

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VY CAN SIU, DEFENDANT AND APPELLANT.

G.R. No. 4915. January 19, 1909

Ponente: MAPA, J.

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MAPA, J.:

The accused pleaded guilty to the charge alleged in the complaint, that on the 29th of June, 1908, he had opium in his possession contrary to the provisions of section 31 of Act No. 1761, and was sentenced by the court below to pay a fine of P2,000, or to suffer subsidiary imprisonment, in case of insolvency, at the rate of one day for every P2.50 that he failed to pay, and the costs of the proceeding. From this judgment the accused has appealed.

The merits of the case are not discussed in this instance. Granting the culpability of the accused, the defense simply tends to demonstrate that, in view of the circumstances, the penalty imposed by the judgment appealed from is notoriously excessive. These circumstances, according to the defense, are that the accused pleaded guilty, that he appeared in court without a lawyer, that he is a Chinaman who from childhood has been in the habit of smoking opium, and that this is his first offense. These allegations have been sufficiently answered by the brief of the Attorney-General, and it is not necessary to further refute them. Suffice it to remark that the law punishes the unlawful possession of opium after March 1, 1908, by a fine which shall not exceed P10,000, or imprisonment not to exceed five years, or both, in the discretion of the court, from which it will be seen that the penalty imposed can not reasonably be considered unjust and excessive.

It appears that counsel for the accused bases his appeal principally upon the belief that, if the fine were not paid, the subsidiary imprisonment might last eight hundred days. He says:

"To consider that the accused must undergo eight hundred days' imprisonment in case of insolvency is so unreasonable that it is absolutely unnecessary to advance any further argument."

Indeed, this would seem to be the inference to be derived from the judgment, which in this particular must be modified. According to law, the imprisonment in the present case can not exceed six months. Act No. 1732, which establishes subsidiary imprisonment in case of insolvency in the payment of fines imposed by Acts of the Commission, expressly provides by subsection (c) that-

"In case the sentence of the court merely imposes a fine (as in the present case), the subsidiary imprisonment shall not exceed six months."

The judgment appealed from is hereby affirmed, provided, however, that the subsidiary imprisonment, which the accused must undergo in case of insolvency, shall not exceed six months, and he is further sentenced to pay the costs of this instance.

Arellano, C. J., Torres, Johnson, and Willard, JJ., concur.

TRACEY, J., with whom concurs Carson, J., dissenting:

Section 31 of the Opium Law reads as follows:

"Any unauthorized person owning, carrying, holding, having, controlling, having possession of, or knowingly having on his premises, any opium, cocaine, alpha or beta eucaine, or any derivative or preparation of such drugs or substances, on and after March first, nineteen hundred and eight, shall be punished by a fine not exceeding ten thousand pesos, or by imprisonment for not exceeding five years, or by both such fine and imprisonment, in the discretion of the court: Provided, however, That in the case of the commission of a second offense under the provisions of this section, any person so convicted, if other than a citizen of the United States or a citizen of the Philippine Islands, may, by order of the court, be deported."

The extremely severe penalties allowed by this section of the law are intended to apply to aggravated cases such as those of holding the drug in large quantities or concealing it. If any such circumstance exists, the Government should prove it, and in the absence of such proof the court should not assume the fact.

In assigning no minimum penalty under this section, the Legislature has clearly left to the discretion of the court the imposition of the punishment suited to the character of the offense, even down to the least degree. The P2,000 fine in this case is out of proportion to the scale of punishments applied by this court to other offenses under this same Act and is beyond the bounds of a reasonable discretion. It is not a sufficient answer to say that the accused may minimize it by taking six months' imprisonment; it can not be taken for granted that he will choose to be imprisoned. The fine should be reduced.

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