

46 Phil. 729

[G.R. No. 18924. October 19, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS.
WONG CHENG (ALIAS WONG CHUN), DEFENDANT AND APPELLEE.**

D E C I S I O N

ROMUALDEZ, J.:

In this appeal the Attorney-General urges the revocation of the order of the Court of First Instance of Manila, sustaining the demurrer presented by the defendant to the information that initiated this case and in which the appellee is accused of having illegally smoked opium aboard the merchant vessel *Changsa* of English nationality while said vessel was anchored in Manila Bay two and a half miles from the shores of the city.

The demurrer alleged lack of jurisdiction on the part of the lower court, which so held and dismissed the case.

The question that presents itself for our consideration is whether such ruling is erroneous or not; and it will or will not be erroneous according as said court has or has no jurisdiction over said offense.

The point at issue is whether the courts of the Philippines have jurisdiction over a crime, like the one herein involved, committed aboard merchant vessels anchored in our jurisdictional waters.

There are two fundamental rules on this particular matter in connection with International Law; to wit, the French rule, according to which crimes committed aboard a foreign merchant vessel should not be prosecuted in the courts of the country within whose territorial jurisdiction they were committed, unless their commission affects the peace and security of the territory; and the English rule, based on the territorial principle and followed in the United States, according to which, crimes perpetrated under such circumstances are in general triable in the courts of the country within whose territory they were committed.

Of this two rules, it is the last one that obtains in this jurisdiction, because at present the theories and jurisprudence prevailing in the United States on this matter are authority in the Philippines which is now a territory of the United States.

In the case of *The Schooner Exchange vs. M'Faddon and Others* (7 Cranch [U. S.], U6), Chief Justice Marshall said:

“* * * When merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. * * * “

In *United States vs. Bull* (15 Phil., 7), this court held:

“ * * * No court of the Philippine Islands had jurisdiction over an offense or crime committed on the high seas or within the territorial waters of any other country, but when she came within three miles of a line drawn from the headlands which embrace the entrance to Manila Bay, she was within territorial waters, and a new set of principles became applicable. (Wheaton, *International Law* [Dana ed.], p.. 255, note 105; Bonfils, *Le Droit Int.*, sees. 490 *et seq.*; Latour, *La Mer Ter.*, ch. 1.) The ship and her crew were then subject to the jurisdiction of the territorial sovereign subject to such limitations as have been conceded by that sovereignty through the proper political agency. * * * ”

It is true that in certain cases the comity of nations is observed, as in *Mali and Wildenhuis vs. Keeper of the Common Jail* (120 U. S., 1), wherein it was said that:

“ * * * The principle which governs the whole matter is this: Disorders which disturb only the peace of the ship or those on board are to be dealt with exclusively by the sovereignty of the home of the ship, but those which disturb the public peace may be suppressed, and, if need be, the offenders punished by the proper authorities of the local jurisdiction. It may not be easy at all times to determine to which of the two jurisdictions a particular act of disorder belongs.

Much will undoubtedly depend on the attending circumstances of the particular case, but all must concede that felonious homicide is a subject for the local jurisdiction, and that if the proper authorities are proceeding with the case in the regular way the consul has no right to interfere to prevent it.”

Hence in *United States vs. Look Chaw* (18 Phil., 573), this court held that:

“Although the mere possession of an article of prohibited use in the Philippine Islands, aboard a foreign vessel in transit, in any local port, does not, as a general rule, constitute a crime triable by the courts of the Islands, such vessel being considered as an extension of its own nationality, the same rule does not apply when the article, the use of which is prohibited in the Islands, is landed from the vessel upon Philippine soil; in such a case an open violation of the laws of the land is committed with respect to which, as it is a violation of the penal law in force at the place of the commission of the crime, no court other than that established in the said place has jurisdiction of the offense, in the absence of an agreement under an international treaty.”

As to whether the United States has ever consented by treaty or otherwise to renouncing such jurisdiction or a part thereof, we find nothing to this effect so far as England is concerned, to which nation the ship where the crime in question was committed belongs. Besides, in his work “*Treaties, Conventions, etc.*,” volume 1, page 625, Malloy says the following:

“There shall be between the territories of the United States of America, and all the territories of His Britanic Majesty in Europe, a reciprocal liberty of commerce. The inhabitants of the two countries, respectively, shall have liberty freely and securely to come with their ships and cargoes to all such places, ports and rivers, in the territories aforesaid, to which other foreigners are permitted to come, to enter into the same, and to remain and reside in any parts of the said territories, respectively; also to hire and occupy houses and warehouses for the purposes of their commerce; and, generally, the merchants and traders of each nation respectively shall enjoy the most complete protection and security for their commerce, but subject always to the laws and statutes of the two countries,

respectively.” (Art. 1, Commerce and Navigation Convention.)

We have seen that the mere possession of opium aboard a foreign vessel in transit was held by this court not triable by our courts, because it being the primary object of our Opium Law to protect the inhabitants of the Philippines against the disastrous effects entailed by the use of this drug, its mere possession in such a ship, without being used in our territory, does not bring about in the said territory those effects that our statute contemplates avoiding. Hence such a mere possession is not considered a disturbance of the public order.

But to smoke opium within our territorial limits, even though aboard a foreign merchant ship, is certainly a breach of the public order here established, because it causes such drug to produce its pernicious effects within our territory. .It seriously contravenes the purpose that our Legislature has in mind in enacting the aforesaid repressive statute. Moreover, as the Attorney-General aptly observes:

” * * * The idea of a person smoking opium securely on board a foreign vessel at anchor in the port of Manila in open defiance of the local authorities, who are impotent to lay hands on him, is simply subversive of public order. It requires no unusual stretch of the imagination to conceive that a foreign ship may come into the port of Manila and allow or solicit Chinese residents to smoke opium on board.”

The order appealed from is revoked and the cause ordered remanded to the court of origin for further proceedings in accordance with law, without special finding as to costs. So ordered.

Araullo, C. J., Street, Malcolm, Avancena, Villamor, Ostrand, and Johns, JJ., concur.

Order reversed and case remanded for further proceedings.

