

34 Phil. 176

[G.R. No. 11321. March 08, 1916]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SY BUN KUE, DEFENDANT AND APPELLANT.

D E C I S I O N

MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Iloilo convicting the appellant of a violation of the Opium Law and sentencing him to three months' imprisonment and to pay a fine of ₱300, with subsidiary imprisonment in case of nonpayment.

The information charges:

“That on or about the 12th day of April, 1915, in the municipality of Iloilo, Province of Iloilo, Philippine Islands, the said accused, not being a properly licensed physician, veterinary or dentist, voluntarily, illegally and criminally permitted one Ong Ting * * * to use opium personally, and knowingly visited a place where the said Chinaman smoked said drug.”

It appears from the evidence that about 9.30 on the night of the 12th of April, 1915, a secret-service agent by the name of Perney, accompanied by a sergeant of the Constabulary named Borbon and two policemen entered a building known as the Grand Opera House situated in Calle Ledesma in the municipality of Iloilo, for the purpose of searching the same for opium. On entering one of the rooms in the upper story Perney and Borbon found the accused lying on a *petate* in company with another Chinaman named Ong Ting. Ong Ting had an opium pipe in his mouth and was engaged in smoking opium. The accused was found in possession of some of the implements used for smoking opium and was engaged in cooking over a lamp a small amount of opium which he was about to put in the pipe which

Ong Ting was smoking. The secret-service agent observed that the atmosphere of the room was impregnated with fumes of burning opium.

This is the only evidence against the accused. He did not live in the room in which he was found, nor is it claimed that the building was a place where opium was generally and habitually smoked.

It should be noted that the information does not charge the accused with the possession of opium or of the implements used in the smoking or other personal use of opium, or with using opium himself, or with administering opium to Ong Ting; it charges simply that he was present and permitted Ong Ting to use opium. The Opium Law does not declare the facts charged by the information a crime. It is not unlawful for one to sit in a room in which another is smoking opium, and that act alone is insufficient to constitute a violation of the Opium Law.

Nor does the information charge that the accused was guilty of visiting a place where opium was generally or habitually smoked. The Attorney-General himself in his brief in this court states that the information does not charge that crime as there is no allegation that the room or building was a place where opium was generally or habitually smoked. While the accused might possibly, although we do not so decide, have been convicted of the crime of administering opium to Ong Ting, that crime is not charged in the information and for that reason the accused cannot be convicted thereof in this action. (U. S. vs. Chua Lui, 26 Phil. Rep., 94; U. S. vs. Ten Yu, 24 Phil. Rep., 1; Ngo Yao Tit and Chua Eng Cheng vs. Sheriff of Manila, 27 Phil. Rep., 378.)

The judgment appealed from is reversed and the accused acquitted. Costs de officio. So ordered.

Torres, Johnson, Trent, and Araullo, JJ., concur.