

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCELO JOSE AND TAN BO, DEFENDANTS. MARCELO JOSE, APPELLANT.

G.R. No. 11565. August 11, 1916

Ponente: TRENT, J.

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TRENT, J.:

Marcelo Jose and Tan Bo were each sentenced to pay a fine of P50, to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay one-half of the costs of the cause for a violation of Act No. 1780. Marcelo Jose alone appealed.

It is now urged that the trial court erred (a) in denying the appellant's motion for a continuance until the arrival of his counsel and (b) in finding that the testimony of record establishes the guilt of the appellant of the crime charged beyond a reasonable doubt.

The Attorney-General agrees with counsel for the appellant that the first assignment of error is well founded. We will consider first the question whether the appellant is guilty under the record.

The admitted facts are these: The commercial firm of Marcelo Jose & Co., composed of this appellant and the Chinaman Tan Bo, was doing business at No. 200 Calle Harris in the town of Olongapo. Both Jose and Tan Bo were arrested and placed in jail on the night of May 16, 1915, and on the following day their store was searched by the authorities and a revolver was found in the main part of the store behind some bolts of cloth. No one connected with the store had a license for this revolver. Sergeant Morill of the Marine Corps, who found the revolver at the above mentioned place, on being asked this question, "How many storekeepers, Chinamen, or people do you usually see in the store of Tan Bo and Marcelo Jose?," replied, "Sometimes two, more times four or five." The appellant, Marcelo Jose, while not denying that he is a part owner of the mercantile establishment at No. 200 Calle Harris, Olongapo, where the revolver was found, testified that he is a merchant and lives in Manila, and that the first time that he ever saw the revolver was in the court of the justice of the peace in Olongapo sometime after it had been found.

Section 1 of Act No. 1780 provides that it shall be unlawful for any person, firm or corporation to possess or have the custody of any revolver without first securing a license therefor. The revolver in question in the instant case was found, as we have said, in the appellant's store and the question arises whether he had possession or custody of it within the meaning of the Act. This court has held that the animus possidendi must be proved in opium cases where the prohibited drug was found on the premises of the accused and the same rule is applicable to the possession of firearms. The appellant denied all knowledge of the existence of the revolver, and the Government's principal witness stated that there were a number of employees in the store. The only testimony which tends to show that the appellant had the possession or custody of this revolver is the inference drawn from the fact that it was found in his store, but we think that this inference is overcome by the positive testimony of the appellant, when considered

with the fact that there were a number of employees in the store, who, of course, could have placed the revolver in the secret place where it was found without the knowledge of the appellant. At least, there is a very serious doubt whether he knew of the existence of this revolver. In such cases the doubt must be resolved in favor of the appellant.

For the foregoing reasons, the judgment appealed from is reversed and the appellant acquitted, with costs de officio. So ordered.

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

MORELAND, J., concurs and dissents.

(See concurring and dissenting opinion in case No. 11566, page 717, ante.)

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