

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. EL CHINO CUNA (ALIAS SY CONCO), DEFENDANT AND APPELLEE.

G.R. No. 4504. December 15, 1908

Ponente: CARSON, J.

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CARSON, J.:

On the 12th of August, 1907, the provincial fiscal filed in the Court of First Instance of the Province of Isabela, an information charging the defendant Chinaman Cuna (alias By Conco), with a violation of section 5 of Act No. 1461 of the Philippine Commission, committed as follows:

"That the said Chinaman Cuna (alias Sy Conco), on or about the 30th day of June, 1907, in the municipality of Echague, in the Province of Isabela, in the Philippine Islands, sold for ten cents, Philippine currency, a small quantity of opium, to Apolinaria Gumpal, a Filipino woman, who was neither a doctor, pharmacist, vender of opium with license, nor an inveterate user of opium duly registered; all contrary to the law."

Thereafter the defendant demurred to the information on the ground:

"1. That the information alleges that on the 30th day of June, 1907, in the town of Echague, Province of Isabela, in the Philippine Islands, the accused violated the provisions of section 5 of Act No. 1461.

"2. That the said Act No. 1461 was repealed by Act No. 1761, enacted on the 10th day of October, 1907, and in effect on the 17th day of October, 1907, during the pendency of this case.

"3. That the said Act. No. 1461 having been repealed during the pendency of this case, and the repealing law not containing any exception touching pending cases, there is no law in force which penalizes the alleged offense. Wherefore, this court has no jurisdiction over the case."

The trial court in its order sustaining the demurrer and dismissing the information held as follows:

"After hearing the arguments of counsel and examining the record, the court finds that at the time when it is alleged this accused committed the offense with which he is charged, Act No. 1461, known as the 'Opium Law' was in force, and continued to be in force until the 17th day of October, 1907, when it was superseded by a new Act, No. 1761, which, in section 33 thereof, repeals Act No. 1461, without excepting from the provisions of the repealing clause cases pending at the time of its enactment, for the infraction of Act No. 1461, and without prescribing what disposition should be made of such cases.- This being true, the court is of opinion that this case should be dismissed, there being at this time no law in force, in accordance with which this accused, if he be tried and convicted, can be punished for the offense committed in June, 1907. (U. S. vs. Tynen, 11 Wai., 88; Mongeon vs. People, 55 N. Y., 613; State vs. Wilder, 47 Ga., 522). The court, therefore, sustains this demurrer, and dismisses the case, declaring the costs de oficio"

From the judgment sustaining the demurrer and dismissing the information, the Government appealed, and the only question submitted for consideration is whether the provisions of section 33 of Act No. 1761, which in express terms repeal Act No. 1461, should be construed so as to deprive the courts of jurisdiction, after the date when the repealing Act went into effect, to try, convict, and sentence persons guilty of violations of Act No. 1461,

committed prior to that date.

The cases cited by the trial court, as well as many others of like tenor and effect which are to be found in the reports, leave no room for doubt as to the American and English common-law doctrine touching the effect of a repeal of a law prescribing penalties; most if not all of the state courts holding that, in accord with this doctrine, the repeal of a law prescribing penalties has the effect of remitting or extinguishing any penalty, loss of rights or responsibility incurred under such law as to all persons who have not been convicted and sentenced under the provisions of such law prior to the enactment of the repealing law, the Supreme Court of the United States declaring that "under the general principles of the common law, the repeal of a penal statute operates as a remission of all penalties for violations of it committed before its repeal, and a release from prosecution therefor after said repeal, unless there be either a clause in the repealing statute, or a provision of some other statute, expressly authorizing such prosecution." (U. S. vs. Reisinger, 128 U. S. Rep., 398, 401.)

But neither English nor American common law is in force in these Islands, nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law; and, in our opinion, the common-law rule of interpretation just cited is in conflict with existing law in these Islands, and directly opposed to the rule of interpretation laid down by the supreme court of Spain and the learned commentators on Spanish written law; and, in the language of a learned American judge, "the rule is an arbitrary one, and never had anything to commend it, except in the United States an undue sympathy for wrongdoers, and in England an early prejudice among common-law judges against 'statute-made law.'" (Opinion of Judge Deady, *Eastman vs. Clackamas Co.*, 32 Fed. Rep., 24, 33.)

Article 1 of the Penal Code in force in these Islands defines crimes and misdemeanors as voluntary acts or omissions penalized by the law; and complementary to this provision, article 21 provides that no crime or misdemeanor shall be punished with a penalty which has not been prescribed by law prior to its commission. In accordance with these provisions the question whether an act is punishable or not depends upon the question whether or not at the time of its commission, there was a law in force which penalized it; this rule being modified, however, by article 22 of the same code, which provides that penal laws shall have a retroactive effect in so far as they favor persons convicted of a crime or misdemeanor, and this notwithstanding the fact that at the time of the enactment of such laws, final judgment may have been pronounced and the convict may have entered upon the execution of his sentence.

The courts of Spain and the learned commentators on Spanish law have construed these provisions to mean that penal laws are to be given a retroactive effect only in so far as they favor the defendant charged with a crime or a misdemeanor, and that, when a penal law is enacted repealing a prior law, such repeal does not have the effect of relieving an offender in whole or in part of penalties already incurred under the old law, unless the new law favors the defendant by diminishing the penalty or doing away with it altogether, and then only to the extent to which the new law is favorable to the offender. In other words, that the enactment of new penal laws, notwithstanding the fact that they contain general repealing clauses, does not deprive the courts of jurisdiction to try, convict, and sentence persons charged with violations of the old law prior to the date when the repealing law goes into effect, unless the new law wholly fails to penalize the acts which constituted the offense defined and penalized in the repealed law.

Thus Pacheco, commenting upon the new Penal Code of 1848-1850, of which article 506 provided that all general penal laws were repealed by its publication, says:

"At this time when the Penal Code is being put into effect and given force, we have in fact two criminal laws in Spain, and close attention is necessary to apply them properly. There may be prosecutions which it is necessary to dismiss, as, for example, those for sodomy; others which it may be necessary to decide in conformity with

the provisions of the new code, as, for example, those for carrying concealed weapons; and others which must be judged in accordance with the old provisions, as, for example, many cases of robbery. The rules of procedure in one or other manner being furnished us by the former article (article 19 of the Penal Code of Spain identical with article 21 of the Penal Code of the Philippines), and the present article (article 20 of the Penal Code of Spain and article 22 of the Philippine Code). Has the code increased the penalty? Then it is not applicable to crimes committed prior to its enactment. Has it extinguished or diminished them? Then it is clearly applicable to them." (1 Pacheco, 296.)

And a similar construction was placed upon the provisions of the Penal Code of 1870 by the supreme court of Spain. Article 626 of this code (which is substantially identical with article 506 of the Penal Code of 1848 and article 611 of the Penal Code of the Philippine Islands) repealed all general penal laws prior to its promulgation, but the court held that, where a crime was committed prior to the publication of the reformed code, the penalty prescribed by the code of 1850 (the code prior to that of 1870) being more favorable to the accused, that must be applied. (Decision of the supreme court of Spain, 17th of January, 1873.)

It is contended, however, that the general provisions of the Penal Code thus construed are not applicable to Acts of the Commission or of the Philippine Legislature defining and penalizing offenses, these provisions being limited in their application to the subject-matter embraced in the code itself. In answer to this suggestion it is said that, while all the provisions of the Penal Code may not be applicable to special Acts defining and penalizing offenses, article 22 of that code prescribes a rule of general application, and in the absence of other provisions this rule is universally applicable in all cases where new penal laws repeal former laws touching the same subject-matter.

For the purposes of this decision, however, it is not necessary to determine this question, because the penalty prescribed in both Acts under consideration is the same, and, even if the rule prescribed in article 22 of the code were not applicable to Acts of the Commission or of the Philippine Legislature, article 3 of the preliminary title of the Spanish Civil Code, still in force in the Philippines, which treats of laws in general, their effect, and general rules for application, provides that laws in general shall not have a retroactive effect, if the contrary is not expressly provided; so that, if it be granted that the express provision of article 22, prescribing that penal laws shall not have retroactive effect save only where favorable to the offender, is not applicable to Acts of the Philippine Commission or the Philippine Legislature, then it must be held under this provision of the Civil Code that such Acts can have no retroactive effect whatever; and the reasoning advanced in support of the Spanish doctrine as to the effect of general repealing clauses in the code, which is based upon a comparative examination of the limited retroactive effect given its provisions in article 22, read together with articles 3 and 21 (which undoubtedly declare principles of universal application), applies to such Acts with equal if not greater force and cogency, since, unless article 22 be held to apply to them, these Acts can have no retroactive force whatever.

We conclude, therefore, that the doctrine of English and American common law relied upon by counsel for defendant is not and has not been the accepted doctrine in this jurisdiction, and that, in accordance with the accepted doctrine, the courts in these Islands are not deprived of jurisdiction to try, convict, and sentence offenders who have violated the provisions of Act No. 1461 prior to the date when Act No. 1761 went into effect, notwithstanding the provision of the latter Act repealing Act No. 1461; and that the penalty prescribed by the repealing Act for the violation charged in the information not being more favorable to the accused than that prescribed in the old law, the penalty to be imposed is that prescribed by the old law. But we expressly reserve our opinion as to which penalty would properly be imposed in a case wherein a later Act of the Commission or the Philippine Legislature imposed a more favorable penalty than that prescribed in a repealed Act.

The reason originally advanced in support of the common law rule of interpretation, was that the former law,

defining and penalizing certain acts committed prior to the enactment of the new law, having been repealed, there is no law in force after the date of the repeal by virtue of which the court can impose the penalties prescribed in the repealed law. This proposition will not bear close scrutiny. Either it assumes that the repeal of a law defining and penalizing an offense has the retroactive effect of remitting penalties already incurred under the repealed law, an assumption which if carried to its logical conclusion would require the discharge of all offenders against the old law, whether actually convicted or not; or else it assumes that, when the legislator repeals a law defining and penalizing an offense, there is an implied derogation of the jurisdiction of the courts to try and convict persons who have already incurred penalties under the repealed law, but have not been tried and sentenced therefor. No satisfactory reason can be assigned for reading such provisions into the repealing law. Where the repealing law itself penalizes the acts penalized in the repealed law, it is absurd to say that the legislator, although continuing in force the penal provisions of the old law, intended to remit the penalties as to certain persons guilty of the very acts which the new law itself penalizes, because of the mere accident that they had not been brought to trial and sentenced before the enactment of the repealing law; and the courts by the laws creating them and defining their powers, are clothed with power to try, convict and sentence all persons guilty of a violation of law which constitutes a crime or a misdemeanor, and unless this jurisdiction is expressly taken away from them by the repealing law, or unless penalties incurred under the old law are expressly remitted, there is no ground for denying to the courts jurisdiction to try, convict, and sentence violations of the old law. All persons who violated the provisions of the old law prior to its repeal thereby incurred the penalties therein prescribed, and thereafter the jurisdiction of the courts to try, convict, and sentence such offenders does not depend upon the continuance in force of that law as to future offenders, but upon those provisions of law which clothe the courts with power to hear and decide complaints charging the commission of violations of law, and upon the observance of those rules of procedural law which prescribe the steps to be taken in prosecuting criminal offenses. The mere repeal of a penal statute is by no means equivalent to a declaration that the statute was invalid from the date of its enactment. On the contrary, it continues on the statute book as the law of the land touching the subject-matter of which it treats; so that, unless the contrary expressly appears, a repealed penal statute loses none of its force and effect as a law defining and penalizing certain acts committed prior to its repeal, and the courts may and should find in the repealed statute the rule whereby to determine whether penalties have been incurred thereunder, and the nature and extent of such penalties as may have been incurred.

We the more readily accept the doctrine laid down by the Spanish authorities, because it leads to a conclusion which appears to be in consonance with the dictates of good sense and sound judgment, while the rule of interpretation laid down by the English and American common law authorities results in a construction of repealing statutes which it is difficult to believe the law maker has in mind when these statutes are enacted. A rule of interpretation which results in a conclusion manifestly contrary to the intention of the legislator and which, as was well said by Judge Beady, is an arbitrary rule, with nothing to commend it, should not be adopted in this jurisdiction where it is not supported by those binding precedents which alone have kept it alive in England and the United States.

We are confirmed in our conclusions by a review of modern American legislation modifying and restricting the application of the common-law doctrine; for it appears that the Congress of the United States, and many if not most of the States have adopted statutory provisions for the express purpose of escaping the absurd and unreasonable consequences flowing from a strict application of the common law doctrine, and it appears that American courts of last resort have never hesitated to give full force and effect to these statutory modifications of the common-law doctrine. (U. S. vs. Jacobus, 96 Fed. Rep., 260; Lang vs. U. S., 133 Fed. Rep., 201, 206; Daggy vs. Ball, 7 Ind. App., 64, 34 N. E., 246; Art. 13, Rev. Stat, U. S.)

The judgment of the trial court sustaining the demurrer to the complaint interposed by the accused is reversed, and

the record will be returned to that court for further proceedings in accordance with law. So ordered.

Arellano, C. J., Torres, Mapa, Willard; and Tracey, JJ.,concur.

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