

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHOA CHIOK (ALIAS CHUA CHIOK) ET AL., DEFENDANTS. SEE PIN AND CHUA SE TONG, APPELLANTS.

G.R. No. 12423. September 06, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

The assistant prosecuting attorney of the city of Manila, on the 11th day of July, 1916, presented a complaint against said defendants, charging them with a violation of section 3 of Act No. 2381. The complaint alleged that said defendants did, on or about the 10th day of July, 1916, in the city of Manila, P. I., then and there willfully, unlawfully, feloniously, and knowingly visit and were present at an opium joint in said city where opium, its derivatives and compounds were smoked or otherwise used in and upon the human body and were unlawfully sold and otherwise disposed of. The complaint further alleged that a number of said defendants had theretofore been convicted one or more times of a violation of the Opium Law. Upon said complaint the defendants were arrested, arraigned, and tried. At the conclusion of the trial, some were acquitted and some were convicted. Said appellants were found guilty of the crime charged in the complaint, and each was sentenced to be imprisoned for a period of two months, and to pay a fine of P100, and, in case of insolvency, to suffer subsidiary imprisonment, and to pay their proportional amount of the costs. From that sentence each appealed.

The appellants in their first assignment of error alleged that the lower court committed an error in not dismissing the complaint against the defendants at the close of the evidence of the prosecution. We have held in the case of *United States vs. Romero* (22 Phil. Rep., 565) that; "Whether or not the evidence presented by the prosecuting attorney, at the time he rests his case, is sufficient to convince the court that the defendant is guilty, beyond a reasonable doubt, of the crime charged, rests entirely within the sound discretion and judgment of the lower court. The error, if any be committed by the denial of this motion, can only be corrected on appeal by showing that the evidence was in fact insufficient, and then the sentence of the lower court will be reversed for failure of evidence only."

An examination of the proof adduced at the time said motion was made shows beyond a reasonable doubt that the defendants were guilty of the crime charged. We see no reason, therefore, for reversing or modifying the sentence of the lower court by reason of the first assignment of error. (*Quison vs. Salud*, 12 Phil. Rep., 109.)

In their second assignment of error the appellants alleged that the lower court committed an error in admitting proof as to the general reputation of the house, for visiting which the defendants and appellants were prosecuted. In reply to that contention it may be said that this court, in the case of *United States vs. Sy Toon* (p. 736, ante), decided :

"That a certain place is 'an opium joint' can be established by proof of facts and circumstances including evidence of the general reputation of the house." {See also the case of *States vs. Steen* [101 N. W., 96], cited in support of that doctrine.)

The proof upon the general reputation of the alleged smoking joint shows that a number of people, at different times, had been arrested in said place for a violation of the Opium Law; that the place was frequented by a large number of Chinamen; that the doors leading into the rooms where opium was found, together with apparatus for injecting and smoking opium, was strongly barricaded; that a large number of Chinamen were in the room at the time "the policemen arrived on the occasion of the arrest of the present defendants; that immediately upon receiving notice of the presence of the policemen, a great number of them escaped; that the place had been raided a number of times by policemen; that it was understood among the policemen to be an opium joint; that nearly all of the witnesses who testified for the defense were persons who knew the place and had been convicted from one to five times each for violation of the Opium Law. We think the proof fully establishes the fact that said house was an opium joint and that the defendants visited the same knowing its general character. This conclusion answers not only the second assignment of error but as well the fourth and fifth.

The appellants in their third assignment of error alleged that the lower court committed an error in giving credit to the declaration of the witnesses for the prosecution. While certain discrepancies in minor details may be pointed out in the declaration of the different witnesses for the prosecution, upon the main facts they agree. The judge who tried the cause saw the witnesses and heard their declarations and was thereby enabled to discern from their manner of giving their testimony whether or not they were entitled to credit. He gave them full credit, and we find no reason in the record for changing or modifying his conclusions.

For all of the foregoing reasons, and finding as we do that the evidence shows beyond a reasonable doubt that the appellants are guilty of the crime charged, the sentence of the lower court is hereby affirmed, with costs. So ordered.

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

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