

NGO YAO TIT ET AL., AND CHUA ENG CHENG, PETITIONERS, VS. THE SHERIFF OF THE CITY OF MANILA, RESPONDENT.

G.R. Nos. 9619 and 9620. March 28, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

These are applications for writs of habeas corpus.

The petitioners herein are detained under a commitment issued upon a final judgment¹ of the Court of First Instance of Manila convicting" them on a new trial, following an appeal from the municipal court of said city, of a violation of section 3 of Ordinance No. 152, and sentencing each one of them to pay P100 fine, with subsidiary imprisonment in case of nonpayment.

Section 3 of said ordinance reads as follows:

"SEC. 3. Visiting places where opium is smoked or dealt in prohibited.—No person shall visit or be present at or in any place where opium, or any of its derivatives or compounds, is smoked or otherwise used in or upon the human body, or unlawfully sold, given away, or otherwise disposed of."

Petitioners allege that the judgments of conviction are null and void and state the reasons therefor as follows:

" (1) That there is no evidence to support said judgment.

"(2) That the trial court in its findings as set out in the copy of the decision of said court hereunto attached and made a part hereof and marked Exhibit A, finds that it was not shown that petitioners or any of them were guilty of a violation of said Ordinance No. 152."

The decision of the court referred to is as follows:

"This action arises on an information presented against the accused for a violation of Ordinance No. 152, already tried and determined in the municipal court, wherein the accused were found guilty as charged and sentenced, each one, to pay a fine of P100, with subsidiary imprisonment in case of insolvency, in accordance with the law. The case is before this court for a new trial upon appeal from that judgment.

"During the trial Sergeant Worrel and Patrolman Peñalosa testified as witnesses. From their testimony it appears that in a house known as No. 363 Calle Ilang-ilang, in one of the living rooms thereof, there were found upon a bed certain utensils used in the smoking of opium, namely, a pipe, a lamp and three small packages, two of them empty and one containing a quantity of opium. They also testified that when they entered the room there was a strong odor of opium fumes and that the opium pipe found upon the bed was still warm.

"With respect to the evidence of the accused, their testimony establishes the entry of the house by the police and the arrest, but they avoided answering questions relative to the utensils that were found in the room, as to who was the person who was smoking opium there that night, as well as the designation of what person was occupying the room and bed on that night.

"There is no proof whatever, on the other hand, that the house, which was a Chinese club, was a place destined or habitually used for the smoking of opium, for if it had been other utensils for the smoking of the drug would have been found; and there not having been found more than those shown to the court, it may not be asserted that said house was destined or habitually used as a place for the smoking of opium.

"The defense in discussing the presence of the accused in the house maintained that they were not there as visitors but that they lived there. Four of the accused, Chua Eng Cheng, Chen Po, Uy Ching, and Ngo Tiao, were employees of the club, the first being the clerk, the second the cashier, the third the collector, and the fourth the cook. The other, Sec Hong, was a transient who had arrived from Tacloban three weeks before and was a guest at the club.

"It is not necessary to discuss the relations which the accused bore to the club on that night. The fact is sufficient that all of them were caught on that occasion in said house and that in said house opium was being smoked at that time. This is sufficient to establish a violation of Ordinance No. 152, article 3, if it is clear to the court that opium was being smoked there in that house at that time and that the accused were there present.

"Wherefore the court declares the said accused guilty of a violation of Ordinance No. 152, article 3, and affirms the judgment of the municipal court sentencing each one of them to pay a fine of P100 and to suffer the corresponding subsidiary imprisonment in case of nonpayment as provided by law."

The petitioners contend that, the Supreme Court having already held in the case of *United States vs. Ten Yu* (24 Phil. Rep., 1), that, before a conviction can be had under section 3 of Ordinance No. 152, "the defendants may prove, if the fact exists, that they visited the place described in the complaint lawfully and not in violation of the provisions or the spirit of said ordinance," and that, in effect, it must be shown, to sustain a conviction under said ordinance that the house visited was one generally used for the smoking of opium, and it appearing by an affirmative statement in the decision of the Court of First Instance that the house in question was a Chinese club and was not destined or generally used for the smoking of opium, and there being no finding that the accused were unlawfully there, the judgment of conviction has nothing to sustain it and is, therefore, absolutely void. That such being the case, a writ of habeas corpus will lie, it is contended, as imprisonment under a judgment absolutely void is an illegal imprisonment. In support of their contention petitioners cite numerous authorities folding in substance that, while a court may have authority to hear and determine a cause, its determination or judgment must be within the law and such power does not authorize it, simply because it has jurisdiction to render some judgment in the cause, to trample down the prisoners' fundamental and constitutional rights by pronouncing a sentence unauthorized by law. Or, to put the contention in another aspect, in addition to jurisdiction over the person and the subject matter, the court must have jurisdiction to render the particular judgment. Authorities are cited to the further proposition that habeas corpus will lie for the discharge of one imprisoned for an act which does not constitute any offense known to the law.

While the authorities cited sustain the propositions advanced, neither the one nor the other applies, in our judgment, to the case before us. It is admitted that the court had jurisdiction over the person of the petitioners and that it had jurisdiction to try a person accused of violating section 3 of Ordinance No. 152. There was, therefore, jurisdiction over the person and the subject matter. It is equally undoubted that, if the acts of the petitioners constituted the crime defined in that ordinance, they were properly convicted. It having been demonstrated by the evidence, as stated in the decision of the trial court, that the petitioners were found in the club house in question and that opium was being smoked therein, it became the duty of the court to determine, by the exercise of its judicial functions, whether such acts constituted the crime defined by the ordinance. This was a judicial determination admittedly within the jurisdiction and authority of the court to make. That being so, the exercise of that jurisdiction would not result in a void judgment, provided the court kept within the limits thereof. In the determination of the case before it, it is clear that the court kept fully within the limits of its jurisdiction and,

exercising the authority which it had a right to exercise within that jurisdiction, determined the question whether the acts developed by the evidence fell within the prohibition of the ordinance. This same question is one which is passed upon by a court every time it tries a criminal cause. That is one of the necessary adjudications. If it is to be held that a wrong determination of that question deprives the court of jurisdiction, then the correctness of a judgment of conviction in a criminal case will nearly always be determinate by a writ of habeas corpus. (Ex parte Coy, 127 U. S., 731.) This, of course, is not the function of that writ, and makers of legislation and constitutions which preserve the writ never intended that it should be used in that manner and for that purpose.

The petitioners also cite authorities, among them cases of this court, which declare that a finding with nothing to sustain it is arbitrary and useless and is a nullity. (Edwards vs. McCoy, 22 Phil. Rep., 598.) We may admit, for purposes of discussion, that the authorities cited lay down the proposition as stated and still they fail to support the contention to which they are cited. It is to be noted that these decisions say that a finding with nothing to support it is a nullity. It should also be noted that in the cases in which those decisions are found there is absolutely nothing upon which the mind of the court making the finding could act to arrive at the conclusion reached. In other words, there was an entire absence of any fact whatever which by any possibility could support the finding or which could even tend to support it. The finding was utterly without relation to any fact of record, was drawn from nothing except imagination, was a pure invention, was not the result of the operation of the mind of the board upon a fact or circumstance, was not the product of the exercise of the deliberative faculty, but was a creation from nothing, a fiction, an arbitrary thing. That is not the case before us. Here we have evidence which supports the finding, although not sufficiently. There is evidence showing that opium was smoked in a house and that the accused were present at the time the smoking was going on. To support properly the judgment of conviction it would be necessary to have only two additional facts, namely, that the house was destined and generally used for the smoking of opium and that the accused were there unlawfully. Those two facts, added to the other facts already established, would have sustained a conviction.

Moreover, in considering these cases it must be remembered that they relate to the findings of boards of special inquiry and not to the decisions of courts.

It is clear, therefore, that the case in hand is not one where there is an absolute failure of anything to support the conviction, where the finding is a pure invention, a creature of the imagination only, an arbitrary thing. It is, rather, a case in which there is some evidence to support the conviction, but not enough. The difference between a finding with absolutely nothing to support it and a finding with something, although not sufficient, to support it, is very great. In fact, this difference is the determining feature of the case before us.

While the judgment attacked in these proceedings was erroneous and the conviction unwarranted by the evidence as it stands before us, it was not void. The record presents simply a case where the conviction is not sustained by the evidence. While it may be a case of improper conviction, the court had jurisdiction to convict and its determination, therefore, is not a nullity. It necessarily follows that the petitioners are restrained of their liberty by reason of being "in custody of an officer under process issued * * * by virtue of a judgment * * * of a court of record, and that the court * * * had jurisdiction to issue the process, render the judgment or make the order, * * * ." (Code Civ. Proc, sec. 528.)

The applications for the writs are denied. Costs de officio.

Since writing the above decision an application has been made to amend the petition in this proceeding by inserting an allegation to the effect that the action in which the petitioners were convicted was entitled, both in the municipal court and in the Court of First Instance, "City of Manila vs. Ngo Yao Tit, Chen Po, Uy Ching, Sec Hong, and Ngo Tiao" and "City of Manila vs. Chua Eng Cheng."

It is urged that, in view of the decision of this court in the case of the City of Manila vs. Rizal (p. 50, ante), the action should have been in the name of the United States and not the city of Manila; and that, the action having been wrongly entitled, the court acquired no jurisdiction of the person or the subject matter of the action and that its judgment of conviction was absolutely void. This being the case, it is argued, habeas corpus will lie as the imprisonment is illegal.

We cannot agree with this contention. The bringing of the action in the name of the city of Manila instead of the United States is an error merely and not a jurisdictional defect. It is not similar to the case where, as claimed by petitioners, an information is filed by a person who is not authorized in law to file it. The fact that the city of Manila was the plaintiff in the action does not signify that said city was the person who signed and filed the information. The accused were prosecuted by the same officials, before the same court, and in the same manner as they would have been if the action had been brought in the name of the United States, and they received the benefits of the same rights and the same privileges which they would have received if the action had been properly entitled. They have been in no sense injured or prejudiced.

The defect is one which could have been cured at any stage of the trial by an amendment on the motion of the court itself or upon the motion of any person interested in the prosecution. Defects of that character which are not taken advantage of in the court below in the manner prescribed by law cannot be raised for the first time here, and especially in a petition for a writ of habeas corpus.

The writ of habeas corpus was not intended and cannot be used to correct mere errors or defects in proceedings, and accordingly does not lie in the present application.

The writ is denied.

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

Carson and Trent, JJ., concur in the result.

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