution and conviction of the latter.

By virtue whereof, finding no error in the judgment appealed from, the same is hereby affirmed, with costs against the appellants. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Imperial, JJ., concur.

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