

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TERESA CONCEPCION, DEFENDANT AND APPELLANT.

G. R. No. 10396. July 29, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendant was charged with a violation of the Opium Law. The complaint alleged that she had in her possession and under her control a quantity of opium. She was arrested, arraigned, pleaded not guilty, tried, found guilty, and sentenced to pay a fine of P300 and costs.

From that sentence she appealed to this court. In this court she alleges that the lower court committed several errors, both of law and of fact. Upon the question of fact, she alleges that the lower court committed an error in deciding that the evidence adduced during the trial of the cause was sufficient to show that she was guilty of the crime charged beyond a reasonable doubt.

Upon that question the Attorney-General, in a carefully prepared brief in which he analyzes the proof, reaches the conclusion that the facts are insufficient to show that she is guilty of the crime charged.

It appears from the evidence that on the night of the 2d of December, 1913, several policemen went to the house of the defendant, where she was living with her husband, Felix Ricablanca. Upon arriving there, they obtained permission to enter and immediately proceeded to make a search of the premises for opium. While there is some dispute concerning the fact, we believe the proof shows that the defendant, during the time the policemen were searching the house, went to a bed located in the house, after being so ordered by her husband, and took from beneath a pillow a small can of opium, said to contain about 7½ grams of opium, and attempted to throw it away. At that moment the policemen took possession of the can. There is some conflict in the proof as to just what took place at that moment. That the policemen inquired to whom the opium belonged is not denied. The conflict arises in the answer which was given to that question. The defendant in the present case, according to some of the witnesses, declared that it belonged to her. Her husband, Felix Ricablanca, according to some witnesses, declared that he was the owner of the house and was responsible for everything that was found within it. The policemen, at that moment, evidently believed that the opium belonged to the husband, Felix Ricablanca, for the reason that they arrested him and took him to the pueblo, and later filed a complaint against him for a violation of the Opium Law. He was later brought to trial and was acquitted.

No complaint was presented against the present defendant until after a period of more than ten months had elapsed. The policemen who were present at the time the opium was found certainly knew no more about the facts at the time the complaint was presented against the present defendant than they did on the night when the opium was found and when they arrested her husband. The fact that the defendant took the opium from under the pillow on the bed, at the request of her husband, seems to us to be entirely supported by the proof. Her husband was a confirmed user of opium. He admitted that he was in the habit of smoking opium. That the defendant was temporarily in possession of the opium is not denied, even by her. That her possession was such a possession as is

prohibited by the law, she strongly denies. The mere fact that she had in her possession the opium for but a moment and took possession of it under her husband's order, is not, in our opinion, such a possession of opium as is intended to be condemned by the law. She certainly did not intend, even remotely, to have in her possession opium. She did exactly what any other faithful wife would have done under similar circumstances. There is no proof that she was a user of opium in any form. There is no proof that she knew that the can contained opium and consequently there is no proof of the *aminus possidendi*. In the absence of such proof there can be no conviction under the complaint for the illegal possession of opium.

The appellant makes another assignment of error which presents an important question of law. She alleges that the lower court committed an error in permitting the testimony of her husband to be presented against her over her objection. She alleges that the admission of that testimony was in violation of paragraph 3 of section 383 of the Code of Procedure in Civil Actions. Said paragraph provides : "A husband can not be examined for or against his wife without her consent; nor a wife for or against her husband without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, or to a criminal action or proceeding for a crime committed by one against the other."

It will be noted that said section prohibits a husband from giving testimony against his wife without her consent, except in a civil action between husband and wife, and in a criminal action when the crime was committed by one against the other. The present is not a civil action between husband and wife, neither is it a criminal action where the crime was committed by one against the other. It would seem to be clear, therefore, that the testimony of the husband is not admissible if the wife objected. The testimony of the husband should not have been admitted.

There is still another objection to the admissibility of the testimony of the husband. His testimony was not given in the present case. It was a copy of his declaration given in another case, in which he was the defendant and in which he was charged with the illegal possession of the opium in question. It will be remembered that at the time the opium was found in the house of the defendant, the husband of the present defendant was arrested; that later a complaint was presented against him. During the trial he testified in his own behalf. It was the testimony given in that case which was presented as proof in the present case. He was not called as a witness. His testimony is not only not admissible under the provisions above quoted of section 383, but it is not admissible under the Philippine Bill, which provides: "In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf."

The defendant was not given an opportunity "to meet the witness face to face." The acceptance of the testimony of her husband, given in another case, was in absolute violation of her rights and in direct contravention of the law. The presentation and acceptance of the testimony of the husband violated two well-recognized rules of law—first, paragraph 3 of section 383 of Act No. 190, and [second,] paragraph 2 of section 5 of the Act of Congress of July 1, 1902.

At the common law the rule was that husband and wife could not testify for or against each other in any criminal proceedings, except in the prosecution of one for criminal injury to the other. The common-law rule has been adopted in practically all of the States of the United States. The rule is based upon considerations of public policy growing out of the marital relation. To allow one to testify for or against the other would be subject him or her to great temptation to commit perjury and to endanger the harmony and confidence of the marital relation. The case supporting the rule are innumerable.

For the foregoing reasons, the sentence of conviction must be revoked, and it is hereby ordered and decreed that

the complaint be dismissed and the defendant discharged from the custody of the law, with costs de officio. So ordered.

Arellano, C. J., Torres and Araullo, JJ., concur. Carson and Trent, JJ., concur in the result.

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