

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHOA TONG, DEFENDANT AND APPELLANT.

G.R. No. 7233. July 19, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with a violation of the Opium Law, alleged to have been committed as follows:

"That, on or about the 24th of June, 1911, in the city of Manila, Philippine Islands, the said Choa Tong did, wilfully, unlawfully and criminally, and without any authority whatsoever, have in his power and possession and under his control, and, knowingly, on his premises, three grams of opium ashes, which are a derivative of opium."

After hearing the evidence, the Honorable A. S. Crossfield, judge, found the defendant guilty of the crime charged in the complaint and sentenced him to pay a fine of P300 and the costs, and in case of insolvency to suffer subsidiary imprisonment in accordance with the law. From that sentence the defendant appealed.

From an examination of the evidence it appears that on or about the 24th of June, 1911, the defendant, in the city of Manila, was found in the possession of ashes of opium. This fact was sustained by the testimony of three or four witnesses. The defendant presented no proof to the contrary.

The attorney for the defendant, in his brief in this court, alleges that the proof presented during the trial of the cause fails to show that the substance found in the possession of the defendant was opium ashes. By reference to page 9 of the record, it will be seen that by mutual agreement the substance found in the possession of the defendant was referred to the Bureau of Science for analysis. By reference to page 10 it will be seen that the Bureau of Science made a report which shows that the said Bureau analyzed said substance and found the same to be opium ashes. No objection whatever was made to the sufficiency or to the form of the report of said analysis. The attorney for the appellant attempts to make it appear now that the report was not sufficient. No objection was made in the court below to the form or substance of said report. The objection should have been made at the time the said analysis was presented. Had the objection been presented at that time, the prosecuting attorney might have secured a report in proper form. The objection seems to be too late now, especially when the same relates purely to the form of the report and not to its substance.

The attorney for the appellant makes the further objection, to wit: That the stenographer who took the notes during the trial of the cause did not transcribe the same nor certify to the correctness of the transcription. It appears that some time after the trial, Mr. W. M. Barrington, the stenographer who took the notes and before the same were transcribed, died. Later another stenographer, Mr. Forrest Clark, who signs himself as official stenographer of the Court of First Instance of the city of Manila, transcribed the said notes and certified that said transcription is a full and correct transcript of said notes, to the best of his knowledge and belief, taken by Mr. Barrington in said cause. It is a well known fact that stenographic notes taken by one stenographer can not always be read and transcribed by another. However, where stenographers use the same system of stenography, the notes

taken by one may be read by another familiar with that system. In the present case, in view of the certificate of Mr. Clark (the stenographer who transcribed the notes of Mr. Barrington) and in the absence of proof to the effect that the transcription is not a correct transcription of the notes taken by the former stenographer, we see no objection in accepting the same as being a true and correct transcription of the notes taken of the evidence adduced during the trial of the cause.

From all of the facts of the record, and with due consideration to the defense made by the appellant in this court, we are of the opinion that the sentence of the lower court should be affirmed, with costs.

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

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