

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAN GOY, GAN SAN LIEN AND LIM YU, DEFENDANTS AND APPELLANTS.

G.R. No. 12131. October 10, 1917

Ponente: CARSON, J.

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CARSON, J.:

The evidence of record fully and to our minds conclusively sustains the findings of facts by the trial judge, and leaves no room for reasonable doubt as to the guilt of the defendants and appellants of the offense of which they were convicted in the court below. The contentions of counsel as to the lack of jurisdiction in the trial court are manifestly untenable in the light of the express provisions of section 1 of Act No. 400 amending Act No. 136.

The contentions of counsel based upon the variance of the proof as to the place where the accused had the opium in their possession and the place alleged in the information cannot be sustained, it appearing that the place where the offense was shown to have been committed was within the jurisdiction of the court, and there being no reason to apprehend that the accused were misled or surprised by the variance between the proof and the allegations in the information as to the place where the offense was committed. Unless time or place constitute an essential element of the offense charged, variances between the allegations and the proof touching the time and place where the alleged crime was committed do not constitute reversible error on appeal where the evidence discloses that the offense was in fact committed within the territorial jurisdiction of the court, and within the period of prescription for the prosecution of the alleged offense under the statute of limitation, and where there is no reason to believe that the accused has been misled by the allegations as to the offense for which he was tried, or that he was unfairly surprised by the introduction of evidence as to the commission of an offense at a different time or place from that charged in the complaint or information. (Bishop's New Criminal Procedure, chaps. 24 and 25.) Neither time nor place constitute an essential element of the offense of unlawful possession of opium as defined and penalized in the Opium Law.

We find no error in the proceedings prejudicial to the rights of the accused. We are of opinion, however, that the trial court should have provided expressly for subsidiary imprisonment as prescribed by law in the event of insolvency and nonpayment of the fines imposed upon the convicts; and we conclude that, the judgment convicting and sentencing these appellants, modified by adding thereto a provision to that effect, should be affirmed, with a proportionate part of the costs in this instance against each of them. So ordered.

Arellano, C. J., Johnson, Araullo, Street, and Malcolm, JJ., concur.

Judgment modified.

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