

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MIGUEL VILLANO, DEFENDANT AND APPELLANT.

G.R. No. 6302. February 07, 1911

Ponente: TRENT, J.

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TRENT, J.:

The information filed in this case is as follows:

"That on or about the 31st of October, 1908, within the territory of the municipality of Cebu, in this province and judicial district, the said Miguel Villano, voluntarily, illegally, and criminally imported and knowingly introduced fraudulently into the said municipality merchandise consisting of 190 tins of opium valued at 10 taels, ex steamship Kaifong, which vessel runs between Hongkong and Cebu; that the said Miguel Villano, knowing that the 190 tins of opium had been illegally imported received, secreted, purchased and sold the same; all contrary to law."

Upon this information the defendant Miguel Villano was tried, convicted and sentenced to one year and two months of imprisonment, to pay a fine of two thousand five hundred (P2,500) pesos, and to pay the costs of the cause.

The 190 tins of opium, alleged in the complaint to have been imported into the Philippine Islands by the defendant, were not all imported at the same time, but came in on the steamer Kaifong on the following voyages: Voyage No. 121, 20 tins; No. 122, 20 tins; No. 123, 50 tins; and No. 124, 100 tins. As the importation of these 190 tins of opium in this manner constituted four separate and distinct crimes, on motion of the defendant the court ordered the prosecution to confine itself to the last shipment.

About the time the steamer Kaifong was in the port of Cebu on voyage No. 123 the defendant, a resident of Cebu, entered into a contract with one Lao Loc Hing, the sobre-cargo of this steamer, in which contract or agreement Lao Loc Hing promised and agreed to purchase in Hongkong, and bring into the port of Cebu, 100 tins of opium and turn same over to the defendant, for which the defendant promised to pay him the sum of P3,000. Lao Loc Hing complied with his part of this contract and upon the arrival of the steamer in the bay of Cebu on its one hundred and twenty- fourth voyage, he, Lao Loc Hing, notified the defendant that the opium was aboard. The defendant, after having paid Lao Loc Hing the sum of P2,500 proceeded alongside the steamer about 11 o'clock on the night of October 31, 1908, and received the 100 tins of opium, which he carried ashore and later disposed of by sale to residents of Cebu. This opium was not manifested and was imported without the knowledge or consent of either the customs authorities or the owners or managers of the steamer Kaifong. The opium was not only imported into the Philippine Islands in violation of the Customs Administrative Act, but also in violation of Act No. 1761, known as the Opium Law, which was then in full force and effect and which prohibits the importation of opium, in any form, into the Philippine Islands by persons not duly authorized to do so.

The foregoing facts have not only been established by the testimony of Lao Loc Hing, who gave a detailed statement of everything which occurred with reference to the importation of this opium, but also by the testimony

of one Apao, a stoker on the steamer Kaifong, who testified that he assisted Lao Loc Hing, on the night the opium was delivered to the defendant, in letting same down over the ship's side into the defendant's baroto. Other witnesses testified that they purchased from the defendant large quantities of opium about that time.

The defendant attempted to establish an alibi and testified that he was not in the town of Cebu on the night of October 31, 1908; that he left Cebu on the morning of the 31st and did not return until the afternoon of the 1st of November. He admitted that he was at that time an employee of Smith, Bell & Co. and that his duty was to look after the discharging of merchandise from the steamer Kaifong, but that at this particular time he had obtained permission from his employers to visit another town. This alibi was completely destroyed by documentary evidence. The prosecution showed by a number of receipts signed by the defendant himself, and bearing date of October 31, 1908, that he was on that particular date looking after the discharge of that cargo; that he was on the steamer at the time and receipted for the merchandise as it left the ship's side.

The sentence imposed by the learned trial court, under all the facts and circumstances, is not excessive, especially when we take into consideration the gravity of the offense committed. The judgment appealed from is, therefore, affirmed: Provided, That in case of insolvency the defendant shall suffer the corresponding subsidiary imprisonment. Costs against the defendant. So ordered.

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

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