

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEE SEE (ALIAS TUYA), DEFENDANT AND APPELLANT.*G.R. No. 6613. October 24, 1911*

Ponente: TRENT, J.

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This is an appeal from a judgment of the Court of First Instance of the Province of Samar, the Hon. Ramon Avancena presiding, condemning the appellant Lee See, alias Tuya, to six months' imprisonment, to pay a fine of P1,000, to the corresponding subsidiary imprisonment as provided by law in case of insolvency, and to the payment of the costs, for having violated the provisions of the Opium Law.

Counsel for the appellant insists that the trial court erred in finding the accused guilty upon the unsupported testimony of his suspected accomplice, and because the evidence did not show him to be guilty beyond a reasonable doubt.

On the 26th of May, 1910, while the steamship Ton Yek was anchored in the port of Calbayog, Samar, Nazario Dimakiling, a laborer, and his companion were standing on the bank of the river of Calbayog when he saw Isidoro Cabonico in a banca coming from the direction where the steamer was anchored, halted him, and requested a ride to the other side of the river. A very short time after Dimakiling entered the banca he saw therein a sack and proceeded to examine its contents and found that it contained, among other things, twenty-eight cans of opium. The banquero, Isidoro Cabonico, when this discovery was made by Dimakiling, said that he had been sent by Chino Aua to the steamer Ton Yek to get caramelo and that the accused gave him the sack. Dimakiling took possession of the sack, carried it to the municipal building, turned it over to the authorities, and caused the arrest of the appellant and Isidoro Cabonico. A preliminary investigation was held and the two accused bound over to the Court of First Instance. When this case was called for trial the complaint as to Cabonico was, upon motion of the provincial fiscal, dismissed and the said Cabonico was called as a witness for the prosecution and testified that between 12 and 1 o'clock on that day, the 26th of May, Chino Aua employed him to go out to the steamer Ton Yek and receive a sack of caramelo from the appellant; that on arriving alongside the steamer in his banca the appellant lowered this sack into his banca and that on his return the opium was discovered in the manner above set forth.

The defendant not only denied having anything whatever to do with this transaction, but stated that he did not know and had never seen Cabonico. But Cabonico testified that he had known the defendant for some time and that this was the third time he had been sent out to receive packages from the appellant. Cabonico's testimony is reasonable, direct, and positive. It is not denied by the appellant that the opium was found as stated by Dimakiling. If Cabonico had known that the sack contained opium it is not reasonable to suppose that he would have given Dimakiling an opportunity to cross the river in his banca; he would have known that he would have been running the risk of being caught in open violation of the law. He, believing that the sack contained caramelo only, thought nothing of permitting Dimakiling to enter his banca, so it can not be said that Cabonico was in fact an accomplice.

The judgment being strictly in accordance with law and the merits of the case the same is hereby affirmed with costs against the appellant.

Torres, Mapa, Carson, and Moreland, JJ., concur.

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