

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

G.R. Nos. 13013 and 13014. December 11, 1917

Ponente: MALCOLM, J.

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MALCOLM, J.:

The defendant was charged in the Court of First Instance of Ambos Camarines with two offenses growing out of one act. Under one information he was prosecuted for the illegal possession of opium. Under the second information he was prosecuted for bribery. In the first action, herein R. G. No. 13013, he was convicted and sentenced to four months imprisonment, to pay a fine of P400 or to suffer subsidiary imprisonment in case of insolvency, and to pay the costs. In the second action, herein R. G. No. 13014, he was convicted of attempted bribery and sentenced to pay a fine of P100 or to suffer subsidiary imprisonment in case of insolvency, and to pay the costs. The opium found in the possession of the accused and the amount of P50 offered as a bribe to the Constabulary were declared confiscated in favor of the Government of the Philippine Islands.

The salient facts as found by the trial court are as follows:

"On the 4th day of December, 1914, as a corporal of the Constabulary named Juan Lalizan and a soldier named Pascual Portejos were coming from the town of Daet to the town of Talisay, they met on the road the accused in a calesa and the corporal desiring to light his cigarette stopped the accused and asked him for matches.

"After the Constabulary soldiers stopped the accused, the latter turned so pale that they suspected him of being the bearer of some thing that is prohibited; in effect the soldiers decided to examine him and in the right hand pocket of his trousers they found a tin can wrapped in paper and a piece of rag. Immediately the soldiers said it was opium, and the accused answered that it really was opium and offered them the sum of P50 so they would not arrest or accuse him. Then the soldiers took possession of the opium and of the P50, and subsequently prosecution was begun against the accused.

"The tin can was exhibited to the court and contains 150 grams of opium more or less, which seems to be of the good and pure kind. * * *

"The proof shows beyond a reasonable doubt that the Chinaman knew that the package he had with him Was opium and that voluntarily he handed to the soldiers at the very moment of the arrest the sum of P50 in an attempt to prevent arrest and prosecution."

The findings of the trial court are in accord with the proof and have the effect of disposing of certain of the assignments of error. These facts are established by the testimony of the two Constabulary soldiers, the testimony of the disinterested witness Victoriano de los Santos, and the extra judicial confession of the accused, which under the rule established by the Supreme Court of the United States and the Supreme Court of these Islands can properly be received. {See U. S. vs. So Fo [1912], 23 Phil., 379.) It was further demonstrated at the trial that the package admitted in evidence as Exhibit A was the same package which was found in the possession of the

defendant and which contained opium. These facts are reenforced by well known doctrines of this court concerning animus possidendi. (See U. S. vs. Bando [1912], 23 Phil., 14.) The defendant was therefore properly found guilty beyond a reasonable doubt of the illegal possession of opium.

The second crime which was committed by the defendant can properly be classified as attempted bribery. (See U. S. vs. Sy-Suikao [1911], 18 Phil., 482; U. S. vs. Te Tong [1913], 26 Phil., 453.) The trial court found him guilty of a violation of article 387 in relation with article 383 of the Penal Code. The Attorney-General suggests that defendant is guilty of the higher offense punished by article 387 in connection with article 381 of the said Code. We agree with the trial court.

It results that the sentence of the lower court in case No. 2271, R. G. No. 13013 herein, for violation of the Opium Law, should be and is hereby affirmed. It results further that the sentence of the lower court in case No. 2300, R. G. No. 13014 herein for bribery, should be and is hereby affirmed. The portions of the sentence of the lower court providing for the confiscation of the opium and the amount of P50 offered as a bribe are likewise affirmed. The costs of this instance shall be taxed against the appellant. Let this decision issue in case R. G. No. 13013 and a certified copy thereof be attached to R. G. No. 13014. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Araullo, Street, and Avancena, JJ., concur.

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