

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LAO LOCK HING, DEFENDANT AND APPELLANT.*G.R. No. 5171. September 01, 1909*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-5171/>**TORRES, J.:**

At about 8 p. m. on Sunday, November 1, 1908, Lao Lock Hing, the Chinese purser of the steamer Kaifong, arriving from China ports and at anchor in the harbor of Cebu, approached Maximiano Gerasmio, one of the customs guards on duty aboard said steamer, and offered him and the other guard, Leoncio Rabor, the sum of P200 each if they would permit him to secretly land, that night or early on the following morning, a package containing opium. With the intention of seizing the opium and reporting the matter to the authorities Gerasmio accepted the offer for himself and on behalf of the other guard doing duty on board the said steamer, but between 1 and 2 o'clock on the following morning the accused, who had caused another Chinaman to place the package in readiness alongside the rail where it was to be discharged and taken ashore, noticed, from his movements and actions, that the said Gerasmio was not prepared to allow the package to be landed; whereupon Lao Lock Hing ordered it thrown overboard, which was done, and in order to conciliate the guards offered each of them P1,000 not to report the matter to their chief.

Some hours later, by order of the authorities, two divers, Florentino Rodriguez and Tiburcio Cabugason, recovered the package. It proved to be a closed bag containing seventy tins of opium of which nine tins were damaged and the contents spilled. Two tins were sent to a pharmacist for chemical analysis who stated that he found their contents, which he examined and analyzed, to consist of opium alkaloids, destined among other uses for that of smoking. This seized opium constitutes the corpus delicti and is offered in evidence as Exhibit A.

In view of the above, a complaint was filed by the provincial fiscal on the 20th day of the said month with the Court of First Instance of Cebu, charging Lao Lock Hing with the violation of section 31 of Act No. 1761, in that he had been in possession, had charge of, and had had under his control seventy tins of opium without being duly authorized. Corresponding proceedings were instituted, and the trial judge after hearing the evidence adduced, rendered judgment on the 14th of December of the same year, sentencing the accused to the penalty of five years' imprisonment, to pay a fine of P10,000, and in case of insolvency to suffer the corresponding subsidiary imprisonment, not to exceed one year, and to pay the costs, the fifty-nine tins of opium contained in the bag, Exhibit A, the nine damaged tins, and the two that were sent for analysis to be turned over to the collector of customs of Cebu for confiscation; from which judgment the accused has appealed.

It is seen from the facts stated above that the accused purser of the said steamer had in his possession and control seventy tins of opium which were concealed in a bag in one of the holds of said steamer, and that he tried to land the same at a time when the vessel was lying at anchor in Cebu; when he found that the customs guards doing duty on said steamer were disposed to perform their duties, even though he had tried to bribe them, he ordered one of his Chinese subordinates to throw the package overboard, which was done, but a few hours later and by means of two divers the package which contained said seventy tins of opium was recovered.

Section 31 of Act No. 1761, passed on the 10th of October, 1907, 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 cocaine, 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."

It is a proven fact that the accused, Lao Lock Hing, held, was in possession of, and had control of the seventy tins of opium which were in the sack on board the steamer Kaifong from the night of November 1, 1908, until the following morning, while at anchor in the port of Cebu, since the evidence adduced at the trial shows beyond all reasonable doubt that the accused shipped on the said steamer the seventy tins of opium which were seized, and took them to the port of Cebu, there to be smuggled ashore and landed; he knew that it was an article the introduction of which into this country is prohibited by law and punished by a heavy penalty. Yet he did not hesitate to circumvent the law and violate its provisions, and even dared to commit another crime by attempting to bribe the agents of the authorities who might have surprised him in his criminal act and seized the contraband article which he brought with him and was trying to get ashore.

The accused pleaded not guilty, and his counsel in this second instance has alleged: (1) That the court below erred in overruling his demurrer to the complaint for the reason that the said complaint was not drawn in accordance with the law and for the further reason that the acts complained of did not constitute a crime; (2) that the court below also erred in finding that the accused was guilty of violating section 31 of Act No. 1761, and for having sentenced him to the maximum penalty.

In spite of the fact that counsel for the accused did not except to the overruling of the demurrer, it should be noted that the complaint upon which the proceedings were instituted appears to be drawn in accordance with the provisions of section 6 of General Orders, No. 58, inasmuch as Lao Lock Hing is charged with the violation of the provisions of section 31 of Act No. 1761, in having maliciously and illegally performed certain acts set forth in the said complaint which he well knew were forbidden by the said Act; with criminal intent to violate its prohibition, secretly and unlawfully, and by offering a bribe to the Government agents placed as watchmen on the steamer, he endeavored to carry and smuggle ashore the forbidden contraband article.

The crime under consideration consists of the violation of a special law as referred to in article 7 of the Penal Code, and consequently the provisions of said code and the classifications of the crimes comprised therein are not applicable in the present case. The said crime must be punished under the provisions of the Act which the sovereign power, by virtue of its authority, saw fit to enact for the good of the country and of its inhabitants. Wherefore, inasmuch as it is an act which the lawmaker has declared to be invested with the attributes of a crime, the overruling of the demurrer and the prosecution of the case are in accordance with the law.

As to the culpability of the accused as the responsible author of the said crime, the testimony in the case and the circumstantial evidence, together with the seizure, of the opium thrown into the sea show conclusively that the accused, Lao Lock Hing, if not the owner, was at least in charge of and responsible for a large and valuable amount of opium on board the Kaifong, since by reason of his office and position on board said ship it was an easy matter for him to carry concealed thereon the package containing the seventy tins of opium. Indeed so great was his anxiety to get it ashore, notwithstanding the strict prohibition of the law of which he was aware, that he offered P200 to each of the two watchmen to permit him to land it at the port of Cebu; and to this end two Chinamen, Ah Ki and Ah Yu, members of the ship's crew, took the package from the hold by order of the accused

and placed it forward on deck on the port side near the rail, but between 1 and 2 o'clock on the following morning, fearing that the package of opium might be seized, the accused called up another Chinaman, Ah Chiong, and ordered him to throw said package overboard, which he did, and, the guards' attention being attracted by the splash, the accused approached them and offered each one of them P1,000 if they would not report it to their American chief.

The conduct of the accused in respect to the package of opium in question shows that he had the greatest interest in keeping it and in accomplishing the safe landing of the same, and upon seeing that he could not consummate his unlawful design, notwithstanding his offer of a bribe to the customs guards, he resorted to the extreme of concealing it in the sea, believing in his desperate position that he would thus prevent its seizure. He has not claimed that the opium belonged to a third party, and all the above facts show that, if not the owner of the drug, he was at least the possessor, conductor, and bearer of the article, and therefore, directly responsible under the law, together with such other persons as may subsequently appear, for the violation of the same.

For the above reasons it is our opinion that the court, using the discretion authorized by law in imposing an adequate penalty, should affirm the judgment appealed from, provided, however, that the accused, Lao Lock Hing, shall only be sentenced to two years' imprisonment, to pay a fine of P3,000, with the corresponding subsidiary imprisonment in case of insolvency in accordance with the provisions of Act No. 1732, without, however, exceeding one year, and to pay the costs of this instance. So ordered.

Arellano, C. J., Johnson, Carson, and Moreland, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.