

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LIM SING ALIAS LIM SIN, DEFENDANT AND APPELLANT.

G.R. No. 7428. November 12, 1912

Ponente: CARSON, J.

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CARSON, J.:

The evidence of record conclusively establishes the guilt of the appellant smoking opium in violation of the provisions of Act No. 1761; and further that he is a recidivist, in that on a former occasion he was convicted similar violation of the Opium Law.

The trial judge found him guilty as charged in the information, and ordered his deportation from the Philippine Islands under the provisions section 32 of Act No. 1761, as amended by section 4 of Act No. 1910, which is as follows:

"On and after March first, nineteen hundred and eight, it shall be unlawful for any person in the Philippine Islands to inhale, smoke, chew, swallow or otherwise use or permit to be used in or on his body any opium, except for medicinal purposes, and then only upon prescription of a duly licensed and practicing physician.

"Any person violating any of the provisions of this section shall be punished by a fine not exceeding ten thousand pesos nor less than three hundred pesos, or by imprisonment for not exceeding five years, nor less than three months, or by both such fine and imprisonment, in the discretion the court: Provided, however, That in the case of the commission of a second offense under the provisions of this section, any person so convicted, if other than a citizen of the United States or a citizen of the Philippine. Islands, may, by order of the court, be deported."

The Solicitor-General, in his brief, invites the attention of the court fact that the evidence discloses that the appellant has a native wife an child living in the Province of Iloilo, with whom he was living at the time of his arrest, and suggests that under all the circumstances of this case the penalty of deportation would appear to be excessive. In this we agree with the Solicitor-General.

An exceptionally wide range of discretion is conferred upon the court the imposition of the penalties prescribed for violations of the penalized provisions of the Opium Law. But this discretion should not be exercise arbitrarily, and in imposing the prescribed penalties the courts should have in mind the purpose and object of the statute as a whole. We this that a review of the legislation having for its object the regulation use and sale of opium, its derivatives and compounds, as such legislation has been adopted in this as well as in many foreign jurisdictions, just the conclusion that the primary object of the statute now in force in these Islands is the protection of the body politic from the evils which believed to be incident to the widespread use of this habit forming drug other than as a medicine or for scientific purposes. With this object view all unauthorized use of or traffic in the drug is penalized, the prescribed penalties to be imposed by the courts in their discretion very wide limits.

The exceptionally wide extent of discretion conferred upon the courts the statute clearly indicates the intention of the legislator that in applying these penalties the courts should have in mind, at all times, the primary object of the

law, that is to say the suppression of the vice, as a widespread evil threatening the public welfare; and further, the particular circumstances of each case, and the degree of criminality involved in t particular violation of the statute of which the accused person has been convicted.

Accordingly we have heretofore held that -

"Upon a person who is convicted only of the crime of smoking opium, of having in his possession such a small quantity of the drug as to justify the inference that it was intended merely for his own personal use, the court has always readily affirmed the imposition of the minimum penalty; "but upon those who attempt to 'exploit the vice' and violate the provisions of the Opium Law for gain, it is deemed proper that, within discretionary limits prescribed by law, a higher and more severe penalty should be imposed." (U. S. vs. Castaneda, 18 Phil. Rep., 5

In accord with the views thus set forth we have affirmed a large number sentences imposing heavy fines and prison sentences upon persons convict of violation of the Opium Law, in cases wherein it appeared from the evidence that such persons had been engaged in its illegal importation sale, or in the keeping of opium dens or the unlawful handling of the drug for profit, in any form. Indeed we have adopted the practice in such cases of adding a prison sentence where the court below has imposed a fine without imprisonment. Mere fines, however large, do not seem serve as a sufficient deterrent to offenders of this class, doubtless be the illicit gains from the traffic in the drug are so great, while the of detection and punishment are in most instances so few, as a result the comparatively small bulk of the contraband article.

The following cases illustrate quite clearly our practice in this regard, and also our uniform practice of sustaining the courts below in cases wherein have held that the unexplained illegal possession of the drug, in quantities considerably in excess of an amount which would appear to be reasonably sufficient for the personal use of a victim of the opium habit, justified inference that the possessor is engaged in handling the drug for profit.

In the case of U. S. vs. Chia-Tua (12 Phil. Rep., 605), a fine and two months' imprisonment was imposed on conviction of sale of opium without a license.

In the case of U. S. vs. Lao Lock Hing (14 Phil. Rep., 86), a pen two years' imprisonment and a fine of P3,000 was imposed upon conviction of an attempt to smuggle seventy tins of opium into the Islands.

In the case of U. S. vs. Viliano (18 Phil. Rep., 359), a sentence of one year and two months' imprisonment and the payment of a fine of P2,500, upon conviction of an attempt to smuggle a hundred tins of opium into the Islands, was affirmed.

In the case of U. S. vs. Look Chaw (19 Phil. Rep., 343), sentence of six months' imprisonment and a fine of P1,000 was imposed for a violation of section 15 of the Opium Law.

In the case of U. S. vs. Lee See (20 Phil. Rep., 398), penalty of six months' imprisonment and P1,000 fine for an attempt to smuggle twenty-eight tins of opium into the Philippines was affirmed.

See also U. S. vs. Petallio (15 Phil; Rep., 642), wherein a penalty of one year and one day was imposed; U. S. vs. Ana (15 Phil Rep., 648 wherein a penalty of six months' imprisonment and P300 fine was imposed U. S. vs. Lim-Tioco (15 Phil. Rep., 650), wherein imprisonment an P500 was imposed; U. S. vs. Tan-Quimyung (15 Phil, Rep., 678), imprisonment for one year and a fine of P2,000 was imposed; U. S. vs Lee (20 Phil. Rep., 596), wherein one year's imprisonment was imposed; a number of others of like tenor and effect.

On the other hand, the following cases illustrate the practice of this court affirming sentences imposing lighter penalties in cases where the convict for a first offense, and the violation of the law consisted of smoking opium, or

the illegal possession of small quantities of the drug or of utensils, under circumstances which would not justify the inference that convict was engaged in "exploiting the vice" for gain. (U. S. vs. Que-Latt, 15 Phil. Rep., 680; U. Hong Kong, 16 Phil. Rep., 678; U. S. vs. Go Chin, 16 Phil. Rep., vs. Lim Chu, 16 Phil. Rep., 681; U. S. vs. Farinas Go Ju Rep., 684; U. S. vs. Vy Tico, 16 Phil. Rep., 685; U. S. vs. 16 Phil. Rep., 686; U. S. vs. Yu Chang Co, 17 Phil. Rep., 60 vs. Ng Se, 17 Phil. Rep., 607; U.S. vs. Phee, 17 Phil. Rep. vs. Go-Dingco, 17 Phil. Rep., 611; U. S. vs. Yap Chinci Rep., 617; U. S. vs. Radami 17 Phil. Rep., 626; U. S. vs. Lim Tan Co, 17 Phil. Rep., 637; U. S. Lu, 17 Phil. Rep., 637; U. S. vs. Ang Kan, 17 Phil. Rep., 638; Yuen Chue, 17 Phil. Rep., 638; U. S. vs. Sy Yh Co, 17 Phil. Rep., R S. vs. Tan Nga Hui, 17 Phil. Rep., 640; U. S. vs. Lim Chi Rep., 645; U. S. vs. Bautista, 17 Phil. Rep., 646; U. S. 17 Phil. Rep., 646; U. S. vs. Chua Co, 17 Phil. Rep., 647; U. S. Vijunco, 17 Phil. Rep., 658; U. S. vs. Ing Tong, 18 Phil. Rep., vs. Tan Chuco and Hao Chat Quiat, 18 Phil. Rep., 597; U. S. vs. Hong Ki, 18 Phil. Rep., 607; U. S. vs. Tan Pang, 18 Phil. Rep., 6 Co Su, 18 Phil. Rep., 615; U. S. vs. Yap, 18 Phil. Rep., 617; U. S. Baiiares and Go-Paya, 18 Phil. Rep., 619; U. S. vs. Chua Hun H Rep., 620; U. S. vs. Go Siong Huy, 18 Phil. Rep., 620; U. S. < Hong Ki, 18 Phil. Rep., 621; U. S. vs. Wui Co, 18 Phil. Rep., vs. Guillen Co Cuevo, 18 Phil. Rep., 622; U. S. vs. Chua Ting Rep., 630; U.S. vs. Hu Bu, 18 Phil. Rep., 631; U. S. vs. Zapa Marquez, 18 Phil. Rep., 633; U. S. vs. Go Lean, 20 Phil. Rep., 593; U. Bertran, 20 Phil. Rep., 594; U. S. vs. Co Ba, 20 Phil. Rep., 595; U. S. vs. Yap Tiongco, 20 Phil. Rep., 602; U. S. vs. Poh Chi, 2 Rep., 607; U. S. vs. Ah Chang and Ah Tong, 20 Phil. Rep., 609; U. S. vs. Ly Juat Co, 20 Phil. Rep., 625; U. S. vs. Teves, 20 Phil. Rep., 635.)

A critical examination of these cases will disclose that in the earlier while we favored the imposition of lighter penalties, we were at first inclined to leave undisturbed sentences of the lower courts imposing fines some in excess of three hundred pesos, and even prison sentences, when such penalties were not much in excess of the minimum penalties prescribed law, that is to say a fine of P300 or three months' imprisonment. But will appear from the later cases, a wider experience in the review of originating in the various courts throughout the Islands, and more ext opportunities for the observation of the practical working of the law ha convinced us that, as a rule in such cases, in the absence of some sufficient reason, made to appear of record in a particular case, all prison sentences and fines in excess of P300 should be modified by the substitution therefor of a fine of P300. We have been brought to this conclusion not merely b the marked inequality in the application of penalties in such cases in different courts in the Islands, and even in the same court on different occasions; but also because of the vicious consequences flowing from the uncertainty as to the severity of the penalties to be imposed upon convicts such cases. The provisions of the law touching awards for informers carry with them a very real danger of abuses even under the most careful and painstaking administration of justice. With the fact that the danger such abuses is a necessary incident of the law, the courts have nothing to do. That is a question for the Legislature, and it duty and prerogative of the legislator to determine whether the advantages derived from these provisions outweigh the danger of the abuses incident to them. But it is the duty of the courts to guard against such abuses to the full extent of their power, and to administrative the law so as to reduce them to the minimum. In our opinion the imposition of unequal and at times arbitrarily severe penalties, on persons convicted of smoking opium or of having small quantities of the drug in their possession, is calculated to increase enormously the danger of such abuses, by greatly increasing the facility with which evilly disposed person are enabled to blackmail both the guilty and the innocent with threats of prosecution for violations of the law of this nature. The fear that the courts may impose a long prison sentence, or even an extremely heavy fine on conviction upon a charge of smoking opium, places one who is conscious of guilt practically at the mercy of an informer who demands large sums the price of silence; and the peculiar difficulties confronting an accused person in an attempt to overcome a well laid conspiracy to secure his conviction on such a charge, combined with the fear of such severe penalties may, and we are convinced not infrequently do induce innocent persons, especially those of the Chinese race, to pay tribute to blackmailers, who prey upon their ignorance or their fears.

Our remarks in this connection should not be construed as an attempt to limit or prescribe the discretion of the courts below to impose more s penalties upon opium smokers than that just indicated, where the evidence discloses strong or compelling reasons therefor. Indeed, in a case very recently decided, we affirmed a prison sentence (reduced to three month imposed upon one convicted of smoking opium, where the evidence disclosed that at the time when he was found making use of the drug, others were smoking in his house at his invitation, or at least with his permission, though we gathered from all the surrounding circumstances that the permission to make use of his house for that purpose was not granted for profit or in an attempt to exploit the vice for gain. And in cases it affirmatively appears that the convict, because of inability to pay of P300, would suffer subsidiary imprisonment of more than three months for his failure so to do, we can see no objection to the imposition of months' imprisonment rather than the fine.

In this connection it is proper to add that if provision were made by for the detention and hospital treatment of persons convicted of opium smoking or the use of the drug in any form, with a view to their permanent reform rather than as a punishment for the offense committed, it might and doubtless would be our duty to adopt a different practice in an attempt to give effect to the intent of the legislator. The practice actually adopted is based on conditions as they actually exist, under law as it now stands on the statute book.

From what has been said, we think it must be very clear that the penalty of banishment upon a domiciled alien upon a second conviction of smoking opium, should no be sustained, in the absence of exceptionally strong and compelling reason for the imposition of so extraordinarily severe a penalty. Of course, facts disclosed a bold and contumacious defiance of the law of the land by a foreigner who is permitted to reside in the Islands, or if it appeal that an alien, himself a confirmed victim of the habit, was engaged fomenting the vice and encouraging or inducing others to smoke, his deportation would be clearly justified under the law. But the mere fact a domiciled alien, a habitual user of the drug, has been twice convicted its use, does not, in our opinion, necessitate the imposition of a penal would utterly ruin his business, separate him from his wife and children in a case such as that at bar, and expose him to loss and suffering far in excess of those entailed by the sentence which would be imposed upon citizen for a like offense. We do not believe that the legislator intend anticipated that the discretion vested in the courts in cases of this c would be exercised so as to produce such unjust and inequitable consequences. (U. S. vs. Yu Quico, 17 Phil. Rep., 625; U. S. Chit, 17 Phil. Rep., 647.)

We think that this being the second offense, the penalty to be imposed should be somewhat more severe than that which should be imposed upon a first offender; and that, in this case, the convict should be sentences a prison sentence in addition to a fine.

The judgment of conviction of the lower court is affirmed, but the sent of deportation is reversed, and in lieu thereof the convict is hereby sentenced to three months' imprisonment and to the payment of a fine of P300, with subsidiary imprisonment according to law in the event of insolvency and nonpayment of the fine, and to the payment of the costs in both instances. So ordered.

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

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