

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. UY-KUE-BENG, DEFENDANT AND APPELLANT.

G.R. No. 4634. January 11, 1909

Ponente: MAPA, J.

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MAPA, J.:

The accused herein has appealed from the judgment of the lower court convicting him of a violation of section 7 of Act No. 1761 of the Philippine Commission and sentencing him to the penalty of six months' imprisonment and to pay a fine of P300, or, in case of insolvency, to suffer subsidiary imprisonment at the rate of P2.50 per day, the latter part of the sentence not to exceed the period of two months.

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. The policemen who took possession of the articles assert that they surprised the accused smoking opium at that time. It is stated in the judgment of the court below that the jar contained some opium. The accused admits the finding of the aforesaid articles in his possession, but denies the fact that he was smoking opium on that occasion, also denying that the jar contained opium. It is not necessary to discuss these facts as they are matters of no importance in the case at bar. 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 act of smoking opium, except in certain cases, is punished by section 4 of Act No. 1761. This case was not prosecuted according to this section, but in conformity with section 7, which is the one applied by the court below in the judgment appealed from.

Taking into consideration the circumstances of the case, we believe that the penalty of four months' imprisonment and a fine of P300, which has been imposed on the accused by the lower court, is adequate.

The judgment appealed from is hereby affirmed, with the understanding, however, that the imprisonment imposed shall be that of four months, and that the subsidiary penalty, which he must serve in case of insolvency, shall not exceed one month and ten days, with the costs of this instance against the accused. So ordered.

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

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