

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BONIFACIO POBRE, DEFENDANT AND APPELLANT.

G.R. No. 4537. August 01, 1908

Ponente: TORRES, J.

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TORRES, J.:

On the 27th of July, 1907, Bonifacio Pobre, a councilor of the municipality of Paoay, was charged by the provincial fiscal of Ilocos Norte with having violated Act No. 1461 of the Philippine Commission, inasmuch as, on and prior to the 26th of said month and year, the accused had in his house situated in said town of Paoay, in the above-named province, a certain quantity of opium and an instrument for using the same, he not being one of those authorized by the law to keep or be in possession of said drug.

Proceedings were instituted and at the trial, upon the accused being informed of the complaint, he pleaded not guilty; however, before any evidence was adduced the fiscal and the counsel for the accused agreed that the internal revenue agent and his companions would testify confirming the complaint in all its parts; that the witnesses of the defense would also declare that the opium referred to in the complaint was ashes (carbon) of the said drug, and that if the said article was found in the house of the accused it was because the Chinaman Quin-quo, who is authorized to keep it, had left it there; that the neighbors of the accused would likewise declare that he was not in the habit of smoking opium; and in view thereof, the parties asked that judgment be entered. This was done by the judge on the 7th of December, sentencing the accused, to pay a fine of P50 and the costs, and ordering the confiscation of the articles. From said judgment the accused has appealed.

The agreement entered into between the fiscal of Ilocos Norte and the counsel for the defendant refers to facts which favor the defense and to others connected with the prosecution; no evidence whatever was adduced, nor was the testimony of the witnesses mentioned in the agreement taken. This is a practice which is not authorized and defeats the purpose of the criminal law, being an open violation of the rules of criminal procedure, and particularly of the provisions of section 32 of General Orders, No. 58.

Therefore, in view of the decision of this court in the case of *U. S. vs. Donato* (9 Phil. Rep., 701) for robbery en cuadrilla, and considering the judgment appealed from as null and void, the same is set aside. Let the case be remanded to the court from whence it came for a new trial which shall be held in strict accordance with the provisions or the law of procedure. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

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