

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AH TUNG, HAO YOU KEE AND LIM TIONG TIM, DEFENDANTS. LIM TIONG TIM, APPELLANT.

G.R. No. 8946. December 20, 1913

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal taken by Lim Tiong Tim, one of the defendants in the court below, from a judgment sentencing him to pay a fine of P1,000 or to suffer subsidiary imprisonment in case of insolvency, upon conviction of the offense charged in the information, which is as follows:

"That on or about November 21, 1912, on board the steamer Siberia, anchored in Manila Bay and tied up at pier No. 5 of this city of Manila, P. I., and within the jurisdiction of this court, the said accused, conspiring together and combining among themselves, did willfully, unlawfully, criminally and fraudulently, and knowingly, import and introduce into the Philippine Islands from a foreign country, and did aid in the importation and introduction into the Philippine Islands from a foreign country, in violation of law, goods, articles, and merchandise, to wit: 976 grams of morphine, which is a derivative of opium, having a value of P100 Philippine currency; and at said time and place the said accused, conspiring together and combining among themselves, did receive, conceal, and aid in transporting, receiving and concealing the said quantity of morphine, after it had been imported, knowing that said drug had been illegally imported into the Philippine Islands from a foreign country."

The evidence discloses that on the 21st day of November, 1912, one Andrews, supercargo of the steamer Siberia, which was at that time lying in Manila Bay, was arrested by a customs secret service agent while in the act of bringing two sacks of morphine on shore; that Andrews informed the customs authorities that the morphine had been turned over to him by a Chinaman on board the steamer Siberia to be delivered to another Chinaman whose name he did not know but who would be found in house No. 389 Calle Anloague; that therupon Larsen, a customs secret service agent, went with Andrews to the house designated by him; that on entering this house they found Lim Tiong Tim seated at a table; that after saluting the accused, Andrews told him that he came from the steamship Siberia; that on hearing this the accused spoke in Chinese to some other Chinamen who were in the room at the time, and who left immediately; that the accused asked Andrews and Larsen if they had brought those things with them; that they replied that they had, and handed him the two sacks of morphine which Andrews had brought on shore from the Siberia; that the accused took the sacks and after feeling them asked if there were not more than two; that upon being told that those were all, he threw the sacks under the table; that having been requested to give a receipt, he called another Chinaman, Hao You Kee (one of the codefendants in the trial had in the court below) and that at his direction this Chinaman wrote a receipt, which was made a part of the record and marked Exhibit B; that when this receipt was completed, Larsen informed the accused and Hao You Kee that they were under arrest; that the accused then attempted to run away, but was captured and made a prisoner; that in due course they, together with another Chinaman named Ah Tung, were held for trial on the charge set forth in the information set out above.

Upon proof of these facts the trial court convicted the defendant Lim Tiong Tim and acquitted the defendants Ah Tung and Hao You Kee. It appears that Andrews was tried separately, pleaded guilty to the illegal importation of the drug, and was convicted and sentenced therefor.

The accused insists that he knew nothing whatever about the morphine in question or its alleged illegal importation; that the house in which he was arrested did not belong to him; and that the secret-service agent Larsen forced Hao You Kee to write the receipt at the point of a revolver. We are of opinion, however, that the weight of the evidence sustains the story told by the witnesses for the prosecution and the findings of fact by the trial judge, who saw and heard the witnesses testify, and that these findings sufficiently establish the guilt of the appellant of the offense with which he was charged. We think that the evidence conclusively establishes that the two sacks of morphine were sent from on board the *Siberia* to the accused; that he was expecting them under some arrangement previously had with the sender; and that when he received them and ordered the preparation of the receipt he knew the nature of their contents. We are convinced that while it may be and doubtless is true that the secret service agent drew a pistol at the time of making the arrest, the accused directed the preparation of the receipt voluntarily and in the ordinary course of the transaction, and we are satisfied that it was not until after the receipt had been prepared or was in course of preparation that the revolver was drawn and the accused placed under arrest.

Counsel for appellant makes four assignments of error, as follows: "(1) The court erred in allowing the alleged statements of Andrews to be admitted against the defendant Lim Tiong Tim not made in the presence of said defendant, and in the admission of the receipt; (2) the court erred in its decision in its probative finding of fact relating to the actions and conviction of Andrews, it not being shown that the defendant Lim Tiong Tim knew Andrews or ever had any connection with him prior to his arrest; (3) the court erred in its finding that the defendant Lim Tiong Tim received the morphine, knowing that it was contraband morphine, or in accordance with an arrangement made previously with the smugglers on board the ship; (4) the court erred in allowing the defendant Lim Tiong Tim to be cross-examined in reference to another criminal case in which he had been convicted, and in allowing the introduction in evidence of the sentence in that case after the defendant had admitted his prior conviction."

In regard to the first assignment of error it is sufficient to say that the statements made by Andrews as to the circumstances under which, he had received the two sacks of morphine and his commission to carry them to the house on Calle Anloague do not appear to have been admitted in evidence as declarations of one of several conspirators binding; on his coconspirator, but rather by way of explanation of the proceedings adopted by the customs secret service agent in going to that house and there turning over the morphine to the accused. Its value as evidence against the accused is derived solely from the natural and necessary inferences to be drawn from the conduct of the accused, when examined in the light of the evidence showing the circumstances under which Andrews and the secret-service agent called at the house where they found him and turned over to him the contraband drug. As to the receipt prepared by Hao You Kee, We think that the evidence sufficiently discloses that it was prepared at the order of the appellant and that it was prepared voluntarily in the ordinary course of the transaction, and was not executed at the point of a revolver as alleged by appellant.

What has already been said sufficiently disposes of the second and third assignments of error.

The fourth assignment of error seems to have for its basis the contention of counsel that proof of a previous conviction should not be admitted until after judgment of conviction of the offense for which the accused is being tried has been rendered, a rule of practice which has been adopted in some States of the Union by statute and in others by the courts in all cases where the question of the guilt or innocence of an accused person is tried by a jury. The basis of the rule is the fear that the introduction of evidence of a former conviction may have a tendency

to prejudice the jury against the accused, and to make them think that his prior character is bad. But in the absence of a statute providing a contrary rule the practice in the United States is by no means uniform and "usually the State is permitted to put in the record of the prior conviction as a part of its case before the verdict is reached on the substantive crime." (Underhill on Criminal Evidence, par. 512, note 20, and cases there cited.)

In New York it has been held that as a prior conviction is a fact of criminality which the State must prove, the admission of a prior conviction by counsel for the accused does not preclude the State from proving it, particularly where the admission does not concede the prior conviction as alleged in the indictment, and is made after the State has begun its case. (People vs. Jordan, 125 App. Div. (N. Y.) 522; 109 N. Y. S., 840.) In People vs. Sickles (156 N. Y., 541; 51 N. E., 288), it was held that "the rule is the same as to the right of the State to prove a prior conviction, even when it was conceded before the jury was impaneled."

We are of opinion that the rule contended for by counsel for appellant has no proper place in the practice in this jurisdiction where the question of the guilt of the accused is determined by the trial judge without the aid of a jury. As a rule it is more convenient and practicable for all parties concerned that such evidence be introduced during the trial, and the fear that its introduction may prejudice the judge against the accused is hardly sufficient to justify us in laying down a different practice. While the knowledge that the prosecution intends to submit evidence as to a former conviction may readily be kept from a jury until it has returned its verdict, it would be impossible to keep such knowledge from the judge who presides at the trial. If a trial judge were weak enough to be unduly influenced by evidence of a former conviction he would doubtless be influenced in like manner by knowledge that the prosecution intends to submit evidence as to a former conviction, and in that event it might be of the utmost importance to the accused that he should have an opportunity to remove any such prejudice in the mind of the judge by the introduction of evidence refuting the charge as to a former conviction.

We conclude that in this jurisdiction, where all trials in criminal cases are had without the aid of a jury, the evidence as to a former conviction is properly introduced at the trial of the subsequent charge, and that the trial judge must be relied upon to hear all the evidence without being swayed by prejudices, which might readily affect a body of jurors less experienced and skilled in the administration of justice than he must be presumed to be.

Of course, in such cases, the best evidence of a prior conviction is a certified copy of the original judgment of conviction, and such evidence is always admissible and conclusive unless the accused himself denies his identity with the person convicted at the former trial. As to the alleged irregularities in the cross-examination of the accused when on the witness stand, it is sufficient to say that at most they constituted error without prejudice.

We are of opinion and so hold, that the guilt of this defendant and appellant of the crime with which he was charged was conclusively established in the court below, and we find no error in the proceedings prejudicial to the substantial rights of the accused. The judgment convicting and sentencing him, modified by the addition thereto of six months' imprisonment (in accordance with our practice, the grounds for which are laid down in the case of United States vs. Tan Yak, 25 Phil. Rep., 116), should be and is hereby affirmed, with the costs of this instance against the appellant.

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

MORELAND, J., concurring in part:

I agree to the conviction but not the change of penalty.

The principle underlying the change of penalty abrogates the law relating to discretionary penalties, deprives the trial court of some of its most important functions, and reduces it to a mere puppet moved, in the administration of the law, not by its own judgment but by the substituted judgment of this court.

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