

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

G.R. No. 11566. August 10, 1916

Ponente: TRENT, J.

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TRENT, J.:

Marcelo Jose and Tan Do were each sentenced to pay a fine of P200, to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay one-half of the costs for a violation of section 3 of Act No. 1523. Marcelo Jose alone appealed.

It is now urged that the trial court erred (a) in not allowing the appellant a reasonable time for procuring counsel and in appointing an attorney de officio to defend him against his wishes, and (b) in finding that the evidence of record establishes the guilt of the appellant of the crime charged beyond a reasonable doubt.

The mercantile firm of Marcelo Jose & Co., composed of Marcelo Jose and Tan Bo, was located at No. 200 Calle Harris, Olongapo. Both members of this firm were arrested on the night of May 16, 1915, and placed in confinement. About 2 or 3 o'clock in the afternoon of the following day, May the 17th, the store was searched by the authorities and a one-tenth part of a Macao lottery ticket was found therein. At the time this search was made neither of the owners of the store was present. Tan Bo, the managing partner, testified that this lottery ticket was sent to him by a friend in Amoy and that when he received it he put it in an envelope and placed it in the drawer and that his partner, Marcelo Jose, had never seen it. The appellant, Marcelo Jose, testified that, although he is a member of the mercantile firm of Marcelo Jose & Co., he knew nothing of the existence of the lottery ticket until he saw it in the court of the justice of the peace, and that he lived in Manila and went to Olongapo only when the business required his presence.

Section 3 of Act No. 1523 provides that it shall be unlawful for any person to sell, give away, use or have possession of, with intent to sell, give away or use, any lottery ticket. 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 case at bar. In *United States vs. Tin Mass* (17 Phil. Rep., 463), we held, quoting from the syllabus, that:

"It is a general rule that, when any of the prohibited drugs, enumerated in section 31 of the Opium Law, are found upon the premises occupied by a person accused of using the same, there can be no conviction under said section unless it affirmatively appears that he knowingly had the prohibited article on the premises, or that the animus possidendi in fact existed together with his alleged apparent possession or control of such article. But direct proof of facts of this nature, in a criminal proceeding, is rarely forthcoming, except in cases of confession, and their existence may and usually must be inferred from the varying circumstances in each particular case. When a full, satisfactory, and sufficient explanation of the presence of a prohibited drug on the premises at the time of the seizure is given, which is entirely consistent with the allegation of the defendant to the effect that he did not have the same in his possession, there can be no conviction and the accused must be acquitted."

The testimony of both this appellant and Tan Bo stands uncontradicted and the Government did not attempt to impeach the credibility of these witnesses. We therefore agree with the Attorney-General that the prosecution failed to establish the guilt of the appellant of the crime charged beyond a reasonable doubt.

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

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

Moreland, J., concurring and dissenting:

DISSENTING OPINION

MORELAND, J.:

I agree to the acquittal of the defendant; but I do not agree to the law applicable to the case as laid down in the decision and particularly as set forth in the head note, if that statement of the law means what it appears to mean. The decision itself, and as interpreted by the head note, declares it to be the law that it is not sufficient to sustain a conviction for the illegal possession of opium to show that the opium was found on premises owned or occupied by the defendant; but that it is necessary, before guilt is legally proved, to go one step farther and show by other evidence that the defendant knew that the opium was on his premises.

I do not believe this to be the law. In order to convict a person of the illegal possession of opium, as I understand the law, it is sufficient that it be found on premises owned and occupied by him. That fact, of itself, is sufficient to warrant his conviction; and it is not necessary to prove any additional fact, such as knowledge that the opium was on his premises. Knowledge is inferred, as I understand the law as interpreted by the Supreme Court, from the fact that it was on his premises; and he, in order to free himself from that presumption, must establish lack of knowledge, or must present such evidence as will produce in the mind of the court a reasonable doubt concerning such knowledge. Everything upon the premises of an individual who owns or lawfully occupies them is prima facie in his possession and under his control. That is true with regard to opium and I believe it also to be true with regard to lottery tickets or other prohibited articles. I believe that to be the law as laid down by this court. While this case refers to lottery tickets only, the opinion of the court has laid down also the law as to opium; and for that reason I refer to and discuss it here.

In the case of *United States vs. Gaboya* (11 Phil. Rep., 489) it appears that the prohibited articles were found in a trunk in a house where the accused lived. There was no other evidence of possession or from which knowledge that the articles were in his possession knowingly could be inferred. The court said:

"It has been proven in this case that on the 22d of January, this year, a large quantity of cooked opium, ashes (a sure sign that the opium was used), a pipe and other articles for smoking, were seized at the house of the accused, who was not a person duly authorized to have opium in his possession, nor was he included among the persons permitted by law to use opium. It is therefore unquestionable that the possessor of the said drug, pipe, and other utensils for smoking opium, has violated the Act cited above and has incurred the punishment therein imposed.

"The fact that the defendant pleaded not guilty, and his allegation that the said articles did not belong to him but to a Chinaman who had left them on deposit at his house a year and half ago, unsupported by any proof, is not sufficient to destroy the charges based upon the material possession of the opium and implements, which clearly demonstrates that he violated and willfully disobeyed the express provisions of the law, inasmuch as the mere possession of the opium and of the instruments for smoking it, they being articles specially prohibited

unless duly licensed, fixes the liability of the possessor, and he is not permitted to allege ignorance of the kind and nature of the prohibited goods."

It will be observed that the mere fact of finding the opium on the defendant's premises was accepted as proving his guilt without question or hesitation. Indeed, the very fact of finding it there the court regarded as "the material possession of the opium and implements," and that such "material possession," the court held, "clearly demonstrates that he violated and willfully disobeyed the express provisions of the law, inasmuch as a mere possession of the opium and the instruments for smoking it * * * fixes the liability of the possessor * * *."

To the same effect is the case of *United States vs. Uy-Kue-Beng* (12 Phil. Rep., 451). In that case the court states the facts as follows: "During the night of the 30th of January, 1908, a pipe, a pair of pincers and a small jar used for smoking opium were seized in a room of the house where the accused lived." These are all the facts. No other evidence was offered and particularly none for the purpose of showing knowledge of the fact that the opium was on the defendant's premises. The court said: "The mere possession of paraphernalia for smoking opium, as already stated, being admitted by the accused himself, constitutes by itself a violation of the above-cited provision of law." The fact of finding the opium on defendant's premises, with no other evidence of knowledge except as shown by that fact, was sufficient.

We find the same holding in the case of *United States vs. Lim Chingco* (15 Phil. Rep., 52). In that case the court said, and the opinion was written by the same Justice who wrote the *Tin Masa* case on which the decision in the case at bar so strongly relies: "It is true that their discovery in his store tends to raise a presumption, prima facie, that these goods were in his possession and under his control, but the uncontradicted evidence of record conclusively establishes that the seized articles were in fact the property of Go Chingco, and that they were at the time of their seizure in his exclusive possession, and that the appellant, Lim Chingco, had no knowledge of the fact that his employee, Go Chingco, had these articles in his possession or control."

In that decision the court quoted from the case of *United States vs. Tan Tayco* (12 Phil. Rep., 739, 743). In the latter case, discussing the same question, the court said: "And while the intention and the will to possess may be, and usually are inferred from the fact that the thing in question is under the apparent power and control of the alleged possessor, nevertheless, the existence of the animus possidendi is subject to contradiction, and may be rebutted by evidence which tends to prove that the person under whose power and control the thing in question appears to be does not in fact exercise such power of control and does not intend so to do." There the court held that the presumption of knowledge arising from the mere fact of finding the opium on the defendant's possession had been rebutted.

In the *Tin Masa* case (17 Phil. Rep., 463) the court said: "In the case at bar no explanation "was offered of the fact that the opium and the opium pipe were found in the bedroom of the defendant, which would even tend to put in doubt the reasonable inference therefrom, that under all the circumstances these articles were in the possession and control of the defendant, knowingly on his premises, and that as to these articles the animus possidendi did in fact exist at the time of his arrest."

In the case of *United States vs. Bandoc* (23 Phil. Rep., 14), the court said: "While it is true that in the case just cited we held that the discovery of opium in the house or upon the premises of an accused person is not conclusive evidence that such opium was in his possession and control, nevertheless, it is under the law prima facie evidence to that effect, and is sufficient to sustain a conviction in the absence of a satisfactory explanation."

In the case of *United States vs. Lim Poco* (25 Phil. Rep., 84), Judge Carson wrote the following head note:

"But under the express terms of the statute, proof of the mere fact of possession of a preparation containing the prohibited drug is prima facie proof of guilt of a violation of its provisions and will sustain a conviction, unless

a reasonable doubt arises, from the peculiar circumstances of the case, whether the accused was aware that the preparation under his control contained the prohibited drug."

In volume 33 of the Philippine Reports appears a decision in an opium case which is directly opposed thereto in principle. It is the case of *United States vs. Sy Liongco*, found at page 53, where the court said:

"So also we have frequently ruled adversely to contentions similar to those urged by counsel for appellant as to the lack of proof of the *animus possidendi*. As was said in the case of *United States vs. Tin Masa* (17 Phil. Rep., 463), 'direct proof of facts of this nature in a criminal proceeding, is rarely forthcoming, except in cases of confession, and their existence may, and usually must be, inferred from the varying circumstances in each particular case.' In the case at bar, the opium ash was found in a tin box in the house of the accused and no reasonable or credible explanation, inconsistent with the presumption that it was there and then in his possession and control, *animus possidendi*, was offered as evidence; though testimony which the trial court found to be manifestly false and without foundation in fact was introduced by the defense to the effect that one Daniel Garces, a deputy provincial treasurer who aided in making the seizure, concealed the opium ash at the place where it was found by one of the police officers who accompanied him. Under all the circumstances, we think that the trial judge properly found that at the time of the seizure the opium ash was unlawfully and illegally in the possession of the accused, *animus possidendi*."

From these decisions it is clear that the doctrine set down in the case at bar, namely, that when opium or lottery tickets "are found upon the premises occupied by persons accused of possessing the same, there can be no conviction * * * unless it affirmatively appears that he knowingly had the prohibited tickets on the premises * * *" is not the doctrine heretofore laid down by the court. Nor do I agree to the statement "that this court has held that the *animus possidendi* must be proved in opium cases where the prohibited drug was found in the premises of the accused provided that statement means, as it appears to mean, that the mere fact of finding the opium on the premises of the defendant is not sufficient to convict in the absence of evidence rebutting the presumption of knowledge arising from the fact of so finding the opium. This court, as seen by the decisions referred to, has uniformly held that the mere fact of finding the opium on the defendant's premises is sufficient to convict. No other evidence is necessary. To lay down now the doctrine that, in addition to finding the opium on the defendant's premises, the Government, in order to convict, must go still farther and affirmatively prove knowledge, that is, *animus possidendi*, is to add an element which never before entered into the government's case and to upset all of the prior decisions of this court on the subject. Such a doctrine will almost prohibit convictions in cases of this character.

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