

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. POW SING ET AL., DEFENDANTS. POW SING, APPELLANT.

G.R. No. 7424. November 12, 1912

Ponente: CARSON, J.

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CARSON, J.:

Pow Sing, the appellant herein, together with one Simeon Vega, was charge with the illegal importation into the Philippine Islands of some 336 grams morphine. The information, which was presented by one of the attorneys of the office of the prosecuting attorney for the city of Manila, was as follows:

"The undersigned charges Pow Sing and Simeon Vega with the crime of illegal importation, committed as follows:

"That on or about September 2, 1911, in, the city of Manila, Philippine and in Manila Bay, within two and a half miles of the seashore of the cit Manila and within the jurisdiction of this court, the said Pow Sing and Si Vega did willfully, illegally, criminally and fraudulently, and knowingly conspiring and plotting between themselves, import and introduce into the Philippine Islands from a foreign country, and aid in the importation an introduction into the Philippine Islands from a foreign country, in violation of law, effects, articles and merchandise, to wit: opium and a derivative of that is, three hundred and thirty-six (336) grams of morphine, worth approximately two hundred pesos (P200), Philippine currency; and at said time and place the said Pow Sing and Simeon Vega, conspiring and plotting among themselves, did receive, hide, and aid in receiving and hiding said morphine, after it had been imported, knowing that said morphine had been illegally imported into the Philippine Islands from a foreign country."

Simeon Vega was granted a separate trial on motion of his attorney. He was found guilty as charged and sentenced to pay a fine of P50, and the payment of one half of the costs. From this judgment and sentence he did not appeal. The appellant herein, Pow Sing, was found guilty as charged i the information and sentenced to pay a fine of Pl,200, and to the payment of one half of the costs. From this judgment and sentence the present appeal is prosecuted.

The evidence of record establishes that the steamer Loongsang was anchored in Manila Bay on September 2, 1911, having just recently arrived from Hongkong, and that two men had been sent by the customs officials to keep a close watch on the ship with a view of preventing the landing therefrom any contraband articles or goods of any character, and that for this purpose the men had stationed themselves in a casco moored alongside a lorch, the latter being alongside and fastened to the steamer Loongsang. About 2.30 on the afternoon of September 2, 1911, after the men had been watching for several hours, they observed the appellant Pow Sing deliver a package to the defendant Simeon Vega, and the latter immediately started down from the ship into the lorch by means of a rope. The officers who had been watching forthwith rushed upon, the lorch and arrested Vega and seized th e package which at that time was supposed to contain lottery tickets. Upon examination later, however, the contents proved to be some 336 grains of morphine. One of the officers immediately went upon the ship and effected the arrest of Pow Sing, who was the steward of the Loongsang. The steamer Loongsang had just arrived from

Hongkong and the morphine contained in the package taken from Vega was not manifested in the ship's cargo, nor was it included among or entered upon the ship's store provisions.

The appellant denied that he had delivered the package to Vega, and claimed that at the time he was arrested he had just come from his room where he had been asleep, and that he had been called by an employee who said that some of the passengers wanted some drinks.

Two other Chinos testified that Pow Sing had been asleep, and further that they had seen one Tat Wing, another member of the crew, give a package to Simeon Vega.

This constitutes practically all the testimony upon this point. The who seems to turn on the question of the credibility of the witnesses. The customs officials testified positively and directly upon this point. Both stated that they saw the appellant Pow Sing deliver the package in question to Simeon Vega, and the trial judge commenting upon this point said that their testimony was given in such a way as to bring conviction that they were telling the truth; and added that it was easy to see that the witnesses for defense were not telling the truth.

As the fiscal points out, this court has repeatedly held that since the trial court enjoys exceptional advantages for determining and passing upon the credibility of opposing witnesses testifying in his presence, such conclusions as the court may reach in regard thereto will not be disturbed unless the record clearly indicates that the trial court has fallen into error, or failed to consider some material matter which should have led him to arrive at a different conclusion. (See *U. S. vs. Benitez and Lipia*, 18 Phil. R. Other questions are raised by counsel for appellant in his brief, but these to be very conclusively answered by the fiscal.

We find no errors in the proceedings prejudicial to the rights of the accused and we are satisfied beyond a reasonable doubt as to the guilt of the appellant of the crime of which he was convicted. The trial court sentenced the convict to a fine of P1,200, and the payment of one-half of the costs of the proceedings, but following the practice indicated in the case of *vs. Castaneda et al.* (18 Phil. Rep., 58) and *U. S. vs. Li* 7428), recently decided,[1] we think that a prison sentence should be added in this case, it appearing that the convict was engaged in the illegal importation of the drug. As we stated in the decision just cited, "mere however large, do not seem to serve as a sufficient deterrent to offenders of this class, doubtless because the illicit gains from the traffic in the drug are great, while the chances of detection and punishment are in most instances few as a result of the comparatively small bulk of the contraband article"

The judgment of conviction of the court below is affirmed, and the sentence imposed upon the convict, modified by the addition of six months' imprisonment, is also affirmed, with the costs of both instances against the appellant.

Arellano, C. J., Torres, Mapa, Johnson, and Trent JJ.. concur.

[1]See post.

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