

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALEXANDER MCCORMICK, DEFENDANT AND APPELLANT.

G.R. No. 5565. February 10, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendant was charged with a violation of Act No. 1761 of the Philippine Commission, which violation was alleged to have been committed as follows:

"That on or about the 15th of January, 1909, in the city of Manila, Philippine Islands, within the police jurisdiction of said city, to wit: On the steamer Rubi, anchored in the Bay of Manila, within a distance of less than 1 1/2 miles from the limits of said city, willfully, illegally, and maliciously, and without authority of law, he had in his possession 60 ounces of opium, contrary to law."

The defendant was duly arrested and pleaded "not guilty."

After hearing the evidence adduced during the trial of the cause, the lower court found the defendant guilty of the crime charged and sentenced him to pay a fine of P500, Philippine currency, and the costs, and in case of insolvency to suffer subsidiary imprisonment not to exceed six months. The court further ordered that the said opium discovered be confiscated to the Insular Government, to be delivered to the honorable Collector of Customs, to be disposed of in the manner prescribed by law.

From this sentence the defendant appealed to this court and made the following assignments of error:

First. The court erred in finding as a fact "that the customs inspector, with several assistants, authorized to make arrests, went aboard said ship (Rubi) and notified the chief officer thereof that they were about to make a search of said ship for contraband goods, and immediately went to the engine room therein for that purpose, and then and there announced in the presence of the defendant that they were about to make said search."

Second. The court erred in finding from the evidence that "immediately" after the entrance of the customs inspector, Betenbaugh, into the engine room, the accused retired therefrom and "immediately" went to the bunker where the opium was found.

Third. The court erred in finding that the accused was guilty.

The defendant was the second engineer on the steamer Rubi at the time and on the day when said opium was found on said ship. The contention of the defendant is that in obedience to an order of his superior officer, the chief engineer of said steamer, he assisted in making a search of said steamer for opium. During said search he found in one of the bunkers of said ship the opium in question, and immediately reported the same to his superior officer.

It appears that the customs inspectors had suspicioned that there was opium on the ship, which some person or persons were attempting to bring into the Philippine Islands illegally.

The evidence seems to show beyond question that the defendant, after picking up the said opium in one of the bunkers of the ship, and after giving his superior officer notice, carried the opium to the smoking room of said ship, or was in the act of carrying it to the smoking room, where he supposed the inspectors were, at the time he was arrested.

The simple question presented is whether or not the defendant had said opium in his possession, for the purpose of delivering it to the inspectors, having found it, as he alleges, or whether or not he had it in his possession for his own private purposes.

If the defendant had the opium in his possession, having found it as he alleges, it would be absurd to convict him under the law, for the reason that he had been ordered by his superior to search the ship for opium. The evident theory of the prosecution is that the defendant was attempting to bring into the Philippine Islands illegally the opium in question; that he had it hidden away, and when he discovered that a search was to be made of the ship, he then went to the place where it was hidden, took it and delivered it to the officers, for the purpose of avoiding discovery and subsequent prosecution.

During the trial it was proven that a Chinese tallyman on the said ship, by the name of Wai Kee, had in his possession a permit to buy opium, issued by the Hongkong authorities; that he had actually bought opium from the Hongkong opium farm; that he had tin cans made in Hongkong similar to the cans in question, which were found by the defendant on the ship Rubi; that he had had opium on the ship which was delivered to him by a sampan man, for the purpose of bringing it to Manila to sell; that he said he had thrown the same overboard; that he did not know the name of the sampan man who brought the opium to him on board the ship Rubi, before the same sailed from Hongkong. His statement that he had thrown the cans overboard; that he did not know the name of the person who brought them to him, in the face of his own statement that he was bringing it to Manila to sell, seems entirely improbable to us and to be untrue.

The defendant, at the time he found the opium, apparently made a full and fair statement of how and where he found it. The place where the opium was found was used to place cargo and ship's stores and was in charge of the first mate. During the trial of the cause the defendant stated the circumstances under which he found the opium, exactly as he stated them at the time of his arrest. His statements seem to be straightforward and there is no positive proof to contradict them. The strongest evidence against the defendant is a circumstance only. That circumstance is that he found the opium "too quickly" after he had been ordered to search the ship for opium. The lower court found that the defendant went to the bunker where the opium was found "immediately" after being notified that he was to assist in searching the ship. The evidence does not show that he went "immediately" to the bunker where the opium was found. The evidence does show that the defendant found the opium within a few minutes after the search began. The opium was found in a sack of bran in the corner of said bunker. It seems improbable to us that if the defendant was trying to bring the opium illegally into Manila that he would have put it in a bunker in charge of another officer of the ship. The circumstance of the defendant having found the opium within a few minutes after the search for opium began, standing alone, unsupported by any other evidence whatever, taken in connection with the testimony of the witness Wai Kee, is not sufficient, in our opinion, to find the defendant guilty of the crime charged against him, beyond reasonable doubt. This court has held repeatedly that a defendant may be convicted upon circumstantial evidence, but when that is done such evidence must be consistent with and point to the defendant's guilt, beyond a reasonable doubt, and be inconsistent with his innocence. (U. S. vs. Reyes, 3 Phil. Rep., 3; U. S. vs. Villos, 6 Phil. Rep., 510.)

In our opinion the evidence is not sufficient to show that the defendant was guilty of the crime charged in the complaint. The sentence of the lower court is, therefore, hereby reversed, with costs de oficio. So ordered.

Arellano, C. J., Torres, Mapa, Carson, Moreland, and Elliott, JJ., concur.

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