

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EL CHINO CHIA-TUA, DEFENDANT AND APPELLANT.

G.R. No. 4715. January 26, 1909

Ponente: MAPA, J.

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MAPA, J.:

The accused is here charged with the violation of section 15 of Act No. 1761, committed according to the complaint as follows:

"That the said accused, without having previously obtained a license from the Collector of Internal Revenue to engage in the sale of opium, or to deal or trade therein, without paying the corresponding tax, not being a pharmacist or second-class pharmacist duly authorized therefor, did willfully, unlawfully, and feloniously engage in the sale of opium, dealing and trading therein during the month of February, 1908, in the municipality of Surigao, Province of Surigao; all contrary "to law."

At the trial the accused did not offer any evidence, and in this instance he has limited his defense to alleging that the witnesses for the prosecution contradicted themselves. A careful examination of the testimony of the said witnesses shows at once that the contradictions alleged in the defendant's brief are more apparent than real, apart from the fact that, as they refer to most trifling and accidental details they could not, in any case, affect the essential facts attested by said witnesses. Their testimony has fully established the fact that the accused, without the corresponding license required by law, sold opium to Lucio Sanchez on a certain night in the month of February, 1908.

In view of the above the court below found the accused guilty of the violation of section 15 of Act No. 1761, and sentenced him to the penalty of one year's imprisonment and to pay a fine of P2,000, and in case of insolvency to suffer the corresponding subsidiary imprisonment at the rate of P2.50 per day, not to exceed four months, and costs. The said section 15 reads as follows:

"(a) No person shall import, cook, or prepare opium, or engage in the business of purchasing¹ or selling opium or of dealing or trafficking therein, unless he shall have first secured from the Collector of Internal Revenue a license to transact such business and shall have paid the license tax prescribed by this Act. Crude opium shall not be sold to any person who is not a duly licensed wholesale dealer, and then only subject to all the provisions of section five * * *

" (b) Any person violating the provisions of this section shall be punished by a fine of not less than five hundred pesos nor more than two thousand pesos, or by imprisonment for a period of not more than one year, or by both such fine and imprisonment, in the discretion of the court."

The Attorney-General maintains in his brief that instead of section 15, applied by the court below, the accused should be sentenced under section 5 of said Act No. 1761 which provides that:

"(a) It shall be unlawful to sell, transfer, give, or deliver opium to any person except to a duly licensed and practicing physician, pharmacist, or second-class pharmacist, or a duly licensed dispensator of opium, or duly

registered confirmed user of opium in a licensed opium dispensary for consumption therein only, and in accordance with the provisions of this Act: * * *

"(b) Any person violating the provisions of the preceding subsection shall be punished by a fine not exceeding one thousand pesos, or by imprisonment for a period not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: * * *"

As may be seen, both sections contain a prohibition to sell opium, but their wording is certainly quite different. The prohibition in section 15 is absolute to all persons who are not provided with the corresponding license to sell opium, without taking into account the condition of the purchaser. Under this section no one can sell opium to another unless such a license has been previously obtained. On the other hand, the prohibition in section 5 is limited to sales made to any person who is not a physician, a pharmacist, an authorized seller of opium, or a duly registered consumer thereof. This limitation presupposes, in our opinion, a license to sell opium, because without it, it would be unlawful to effect any sale of the drug, even to physicians, pharmacists, dealers, or confirmed users of opium. As we understand it, section 15 makes a license a necessary and indispensable requisite in order that a person may engage in the sale of opium; while section 5 points out the only class of persons to whom opium may be sold even under such a license. According to this interpretation, it follows that the provision of the section first cited is applicable to any person who sells opium to no matter who the purchaser may be; and that of the last named, that is, section 5, to any person who, holding a license, sells opium to persons other than those expressly mentioned therein.

Therefore, the trial judge acted rightly in applying the said section 15 in the present case which deals with the sale of opium by a person who held no license therefor.

Taking into consideration all the circumstances of the case, the penalty imposed by the judgment appealed from is hereby reduced to two months' imprisonment and a fine of P500, or subsidiary imprisonment which shall not exceed twenty days at the rate of P2,50 per day in case of insolvency in the payment of the fine.

With this modification the judgment appealed from is affirmed, with the costs of this instance against the accused.

Arellano, C. J., Torres, Carson, and Tracey, JJ., concur.

Willard, J., dissents.

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