

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SANA LIM ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 9604. November 19, 1914

Ponente: TORRES, J.

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TORRES, J.:

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SANA LIM ET AL., DEFENDANTS AND APPELLANTS. body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } This action has come before us on appeal raised by the defendants Sionga Yap, Sana Lim, and Dina Lim, from the judgment of December 8, 1913, whereby the Honorable Adolph Wislizenus, judge, sentenced Tiburcio Ricablanca, King Kong Kiang (alias Esteban), Sionga Yap, Sana Lim and Dina Lim each to the penalty of six years ten months and one day of prison mayor, and to pay, each of them, one-ninth of the costs. In the same judgment Rufino Cortes and Pedro Blando were acquitted, and by two orders of the same date, December 3, 1913, upon the petition of the provincial fiscal, the case was dismissed with respect to Eleno Suizo, in order to use him- as a witness, and also Manuel Balbuena, with the costs de officio. (Record, pp. 24 and 25.)

The record in this case shows that it was duly proven that some days prior to September 11, 1913, the Moro named Jamilassan disembarked from a vinta or small native boat, in which he and other Moros were traveling, upon the beach of the barrio of Simala, pueblo of Sibonga, Island of Cebu, carrying with him 101 tins of opium, belonging to his employer, the Moro Tahil, for the purpose of selling the drug; that Jamilassan thereupon went to the store of the Chinaman King Kong Kiang (alias Esteban), situated in the said barrio and near the shore, to sell the opium, but that this Chinaman, instead of agreeing to buy it, went to the town of Sibonga and proposed its purchase to another Chinaman named Sionga, who in turn approached another Chinaman named Sana for the same purpose; that, as Sana did not have the money, Sionga then went to the municipal treasurer of the pueblo, Tiburcio Ricablanca, to report the fact that the opium was being offered for sale; that Rica-blanca thereupon conceived the idea of seizing the opium brought by the Moro Jamilassan, with the intent to obtain unlawful gain, and, with this purpose in view, arranged that one of the Chinaman should pretend that he would buy the opium and upon his acquiring it the treasurer and his accomplices would proceed to arrest the Moro, seize the opium for the purpose of appropriating it to themselves, substitute molasses for a part of it and deliver to the authorities the molasses and a part of the opium so seized, together with the bearer of the drug.

In order to carry out the plan thus conceived, the Chinamen Sionga and Dina went to the pueblo of Carcar to buy molasses from the Chinaman Yap Chian, while the treasurer Ricablanca gave orders to the police sergeant Eleno Suizo to take two subordinates, dressed as civilians and without uniforms, and accompany those who were to execute the deed. On the night of the said 11th of September, 1913, the Moro Jamilassan, who, with his companions and his employer Tahil, was in the small boat anchored off the shore of the said barrio, believing that

the Chinaman would buy the opium, went ashore carrying a sack that contained 101 tins of opium worth P3,333, or P33 a tin. Prior to his leaving the boat, the defendants had posted themselves in the vicinity of the place where the Moro was to land. When Jamilassan, who was carrying the opium, drew near to Sionga, the pretended purchaser, the latter, according to an arrangement previously made with his companions, twice lit some matches, whereupon the defendants appeared upon the scene preceded by the sergeant and his policemen who, brandishing their weapons to frighten the Moro, arrested him and seized the opium he was carrying in the sack. At this moment, as the Moro succeeded in escaping toward the boat, the sergeant fired his revolver four times and the treasurer Ricablanca also fired his. Thereupon the Moros in the boat precipitately fled from the shore, but the one who carried the opium was finally captured.

The defendants then appropriated to themselves 77 tins of the opium, set aside 12 of them, and for the contents of the remaining 11 tins they substituted molasses, 1 tin having been lost. These 12 tins of opium and 11 tins of molasses were delivered by them to the authorities as having been legally seized in the possession of the Moro Jamilassan, the bearer of the drug.

By reason of the foregoing facts, the provincial fiscal filed in the Court of First Instance a criminal complaint against the Chinese appellants, the municipal treasurer of the pueblo of Sibonga, some policemen and others who took part, charging them with having seized opium of the value of P3,300, the property of a Moro named Tahil, willfully, maliciously, and criminally, with intent to gain and by the use of violence and intimidation against the person of the Moro Jamilassan, who was carrying the said drug.

Article 502 of the Penal Code prescribes that the crime of robbery is committed by any person who, with intent to gain, shall take any personal property by the use of violence or intimidation against any person or force upon any thing.

Although the subject matter of the robbery was an article whose introduction, use, and keeping were, and are, strictly prohibited by the laws in force in these Islands, wherefore all public officers vested with authority, and their agents, are under obligation to prosecute any violation of the law and to seize the prohibited drug and all similar substances which are of course confiscated, unless their use or keeping has been expressly authorized by competent authority; yet, when it has been fully proved at the trial that the capture and seizure of the opium was effected by a public officer, assisted by agents of the authorities, with the decided intent to gain thereby the price or value of the opium so seized, and not with the intention to comply with the law and further the purposes of the Government in the eradication and suppression of the vice of its use, one which is very prevalent among the Chinese residents of these Islands and is also spreading among the native inhabitants; and when the commission of the unlawful act was attended by violence and intimidation against the person who was carrying the opium, it is improper to consider such taking-and seizure as lawful and permissible, even though executed by agents authorized to arrest and prosecute opium smugglers, inasmuch as the seizure of the opium was effected with intent to gain and by the use of violence and intimidation, in the present case, against the person of the Moro who, as the agent of its owner, had possession of the drug.

The seizure of the opium and the arrest of its bearer by the agents of the authorities is indeed permissible and perfectly lawful; but that such agents, with the intent and purpose of appropriating to themselves the opium seized and of deriving benefit from its use or sale, should, with impunity and entire security, possess themselves of the opium, cannot be tolerated. Until the agents of the authorities have taken charge of it in the manner prescribed by the administrative law, it is the property of the owner. The Moro Jamilassan having been deprived of the 101 tins of opium, which, by order of the owner of the drug, he was carrying to sell, and this taking having been effected with violence and intimidation on the part of the agents of the authorities, who acted in apparent compliance with the law, but really with intent to obtain unlawful gain, it is unquestionable that the crime of robbery, provided for

and punished by articles 502 and 503, paragraph 5, of the Penal Code, was committed. The legality and correctness of this classification of the crime are in no wise affected by the circumstance that the persons who committed it were agents of the authorities, assisted by some private parties, since the public character with which these agents were invested does not justify the criminal intent that prompted the execution of the punishable act, nor can it change the nature of the crime they committed, inasmuch as, on the occasion of its perpetration, they acted, not as agents of the authorities in the fulfillment of the duties imposed upon them by the law, but as mere private parties, accompanied by some Chinamen, all of whom conspired together and concerted, under the direction of the treasurer Ricablanca, for the purpose of seizing a considerable quantity of valuable opium which was not their property, but belonged to the Moro Tahlil, and which is an article that, upon seizure and confiscation within the territory of this Archipelago, becomes the property of the Government. In this connection it is to be noted that the treasurer Ricablanca, before proceeding to seize the opium, gave no notice either to the municipal president or to the local chief of the Constabulary, nor did he request the latter's assistance; all of which shows that he did not act in good faith and according to the law.

Without discussing the guilt of the defendant Ricablanca and the Chinaman King Kong Kiang, neither of whom has appealed, we shall confine ourselves in this decision to inquiring into that of the appellant Chinamen Sionga Yap, Sana Lim, and Dina Lim. Their participation in the robbery under prosecution was very different from that of the first two, inasmuch as Sionga Yap was present with the policemen during the perpetration of the robbery, he took a direct part therein and cooperated in its commission by the performance of acts without which, perhaps, his coparticipants would not have succeeded in seizing the opium. It was he who pretended to purchase the drug by placing himself in direct communication with the Moro who carried it, and arranged the place and time when the latter should appear on the beach at Simala with the opium for sale; it was this same Chinaman who, in accordance with the agreement he had made with his codefendants, went to the shore ahead of the latter there to await the Moro Jamilassan who was expected with the opium; he, too, it was, who signaled the arrival of the Moro on the shore, by lighting two matches, at which signal the policemen and their companions came up and the former rushed upon the Moro, held him fast, and by force possessed themselves of the opium, the securing of which was the purpose of the common action of the plotters. It cannot be denied, therefore, that Sionga participated as a coprincipal in the perpetration of the robbery in question.

We are of the opinion that the other two appellants, Sana Lim and Dina Lim, acted as accomplices in the commission of the crime. They cooperated by acts prior to and simultaneous with its perpetration, but the record does not show that they performed acts that were necessary and indispensable for its realization. With knowledge of the commission of the robbery and with the intent to obtain unlawful gain, they accompanied the principals in the crime up to a certain distance from, though not near, the place where it was perpetrated, but did not approach that place until after the robbery took place and then for the sole purpose of sharing in the booty or the division of the opium stolen. Hence, as these two defendants do not fall within any of the three classes specified in article 13 of the Penal Code, which treats of principals, the said Sana Lim and Dina Lim are to be considered as mere accomplices of the principals in the robbery.

Counsel for the defendants, arguing against the classification of the crime, alleges that at most it should be defined as estafa, and in support of his contention cites several decisions of this court and of the supreme court of Spain, where the principle is laid down that such acts should be qualified as estafa and not robbery, for the reason that the agents of the authorities were authorized to seize the opium and the persons having it in their possession or who were its owners, and because the officers of the law could not, in the act of the seizure of a prohibited article, have exercised violence and intimidation upon the person of a transgressor; that if after the seizure of the opium, they conceived the purpose of gain and it was then that they appropriated to themselves the opium seized, they would in such a case have committed the crime of estafa, but not that of robbery.

In answer to these allegations we must state that the robbery was engendered from the very moment when the principals resolved to possess themselves of the opium carried by the Moro Jamilassan, with the fixed and malicious intent to obtain unlawful gain from the said drug which, as was well and publicly known, obtained a high price among the Chinese, its chief consumers. With that end in view, they came to an agreement, formed a conspiracy among themselves and, under the direction of the treasurer Ricablanca, decided upon the method by which they should possess themselves of the opium so that they might derive profit from its sale. They later took the opium from the possession of its bearer by means of violence and intimidation, since four shots were fired by one of the policemen and another by the treasurer Ricablanca, who was present at the commission of the robbery. There is, therefore, no question that the persons who, with malicious intent to obtain unlawful gain and by the use of violence and intimidation, forcibly possessed themselves of the opium carried by the Moro Jamilassan, proceeded and acted in the same manner as robbers usually do who, with intent to gain, take possession of another's property against the will of its owner.

In the cases cited by the defense to show that the crime under prosecution should be classified as estafa and not as robbery, the guilty persons first acted in good faith in the discharge of their duties and without any unlawful intention, and the intent to derive illicit gain was formed only after they had legally seized the property. For this reason those acts cannot be classified as robbery, only as estafa, because prior to and at the time of their performance, they acted as agents of the authorities and in accordance with law, and only after they were in possession of the property, did they conceive the idea of deriving profit therefrom by appropriating it to themselves for personal gain.

In the case at bar, both the treasurer Ricablanca and the Chinese appellants, from the moment they proposed to seize the opium which the Moro Jamilassan carried for sale, had the intention to appropriate to themselves the greater part of the drug. They even planned to deceive the authorities by substituting molasses for the contents of 11 of the 23 tins of opium which they presented to the said authorities as legally seized from Jamilassan. They kept 77 of the tins so seized and made no report of them to their superior, nor does the record show that these tins were afterwards recovered from the possession of the defendants. Therefore it is just and proper that the crime in question should be classified as robbery, and not as estafa.

In the commission of the crime account must be taken of the attendance of the aggravating circumstance No. 15, to wit, that the crime was committed in the nighttime and in an uninhabited place, without any extenuating circumstance to offset its effects. No weight can be given to abuse of superior strength, that circumstance being inherent in the crime of robbery, even though it were not committed by a band of armed men.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, the said judgment is affirmed in so far as it agrees with this decision and reversed in so far as it does not, and we hereby sentence the Chinaman Sionga Yap, as a principal, to the penalty of six years ten months and one day of presidio mayor and to the accessory penalties of article 57, and each of the other Chinamen, Sana Lim and Dina Lim, as accomplices, to six months of arresto mayor and the accessory penalties of article 61. Furthermore, Sionga is sentenced to restore, jointly and severally with his coprincipals, the opium stolen or to pay the value thereof to the Government of the Philippine Islands, and the accomplices, Sana Lim and Dina Lim, are held to be bound, also jointly and severally between themselves and subsidiarily in default of fulfillment, for the civil liabilities incurred by the principals, and each of the three appellants shall pay one-third of the costs of this instance. The opium seized and all quantities thereof that may be recovered shall be confiscated.

Arellano, C. J., Carson and Araullo, JJ., concur.

CONCURRING**JOHNSON, J.**

In my opinion, the facts set forth in the decision by Justice Torres are in accord with those found in the record, and the conclusions are supported by law.

DISSENTING**MORELAND, J.**

The doctrine promulgated by this decision seems to me so unusual and strange that I feel myself constrained to dissent.

The crime charged and for which the accused were convicted is robbery of 11 cans of opium.

The simple facts are that the appellants were members of the police force of the barrio of Simala, municipality of Sibonga, Cebu Province, and on the night of the 11th of September, 1913, as such police officers, in the discharge of their duty, arrested certain Moros and others for the crime of illegal possession of opium and seized 101 cans of opium, then and there found in their possession. The persons arrested were conveyed in the regular way before the proper officials and were subsequently tried and convicted and are here now on appeal. Before arriving at the municipal building with the prisoners the appellants, with others, abstracted the contents of 11 of the cans and put in place thereof some other substance not opium, the opium thus abstracted being converted by the appellants to their own use and benefit and to the use and benefit of others. It is admitted that the seizure of the remaining 90 cans was legal, proper and commendable.

This is all there is of this case.

It is contended by the court that the crime of robbery was committed because the opium was taken by force and violence.

In my judgment the case, as put by the court, cannot be stated without involving irreconcilable contradictions. It is unquestioned, of course, that it was the duty of the appellants as peace officers of the municipality of Sibonga to arrest all people found in the illegal possession of opium and to seize the opium found. No one disputes this. It is done every day in all parts of the Islands. If the appellants had not arrested the possessors of the opium and seized the opium itself as they did, they would have been recalcitrant in their duty and would have made themselves liable to disciplinary punishment, if not removal from office.

How, then, is it possible to contend that their arrest of the persons found in possession of the opium and the seizure of that opium was illegal and constituted robbery by the use of force and violence against the persons who possessed the opium?

It is, of course, unquestionable that one of the essential elements of robbery is force and violence either upon the person or upon the thing. If the acts which constituted the force and violence are not only legal acts but acts which the parties who executed them are in duty bound to perform and such performance is in the interests of the public, how can they constitute robbery by force and violence? The mere statement of the proposition discussed in the case is a refutation of the conclusion. It is a perfect contradiction of terms to assert that an officer of the law who legally arrests a person guilty of a crime and seizes the property which constitutes the gravamen of the offense is guilty of an illegal use of force and violence upon the person arrested and the property seized.

The proposition which I assert is clearly and explicitly sustained in the case of *United States vs. Atienza* (2 Phil. Rep., 242). In that case a lieutenant ordered a soldier to seize all the money in the possession of a certain person, it being believed that such money was the property of a revolutionary officer. He did so, but before delivering the money to his superior officer appropriated a portion of it to his own use and benefit. He was charged with robbery, as in the case at bar, for having taken the property with force and violence.

The court, discussing that proposition, said: "Nevertheless, this act does not constitute the crime of robbery, with which the accused is charged in the complaint. The seizure of the money in Father Ilagan's house and that of his family was not in itself unlawful, because it was done in obedience to a lawful order given for that purpose by competent authority. The unlawful and punishable appropriation took place subsequently to this act, when the money appropriated was lawfully in the possession of the accused. The order given to him by his commanding officer was for the precise purpose of the seizure of this money, and consequently the seizure in itself does not constitute an act of unlawful taking, a necessary element for the existence of the crime of robbery, as well under the different cases covered by article 502 and the other articles included in the chapter of the Penal Code, which deals specifically with robberies, as in the special case covered by article 206 of the said code."

This case is conclusive of the case before us. The seizure of the opium in the case at bar "was not in itself unlawful, because it was done in obedience to a lawful order given for that purpose by competent authority." In the case at bar it was the duty of the appellants, and they had received orders, to arrest all persons found in the illegal possession of opium and to seize the opium. In the case cited "the order given to him by his commanding officer was for the precise purpose of the seizure of this money;" in the case at bar the order given to the appellants was for the precise purpose of the seizure of the opium.

In my judgment, there is confusion in the decision as to the nature of the crime committed. The unlawful act took place after the arrest and seizure. It is clear that the officers, in converting to their own use a part of the opium after it had been legally seized, committed a crime; but they took advantage of their official position to get the opium into their possession in a lawful manner. Their whole purpose was to avoid the necessity of robbing the possessors of the opium by forcibly seizing it. They preferred, and it was their precise purpose, to obtain possession of the opium in a legal manner, and they took advantage of their official position to that end. Afterward they again took advantage of that lawful possession to profit illegally. It was, I repeat, their object to obtain legal possession and they did obtain it by making a bona fide arrest and a bona fide seizure and presenting the prisoners and most of the property seized to the proper public officials for further action in the premises.

It is clear that the crime committed is misunderstood by the court. It probably constitutes the crime of *estafa* or possibly, of *malversation of public property*, the opium being subject to confiscation on the conviction of its possessors for a violation of the Opium Law. The fact that the persons committing the *estafa* were public officials would be an aggravating circumstance under paragraph 11, article 10, of the Penal Code, which provides that it shall be an aggravating circumstance if, in the commission of the crime, "advantage be taken by the offender of his public position."

If the crime were *malversation of public property*, then, of course, this aggravating circumstance would not apply, as it would be one of the circumstances qualifying the crime and not aggravating it.

That the crime committed is misunderstood by the court is clearly demonstrated by a further statement of the court in the case of *United States vs. Atienza*, above, which is as follows: "The subsequent conversion by the accused, after getting the money into his possession, by keeping part of it instead of turning it all over to the officer who directed the seizure, may perhaps constitute the crime of *malversation of public funds* or that of *estafa*, according to whether the accused may or may not be regarded as having been in the discharge of the duties of a public

officer when committing the deed, and that the money converted came into his possession by reason of his office."

This case clearly settles the whole question before us. It is logical and unequivocal. All the court agreed to the decision except Justice Torres, who dissented and who now presents, as the writer of the prevailing opinion, the same arguments which were presented by him in his dissent in the case of *United States vs. Atienza* and were there rejected. These arguments are now accepted.

It is urged as the basis of a distinction between the case at bar and the case of *United States vs. Atienza* that, in the case at bar, the intention was formed to convert the opium prior to the arrest, and that that intention made the arrest forcible, illegal, and criminal. The mere statement of this proposition is its own refutation. To assert that an act which is not only lawful but required by law is made illegal by reason of the intention of the official who performs it, is to state an absurdity. Moreover, with their intention to convert the opium to their own use ran also the purpose of getting possession of that opium legally, and they did it by exercising the duties of their office in a manner which the law not only approved but compelled.

Moreover, which of the 101 cans of opium did the officers, before the arrest, intend to convert to their own use? It is admitted that the 101 cans of opium, at the time they were seized, were all in one package, and that all of the cans were seized at the same time and by the same act. Prior to the arrest and seizure, therefore, the appellants had not decided upon any particular cans of opium, such as the 11 cans, and separated those out for the purpose of converting them after the arrest and seizure. If there was any intention at all to misappropriate any of the opium, it was an intention to misappropriate an undivided portion thereof, which portion was entirely unknown, so far as the specific cans are concerned, at and before the seizure thereof. It is impossible to say, therefore, as to which of the cans the evil intention of the appellants referred.

The absurdity of holding that the seizure of the 11 cans of opium was robbery may be still further demonstrated. As we have already said, it is admitted that the 101 cans of opium constituted and formed one package at the time of the seizure and that the seizure of the whole 101 cans was made at the same time and by the same act. Now, the seizure of the 11 cans, says the court, was a forcible and violent seizure and was so illegal and criminal as to constitute the crime of robbery. But what about the seizure of the remaining 90 cans? Was not the seizure of the 90 cans exactly like that of the 11, since all the cans were in one package and were all seized at the same time and by the same act? But the seizure of the 90 cans was admittedly proper, legal, and commendable. That being so, how can the seizure of the 11 cans be robbery? How can the seizure of a package, consisting of 101 cans of opium, be robbery as to a part of the package and perfectly legal and proper as to the balance? How is it possible, under the circumstances of this case, that the seizure of the 90 cans be legal and the seizure of the 11 cans be robbery? It is not possible, of course. The 11 cans and the 90 cans were intermingled in one package and constituted together the 101 cans seized on the arrest. The seizure of 1 can was exactly like the seizure of every other and had precisely the same effect and produced precisely the same result. Yet the court holds that as to the 11 cans the act was robbery and as to the 90 cans it was legally proper.

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