

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DY LUCHIAT, DEFENDANT AND APPELLANT.

G.R. No. 8947. December 24, 1913

Ponente: CARSON, J.

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CARSON, J.:

Appellant pleaded guilty in the court below on a charge of a violation of the Opium Law, and was sentenced to three months' imprisonment and the payment of a fine of P100, to suffer subsidiary imprisonment as provided by law in case of insolvency and failure to pay the fine, and to the payment of his share of the costs in the court below.

Counsel for appellant, relying on our decision in the case of *United States vs. Lim Sing* (23 Phil. Rep., 424), insists that the sentence should be modified by substituting a fine of not less than P300 for so much thereof as imposes a prison sentence, it appearing that this is appellant's first conviction of a violation of the Opium Law.

It appears, however, that in imposing the prison sentence the trial judge had in mind the fact that the amount of opium which was seized in the possession of the appellant (some four or five ounces) was such as to raise a presumption that he was engaged in "exploiting the vice," and trafficking in the forbidden drug. While some question might well be raised as to whether the amount of the drug found in the possession of the defendant and his codefendant in the court below was sufficient to justify the inference drawn therefrom by the trial judge, nevertheless, the penalty imposed being, well within the limits prescribed by law, we do not think that we would be justified in disturbing his action in this regard.

The sentence should, however, be modified by striking out therefrom the fine of P100, since the law expressly provides a minimum fine of P300 in any case wherein the courts in the exercise of their discretion impose a fine, either as the sole penalty, or together with a prison sentence.

Modified by striking out therefrom the fine of P100 and subsidiary imprisonment in the event of insolvency and nonpayment, the judgment convicting and sentencing this appellant should be and is hereby affirmed, with costs against the appellant.

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

Moreland, J., concurs in the result.

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