

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAN CHIA,
DEFENDANT AND APPELLANT.***G.R. No. 9597. January 06, 1915*

Ponente: MORELAND, J.

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This is an appeal from a judgment of the Court of First Instance of Manila convicting the appellant of the crime of illegally possessing opium and sentencing him to 4 months of imprisonment and to pay the costs of the trial.

It is charged, "That on or about the 18th day of November, 1913, in the city of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully, and feloniously have in his possession and under his control 130 grams of opium and 65 grams of opium ash."

The evidence clearly supports the conviction; so clearly, in fact, that the guilt of the accused is not seriously questioned on this appeal. The only argument made is addressed to the severity of the penalty imposed, it being urged that the companion of the accused in the possession of the opium described in the information, and who pleaded guilty to the charge against him, was sentenced to pay a fine of P300, whereas the appellant was sentenced to imprisonment for four months; that the difference in penalty as demonstrated is a manifest injustice to the appellant and that his penalty should be reduced accordingly. In reply to this argument the Attorney-General contends that "Act No. 1761, as amended by Act No. 1910, gives the trial court the right to exercise discretion in the application of the penalty, the only limitation being that the fine imposed shall not exceed 710,000 or be less than P300, and that the imprisonment shall not exceed five years or be less than three months," and adds that "the penalty imposed by the court below was within its discretion and is accordingly fully supported by the law." It is undoubtedly the rule, generally speaking, that an appellate court will not interfere with the penalty imposed by the trial court where the statute gives the trial court discretion in the application of the penalty and the penalty imposed is within the limits designated. (U. S. vs. Jao Quico, R. G. No. 9409, filed August 4, 1914 (not reported) ; U. S. vs. Palanca Dy Tiamco, R. G. No. 9463, filed August 4, 1914 (not reported) ; U. S. vs. Ku Lu Kim, R. G. No. 9713, filed August 31, 1914 (not reported); 3 Cyc, 325, 327; 12 Cyc, 905, 906; Baldwin vs. State, 75 Ga., 482; Whittin vs. State, 47 Ga., 297; Farris vs. State, 35 Ga., 241; People vs. Kelly, 99 Mich., 82; State vs. Barrett, 40 Minn., 65; State vs. Herrick, 12 Minn., 132; Wright vs. State, 45 Neb., 44; Weinecke vs. State, 34 Neb., 14; Morrison vs. State, 13 Neb., 527; People vs. Williams, 58 Hun, 278; State vs. Miller, 94 N. C., 902; Tarrant vs. State, 4 Lea, Tenn., 483; March vs. State, 35 Tex., 115; People vs. Schafer, 161 Cal., 573; Fitts vs. Atlanta, 121 Ga., 567; Keeler vs. State, 73 Neb., 441; People vs. Sharrar, 164 Mich., 267; State vs. Bjelkstrom, 20 S. D., 1; State vs. Van Waters, 36 Wash., 358.)

The judgment of conviction and the penalty imposed thereunder are affirmed, with costs. So ordered.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

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