

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TE TONG (ALIAS TUÑGA), DEFENDANT AND APPELLANT.*G.R. No. 8645. December 29, 1913*

Ponente: MORELAND, J.

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This is an appeal from a judgment of the Court of First Instance of Cebu convicting the accused of the crime of attempted bribery and sentencing him to pay a fine of 6,000 pesetas, an additional fine of 750 pesetas, with subsidiary imprisonment in case of insolvency, and declaring confiscated the P500 which constituted the sum offered as the bribe; with costs.

It appears that on the 28th day of August, 1912, A. J. Robertson was a police official known as a comandante of the Province of Cebu, having his official residence in Cebu, the capital of said province. On said date the two Chinamen Yap Shut and Te Tong, together with others, were surprised in a gambling game known as jueteng and were arrested and charged with gambling. At the time of making the arrest the police officials seized various books belonging to the person in charge of the game, together with other articles and utensils used therein. These books and articles were kept under the personal supervision of Comandante Robertson, who placed them in an iron safe in his office. On the night of the 30th of August an unknown Chinaman was found by Robertson conversing with his Chinese cook in the kitchen. Robertson asked the cook who the Chinaman was. In reply the cook informed him that the Chinaman desired to speak with him regarding certain books which had been seized during the gambling raid made just previously, saying that certain interested Chinamen desired to be allowed to remove the books from Robertson's possession and substitute others in their place. Robertson thereupon agreed to make the substitution provided that he was paid a sufficient sum of money therefor. Thereupon the unknown Chinaman departed.

On the night of the 1st of September following, the accused Te Tong went to Robertson's house, saying to him that he brought with him a sum of money as a consideration for the substitution of the books. Prior to that time Robertson had made arrangements with two members of the police force to place themselves secretly in a position where they could see and hear all that passed between him and the Chinaman. Robertson lighted the lamp, opened his iron safe and took out the books. The Chinaman Te Tong thereupon began to examine the books, picking out two of the larger ones, they being those that contained evidence very damaging to his case. After having picked out the books Te Tong delivered to Robertson other books similar in appearance which were to be used as substitutes. After the substitution had been made Robertson asked Te Tong for the money which he had offered to pay for the substitution. Te Tong answered that the money was at his house; but Robertson insisted upon immediate payment, and the Chinaman thereupon drew from his pocket a roll of bills amounting to P500 and delivered it to Robertson. As the Chinaman started to leave the office Robertson called to the two policemen who came forward and stated that they had seen and heard all that had transpired. The Chinaman was then arrested.

The facts are proved beyond shadow of doubt. The only question is whether the crime is attempted, frustrated, or consummated bribery. In similar cases we have held the crime to be attempted. (*U. S. vs. Sy-Suikao*, 18 Phil.

Rep., 482; U. S. vs. Paua, 6 Phil. Rep., 740; U. S. vs. Camacan, 7 Phil. Rep., 329; U. S. vs. Tan Gee, 7 Phil. Rep., 738.)

In the case of United States vs. Sy-Suikao, above, it appeared that the defendant offered an officer of the Bureau of Internal Revenue P5 a barrel for each and every barrel of spirits which that officer would permit the defendant to withdraw from the warehouse in which it was stored without exacting¹ the taxes which under the law the defendant would otherwise have been obliged to pay. The officer pretended to accept the offer and to enter into the proposed agreement, but, as a matter of fact, reported the matter to his superiors and procured the arrest of the defendant after five barrels of spirits had been removed from the warehouse under the agreement. The crime was held to be attempted bribery.

In the case of United States vs. Paua (6 Phil. Rep., 740), the court dealt with a case in which the accused paid to one Frank C. Lane, inspector of hulls and boilers of the customhouse of Manila, the sum of P200 as a guaranty of an agreement to pay P500 in case said Lane would issue a certificate for the steamer Iruña, although the said steamer did not then fulfill the conditions required to receive a certificate to go to sea. While pretending to accept said sum Lane was in reality trying to entrap the accused and immediately thereafter reported the matter to his superiors and to the police. The crime in that case was held to be attempted bribery.

In the case of United States vs. Camacan (7 Phil. Rep., 329) it appeared that certain Constabulary officers were set to guard a corral in which was kept a considerable number of carabaos. On the night of the day on which the Constabulary officers took possession of the corral Camacan approached one of the officers and offered him P40 for the privilege of removing from the corral four of the carabaos. The officer accepted the agreement. The P40 was paid, P10 in cash and a promissory note for P30. The carabaos were not, however, in reality delivered to the accused, the Constabulary officer seeking simply to entrap him. The crime committed in that case was held to be attempted bribery.

The case of United States vs. Tan Gee (7 Phil. Rep., 738) was of a similar nature, and the crime in that case was held to be that of attempted bribery.

While there is some authority to the contrary, we are of the opinion that we should follow the substantially uniform holding of this court which declares the crime to be attempted bribery.

The judgment is affirmed, with costs against the appellant.

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

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