

THE UNITED STATES, PLAINTIFF AND APPELLEE, vs. TAN TAYCO AND CO SENCHO, DEFENDANTS AND APPELLANTS.

G.R. No. 4723. February 08, 1909

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment convicting the appellants, Tan Tayco and Co Sencho, of a violation of the provisions of section 7 of Act No. 1761 (Opium Law), and sentencing them, and each of them, to a fine of P500, or in case of insolvency, to the corresponding subsidiary imprisonment prescribed in such cases, and to the payment of the costs of the trial.

On the night of the 30th day of November, 1907, in the municipality of Ormoc, Province of Leyte, the municipal treasurer, accompanied by a policeman, found various utensils, used for smoking opium, including a lamp and a pipe, in a store owned by one of the defendants, Tan Tayco, and his partner, Andres T. Avila. These utensils were found near or under Avila's bed in the room occupied by him jointly with the defendant Co Sencho, who was employed as an assistant in the store. This room connected with the room occupied by the defendant, Tan Tayco, by a small passageway.

The discovery of these utensils was conclusively established by the testimony of the witnesses for the prosecution, and was not denied by the defendants, who admitted that they were not authorized under the provisions of section 7 of the Opium Law to have such utensils in their possession. But they denied the allegation of the information, that these utensils were in their possession or control at the time of their discovery, claiming that they were the property of Andres Avila, one of the coproprietors of the store. Avila admitted that he was the owner of the utensils in question, but swore that at the time of their discovery he was in Cebu, where he had gone on business not long before the seizure; that he had left for Cebu prior to the passage of Act No. 1761; that at the time when he left for Cebu he held a license, under the provisions of Act No. 1461, whereby he was authorized to smoke opium, and to have in his possession the utensils for smoking opium which were found in his room; that not anticipating the passage of Act No. 1761, he left the implements in question in the tray in his room; and that his partner, Tan Tayco, and their employee in the store, Co Sencho, had no interest whatever in the ownership or control of these utensils.

The prosecution introduced three witnesses who testified that the defendant, Tan Tayco, was the real owner of the pipe and other utensils in question, and that they had seen Tan Tayco smoking opium with the pipe on various occasions in the months of August, September, and October, 1907.

Defendants introduced evidence which tended to show that these three witnesses were professional gamblers with no occupation or visible means of support, and wholly unworthy of credit or belief; Tan Tayco and his partner, Avila, declaring that on various occasions these witnesses had begged them for opium and for permission to smoke it, and that when their request was denied they became angered, and testified falsely at the trial in a spirit of revenge.

Section 7 of Act No. 1761 is as follows:

"(a) Except upon the prescription of a duly licensed and practicing physician or upon lawful permit of the Collector of Internal Revenue, it shall be unlawful for any person not a duly licensed and practicing physician, pharmacist, second-class pharmacist, licensed dispensator of opium, or a duly registered user of opium, when using the same in a licensed opium dispensary only and in such quantities as may be stated in his certificate, to have in his possession opium, or any pipes, hypodermic syringes, or other apparatus or paraphernalia to be used for smoking, injecting, or using opium in any manner.

"(b) Any person violating the provisions of this section shall be punished by a fine not exceeding five hundred pesos or by imprisonment for a period not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: Provided, That all opium, pipes, and other opium apparatus and paraphernalia found in the possession of any person not authorized to have same shall be seized and forfeited to the Government."

Defendants on appeal attacked the constitutionality of this section on the ground that its enactment was in violation of the provisions of section 5 of the Philippine Bill, which provides that no person shall be deprived of his life, liberty, or property without due process of law. Appellants contend that opium is a beneficial and wholesome medicine; that to deprive one of such medicine who might have need thereof would inflict serious injury upon his health; and that the provision of the Opium Law which forbids the having of utensils for smoking opium in one's possession is an infringement on the personal liberty of the citizen, which is guaranteed to the people of these Islands by the terms of the Philippine Bill.

We do not deem it necessary to discuss this question at length in this case, because we are convinced that the evidence offered by the prosecution is not sufficient to sustain a judgment of conviction. It may not be improper, however, to indicate that it is a fact of general knowledge, not seriously questioned by thinking men, that the habitual use of opium to excess is a vice degrading and disgusting in its tendencies, and pernicious and dangerous to a degree in its effect, mental, moral, and physical, upon the individual addicted thereto. We think, therefore, that there can be no doubt of the power of the legislature to determine for itself whether the indiscriminate use of this drug is or is not marked by consequences dangerous to the welfare of the general public, so as to necessitate and justify control of its use as a medicine or otherwise, under such restrictions as the legislature may deem necessary to prevent its abuse.

"But it is urged by the defense that a moderate use of opium, or that the moderate use of an opium pipe, is not deleterious, and consequently can not be prohibited. We answer that this is a question of fact, which can only be inquired into by the legislature. Smoking opium is a recognized evil in this country. It is a matter of general information that it is an insidious and dangerous vice, a loathsome, disgusting, and degrading habit, that is becoming dangerously common with the youth of the country, and that its usual concomitants are imbecility, pauperism and crime. It has been regarded as a proper subject of legislation in every Western State." (*Territory of Washington vs. Ah Lim*, 9 L. R. A., 395, 397.)

"The sale and disposition of such a drug may unquestionably be regulated and controlled by law, and whether its nature and character are such that, for the protection of the public, its possession by unauthorized persons should be prohibited, is a question of fact and of public policy, which belongs to the legislative department to determine. The discretion of the legislature in the employment of means which are reasonably calculated to protect the health, morals, or safety of the public is very great; and so long as it does not infringe upon the inherent rights of life, liberty, and property, either directly or through some limitations upon the means of living or some material right essential to the enjoyment of life, its determination is conclusive upon the courts." (*Mon Luck vs. Sears*, 32 L. B. A., 738, 739; *State vs. Ah Chew*, 10 Nev., 50, 40 Am. Rep., 488; *In re Yung Jon*, 28 Fed. Rep., 308.)

The discovery of the pipe and other utensils at the time and place above indicated tends strongly to support the

contention of the prosecution that they were found in the possession of one or both of these defendants, but it is not conclusive evidence as to that fact.

Possession has been defined to be the detention or enjoyment of a thing which a man holds or exercises by himself or by another who keeps or exercises it in his name. (Bouvier's Law Dictionary, Rawles' revision, Vol. II.) Clearly it involves a state of mind on the part of the possessor whereby he intends to exercise, and as a consequence of which, he does exercise a right of possession, whether that right be legal or otherwise; 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. In order to complete a possession two things are required, that there be an occupancy, apprehension, or taking; that the taking be with an intent to possess (animus possidendi). Hence persons who have no legal wills, as children of insufficient understanding and idiots, cannot possess or acquire a complete possession (Pothier, Etienne, see 1 Mer., 358; Abb. Sh., 9); so where stolen property is placed in the house or upon the premises of A, without his knowledge or consent, A is not properly speaking in possession of such property, so long as he does not assert a right to its control, and is not moved by the animus possidendi with reference thereto.

The statements of the witness Avila, if they can be believed, furnish a full, satisfactory, and sufficient explanation of the presence of the utensils for smoking opium in his house at the time of their seizure, which is entirely consistent with the allegations of the defendant that those utensils were not at that time in their possession; and, therefore, entirely consistent with the innocence of the defendants charged with a violation of the provisions of the above-cited section of the Opium Act.

The trial judge was of opinion that the witness Avila was a perjurer and testified falsely, basing his opinion upon the self-contradictory character of the testimony of this witness, which, in his opinion, left no room for doubt that this testimony was false and unworthy of belief. We do not think that the evidence of record establishes this finding of the trial court beyond a reasonable doubt. The only statement of a self-contradictory character which we find in the testimony of this witness is that pointed out by the trial judge.

The first question asked the witness upon direct examination and his answer thereto were as follows:

"Q. Look at these articles marked Exhibits A, B, C, and I); what are they used for, and who is the owner of them?-A. All the articles here are used for smoking opium with the exception of this bamboo (the pipe in question); the rest are mine. I say it is not mine because the metal which gives it strength is not of the same shape as that on mine."

Upon cross-examination by the provincial fiscal, the witness testified as follows:

"Q. But this pipe, Exhibit A, is not your pipe?-A. It appears like my pipe, but there are so many pipes that look alike.

"Q. Answer the question, is this your pipe or not?-A. Yes, sir; it is.

"Q. Then why did you say before that it was not yours?-A. Because it is very dirty, and as there are other pipes that look like it, I did not say it was mine.

"Q. Now tell the truth, is it not true that just a few moments ago you stated this pipe was not yours because your pipe has a different-shaped piece of metal than that which is on this pipe?-A. I stated before that it was not the same because it is very dirty.

"Q. Did you not say that it was not yours because the metal was different?-A. But I remember now that it is mine.

"Q. State whether or not you said the metal on your pipe was different?-A. I said that before.

"Q. What has caused you to change your mind about the metal?-A. The difference is that the metal is round which caused me to doubt its being mine.

"Q. Then you have changed your mind and decided that it is yours?-A. Yes, sir; because I know it is round.

"Q. What about the metal? Has it changed its appearance since you made the statement?-A. It has not changed since then.

"Q. Then you are quite sure that it is your pipe, are you?-A. Yes, sir.

"Q. No doubt about it at all?-A. No, sir; there is no doubt.

"FISCAL. Is it not true that before you answered the question, when you were asked about recognizing the pipe, you examined the pipe for more than ten seconds before you answered and said, it was not your pipe?

"A. Yes, sir; because I did not recognize it at first glance because it is very dirty.

"Q. Answer the question, is it not true that you carefully examined the pipe before you stated that it was not yours? This is-on your direct examination.-A. It is true that I examined it, but I did not recognize it immediately because it is a long time since I have seen it."

We do not think that the fact that the witness, upon due reflection and consideration, and after a careful and extended examination of the pipe, corrected his first statement in regard thereto, is proof conclusive that his statements as modified were false and unworthy of credit. It will be observed that he appears to have modified his testimony under the rigid cross-examination of the prosecution when his attention was especially directed to the question of ownership of the exhibit which was placed in his hand. If he was indeed a deliberate perjurer and went upon the stand for the purpose of willfully testifying falsely, it would seem more reasonable that he should have claimed the ownership of the pipe under the examination of counsel for the defendant, rather than that fact so essential to the defense should have developed upon cross-examination, at a time when, without the aid of the prosecution, it could not have been established otherwise. It may well be that at first glance the witness was mistaken as to the identity of the pipe, which had been out of his possession for many months, during which the metal finishing might have become tarnished, either in the store where he left it, or in the hands of the officers of the law who held it after its seizure. It appears that Act No. 1761 was not in force when this witness left Cebu, and that at that time he held a license which authorized him to smoke opium and to have in his possession and under his control the necessary utensils for that purpose. There is nothing incredible in his statements that he left the pipe in question in his room, expecting to find it there upon his return, and we think that, giving to the defendants the benefit of the doubt, the testimony of this witness should be accepted as true.

The testimony of the three witnesses for the prosecution, who declared that they had seen the defendants smoking the pipe in question on various occasions, if it could be believed, would cast grave doubt upon the truth of the declarations of the witnesses for the defense. We think, however, that the uncontradicted evidence as to the character of these witnesses, taken together with the evidence tending to prove that they were actuated in testifying by a feeling of revenge, because the defendants refused to let them have opium or to smoke in their store after the passage of the Opium Law, is sufficient to justify us in rejecting their testimony. One of these witnesses admitted on the stand that he had begged Tan Tayeo to let him smoke opium in his store, and that Tan Tnyco had refused to grant his request, and taking into consideration the worthless character of these witnesses, their suspicious mode of living, the fact that they had no known means of gaining a lawful livelihood, and the fact

that, under the law, informers receive a share in the fine inflicted upon violators of the Opium Law, we feel compelled to hold the statements of these witnesses as unworthy of credit and belief.

The judgment and sentence of the trial court should be and are hereby reversed, and the defendants acquitted of the offense with which they are charged, with the costs in both instances de officio.

Arellano C. J., Torres, Mapa, Johnson, and Willard, JJ., concur.

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