

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHONG TING AND HA KANG, DEFENDANTS AND APPELLANTS.

G.R. No. 7259. September 02, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with a violation of the Opium Law. The complaint alleged:

"That the said accused on May 6, 1911, in the settlement of Laporawan, Zamboanga District, Moro Province, Philippine Islands, had in their possession opium ashes, a derivative of opium, the said accused not being persons legally authorized therefor: an act constituting said violation defined and penalized in section 31 of Act No. 1761 of the Philippine Commission, and executed within the jurisdiction of this Court of First Instance and in violation of law."

After hearing the evidence, the Honorable Charles A. Low, judge, rendered the following sentence:

"The accused, Chong Ting and Ha Kang, having been found guilty as charged, are sentenced each to pay a fine of P300 or to three months' imprisonment.

"It is so ordered."

From that sentence the defendants appealed and in this court attempt to show that the evidence adduced during the trial of the cause is insufficient to show that they are guilty of the crime charged in the complaint.

During the trial of the cause the prosecuting attorney for the District of Zamboanga presented three witnesses. The first was a Moro called Ambol. He testified that in the month of May, 1911, he was carrying the two defendants in a sailboat. He testified that he had been working for the defendants for forty-five days. He testified that they were sailing their boat to the rancheria of Laporawan. He does not state from what place they started. He first tries to make it appear that the defendants were smoking in his boat and that he took possession of certain apparatus and opium ashes from them, for the reason that they would not pay him (supposedly for his labor in managing the sailboat). This witness also tries to make it appear by his declaration that he took the apparatus and opium ashes from the defendants for the reason that he knew that the use of opium was prohibited by law. After he took the apparatus and opium ashes from the defendants he testified that the defendants took the same away from him; that he later obtained possession of the same again and locked the same up in his trunk; that after they landed (and the evidence is very uncertain as to the place where they landed) Ambol testified that he delivered the apparatus and the opium ashes, in company with another Moro called Callava, to Captain Paegelow, some two days after they had landed.

The other witness, Frank S. DeWitt, presented by the prosecuting attorney, was only called for the purpose of showing that the apparatus and opium ashes to which the witness Ambol referred were the apparatus used in smoking opium and that the ashes were in fact opium ashes.

Captain Paegelow was presented by the prosecuting attorney for the purpose of showing that the objects which the

witness Ambol claimed he had obtained from the defendants had been delivered to him by the said Ambol.

It will be noted that there is nothing in the testimony of Mr. DeWitt or Captain Paegelow which in any way shows that these defendants had been in the possession of or had been using opium in the manner alleged by the witness Ambol.

Each of the defendants testified in his own behalf. The defendant, Chong Ting, stated that he was a merchant and was 27 years of age; that he knew the witness Ambol and had known him since the 19th of April, 1911; that the witness Ambol had been working for him in managing a sailr boat for a period of ten days only, prior to the 28th of April, 1911; that he had not seen the apparatus or articles or the opium ashes to which reference was made by the witness Ambol; that during the voyage in the said sailboat, some question had arisen between him and the witness Ambol relating to the payment of an amount due from one Yap Kang to the said witness. From this it appears that one Yap Kang was also a passenger in the sailboat. This fact does not appear positively but by inference only.

The defendant, Ha Kang, testified in his own behalf. He testified that he was a merchant and was 26 years of age; that he lived in the pueblo of Taluysangay; that he knew the witness Ambol; that Ambol had been managing a sailboat for him; that they arrived at the pueblo of Laporawan on the 28th of April; that he had had some trouble with the witness Ambol, with reference to the payment of a sum of money supposedly due for Ambol's labor. He testified positively that the articles (alleged apparatus and opium ashes) had never been in his possession; that the witness Ambol had not taken said articles from him.

The said articles (apparatus for smoking opium and opium ashes) which the witness Ambol alleged he had taken forcibly from the two defendants, were not presented as proof during the trial of the cause. The record contains the statement:

"The prosecution wishes to present these articles as evidence, marked Exhibit A for the prosecution." (Record, p. 15.)

But nowhere in the record does it appear that said articles were actually presented or were received in evidence. The only evidence, therefore, which we have before us upon which to base a conviction of the defendants, is the declaration of the witness Ambol, to the effect that the defendants had been smoking opium in his sailboat and that he took from their possession certain apparatus and some opium ashes. This declaration of the witness Ambol is positively denied by each of the defendants. There is nothing in the record which, in any way, casts doubt upon the credibility of the testimony of the two defendants. We see no reason why their testimony in the present case should not be accepted, in view of all the facts contained in the record. On the contrary, the record does contain some indication that the witness Ambol was not clear concerning the facts stated in his declaration. He stated that he had been working for the defendants for forty-five days, leaving the impression that the trip on which he had possessed himself of the articles in question had lasted for forty-five days. The defendant, Chong Ting, states positively that the trip lasted but eleven days and ended upon the 28th of April. The other defendant, Ha Kang, stated positively that he did not remember when the trip began, but he did remember that it ended upon the 28th of April. This apparent conflict between the testimony of the witness Ambol and that of the two defendants, taken into consideration with the fact that the witness Ambol had had in his possession said articles for a period of two days after he had separated from the defendants before delivering the same to any authority, in our judgment casts some doubt upon the truthfulness of the statements of the witness Ambol. It further appears from the record that some nine or ten days had elapsed between the time the defendants and the witness Ambol separated before any complaint was presented in the courts. There is nothing in the record which conclusively shows, in our opinion, that the defendants are guilty of the crime charged in the complaint.

There is an objection to the form of the sentence dictated by the lower court which we deem inadvisable to overlook without criticism. It will be noted by reading the sentence above quoted that the same is in the alternative. Sentences should not be in the alternative. There is nothing in the law which permits courts to impose sentences in the alternative. The sentence should not only show the facts upon which the defendant is found guilty, but it should clearly indicate the particular crime of which he is found guilty, as well as definitely and positively and without doubt to indicate the penalty imposed. (Artículo 51, Ley provisional para la aplicacion de las disposiciones delCodigo Penal,) Of course where the defendant appeals, it is believed that the Supreme Court has a right to impose the penalty provided by law, for whatever offense, within the complaint. which the evidence shows was committed. In case the defendant does not appeal, however, it is difficult to imagine how a sentence in the alternative may be enforced. It is true that under many of the provisions of the penal law, the court has the discretion or alternative of imposing one or another of different penalties; but certainly it can not be argued that because the judge has the discretion of fixing one or another penalty, that he can impose both in the alternative. He must fix positively and with certainty the particular penalty.

After a careful examination of the evidence adduced during the trial of the cause, we are persuaded that the same is not sufficiently positive to lead us to believe that the defendants are guilty of the crime charged in the complaint, beyond a reasonable doubt. The sentence of the lower court is, therefore, hereby reversed, and it is hereby ordered that the complaint presented against the defendants be dismissed and that they be discharged from the custody of the law, with costs de oficio.

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

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