

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. HUGO SENA, DEFENDANT AND APPELLANT.

G. R. No. 10315. September 23, 1915

Ponente: CARSON, J.

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CARSON, J.:

The appellant in this case, Hugo Obsena, and his two coaccused, Rufo Bucto and Flaviano Ubalde, were convicted in the court below of illegally having in their possession a small quantity of opium ash and various articles used in the preparation and smoking of opium, and each was sentenced to pay a fine of P500, to suffer subsidiary imprisonment as provided by law and to pay one-third of the costs of the proceedings.

From this judgment only the defendant Hugo Obsena appealed.

It appears from the evidence that at about 7 o'clock of the night of October 13, 1913, a corporal of the Constabulary, Victor Taniñon, on passing the house of Rufo Bucto, situated in the municipality of Balingasag, Province of Misamis, detected the odor of burning opium, and after making a casual examination of the premises hurried to the house of Lieutenant Rafael Padua of the Philippine Constabulary and reported the matter; that immediately thereafter Lieutenant Padua and Corporal Taniñon went to the house in question and upon entering found the three accused in one room, Hugo Obsena, the appellant, lying on the bed, with an opium pipe in his hand, and the other

defendants sitting near by. The opium pipe contained a small quantity of opium ash and the bowl was still warm, indicating that it had been recently in use. A lamp and a small iron rod used in the cooking and preparation of opium were also found in the room.

The defendants as witnesses in their own behalf attempted to show that they were not present in the room at the time when the articles were found and disclaimed all knowledge in that regard. Their statements, however, are highly unsatisfactory and in some respects inconsistent and contradictory. There is nothing in the record which would justify us in discrediting the testimony of the Constabulary officers who made the arrest and seizure and whose statements were accepted as true by the court below. The judgment of conviction entered in the court below should therefore be affirmed.

We are of opinion, however, that there is nothing in the record which seems to justify or require the imposition of the prescribed penalty in a severer form than that which we have quite uniformly imposed in cases of this kind, where there is nothing in the record which would sustain a finding that the penalty in the particular case under consideration should be imposed in an exceptionally severe form. The case appears to fall within the rule announced in *United States vs. Lim Sing* (23 Phil. Rep., 424), and *United States vs. Torres* (No. 10566,[1] promulgated August 20, 1915). The sentence imposed by the trial court should be modified by substituting a fine of P300 for so much thereof as imposes a fine of P600, and thus modified the judgment entered in the court below convicting and sentencing this appellant is affirmed, with the costs of this instance against him. So ordered.

Arellano, C. J., Torres, Johnson, Trent, and Araullo, JJ., concur.

[1] Not reported.

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