

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARTIN RUBIO CO-PINCO, DEFENDANT AND APPELLANT.

G.R. No. 3882. January 31, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the violation of the provisions of section 5 of Act No. 1401 of the Philippine Commission, known as the Opium Law, in the following complaint:

"That the said accused, on several occasions, and on certain days in April, May, June, and July, 1906, on the day of 190...., at Paoay, Province of Ilocos Norte, did willfully, unlawfully, and feloniously give to certain persons his pipe and opium in order that they might smoke at his house without a proper license therefor, which persons are not such as under section 5 (a) of the law are permitted to smoke. This is an act which constitutes a violation as defined and punished under the said section 5 (a) of Act No. 1401, committed within the jurisdiction of this Court of First Instance, and is contrary to law."

Upon this complaint the defendant was duly arrested, brought before the court and arraigned and pleaded "not guilty." After a consideration of the evidence adduced during the trial of the cause, the court below found the defendant guilty of the offense charged in said complaint and sentenced him to be confined in the provincial jail of the Province of Ilocos Norte for a period of two months and to pay a fine of P200, and in case of insolvency to suffer subsidiary imprisonment at the rate of 2.50 per day, which subsidiary imprisonment shall not exceed one-third of the time imposed in the principal penalty. From this sentence of the lower court the defendant appealed.

Said section 5 of Act No. 1461 provides in part as follows:

"(a) It shall be unlawful to sell, transfer, give, or deliver opium in any of its forms, to any person, unless such person is a duly licensed physician, * * * or is a duly licensed wholesale dealer or retail dealer in opium, or is duly registered as a confirmed user of opium, as prescribed in section two hereof, who presents his certificate as such at the time of the sale, transfer, gift, or delivery to him of opium in any of its forms: * * *

"(b) Any person violating the provisions of this section shall be punished by a fine not exceeding one thousand pesos, or by imprisonment for a period not exceeding one year, or by both such fine and imprisonment, in the discretion of the court."

An examination of the evidence brought to this court discloses that on various and distinct days during the months of May, June, and July, 1900, the defendant herein gave to various persons opium to be smoked by them, and that these various persons did then and there, in the house of the defendant, smoke the opium thus given to them by the defendant. The attorney for the defendant in this court admits the following facts:

"1. That the Chinaman, Martin Kubio Co-Pinco, is registered under Act No. 1401, as an inveterate opium smoker.

"2. That frequently this Chinaman was visited by certain friends who undoubtedly were fond of smoking opium, the president of the town being among them.

"3. During these visits, the accused, who was at the time smoking opium, out of courtesy offered his pipe to his visitors; the offer was accepted by the latter. The accused did make the offer as an act of courtesy, for it has been proved that he did not collect money and that his visitors paid him nothing for it."

These admissions by the attorney for the defendant support the conclusion of the court below.

The complaint presented in this cause alleged that the persons to whom the defendant gave opium were not of the class to whom opium might be given under the provisions of said section 5. No evidence was introduced to prove this negative allegation. As was said in the case of *United States vs. Isaias Gonzalez*[1] in accordance with section 297 of the Code of Procedure in Civil Actions, the prosecuting attorney was not required to prove this negative allegation. If the person to whom the defendant gave opium belonged to the class to whom opium might be given, it was the duty of the defendant to prove that fact. The purpose of the law was to prevent the selling, transferring, giving, or delivering of opium, in any of its forms, to any person or persons, except those expressly mentioned in the law. The selling, transferring, giving, or delivering of opium was limited to a special class mentioned in said law. Exceptions in a law other than those which constitute a part of the offense need not be alleged or proved. The exception is a matter for the defendant to prove. (*U S. vs. Demarche*, 5 Blatchford, 84; *Rex vs. Pemberton*, 1 Wm. Blackstone, 230; *Rex vs. Baxter*, 1 Wm. Blackstone, 580; *Bishop's New Criminal Procedure*, vol. 1, sec. 513.)

After a full examination of the record brought to this court, we are of the opinion, and so hold, that the sentence of the lower court should be affirmed, with costs, except as to that part of said sentence which imposes subsidiary imprisonment, which is hereby revoked. So ordered.

Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

[1] Page 66, *supra*.

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