

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TIN MASA, DEFENDANT AND APPELLANT.

G.R. No. 6255. December 09, 1910

Ponente: CARSON, J.

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CARSON, J.:

The appellant was convicted in the Court of First Instance of Manila of a violation of section 3 of Act No. 1761 (Opium Law), upon the following information:

"The undersigned accused Tin Masa of having violated the provisions of the Opium Law, as follows:

"That on or about the 26th day of February, 1910, in the city of Manila, Philippine Islands, the said Tin Masa voluntarily, illegally, and criminally had in his possession some twenty grams of opium and a pipe for smoking opium, without having been duly authorized to possess the same. All contrary to law."

The trial court sentenced the defendant to pay a fine of P310 and to pay the costs of the proceedings, or, in case of insolvency to suffer the corresponding subsidiary imprisonment as provided by law.

The accused when arrested was sitting on a bed in a room in a house in Calle Nueva, Binondo, Manila, talking to another Chinaman, who was standing there. The room was full of opium smoke, and upon being searched a small box of opium was found behind a clothes' chest close to the wall, and an opium pipe was found hidden in a hole which had been dug out in a post of the bed on which the accused was sitting. There was only one bed in the room. When the internal-revenue agents who made the arrest asked who had been smoking opium, each of the Chinamen pointed to the other. In the room was found also the clothes and registration certificates of the defendant, together with certain articles of feminine apparel. The defendant testified that he did not live by himself in the room; that the bed was not his; and that he knew nothing of the pipe or opium which was found there; but he admitted that he lived in the room, and that he rented other rooms in the house to various tenants.

The only error assigned on this appeal which need be considered was the alleged failure of proof that the defendant knew that he had on his premises the opium and opium pipe which were found there by the internal-revenue agents. Section 31 of Act No. 1761 is as follows:

"Any unauthorized person owning, carrying, holding, having, controlling, having possession of, or knowingly having on his premises, any opium, cocaine, alpha or beta eucaine, or any derivative or preparation of such drugs or substances, on and after March first, nineteen hundred and eight, shall be punished by a fine not exceeding ten thousand pesos, or by imprisonment for not exceeding five years, or by both such fine and imprisonment, in the discretion of the court: Provided, however, That in the case of the commission of a second offense under the provisions of this section, any person so convicted, if other than a citizen of the United States or a citizen of the Philippine Islands, may, by order of the court, be deported."

It is true, as counsel for appellant insists, that a conviction can not be had under this section unless it affirmatively appears that defendant knowingly had the prohibited articles on his premises, or that the animus possidendi in fact existed together with his alleged apparent possession or control of such articles, But direct proof of facts of this

nature in a criminal proceeding; is rarely forthcoming, except in cases of confession, and their existence may and usually must be inferred from the varying circumstances in each particular case. In the case at bar we are satisfied beyond a reasonable doubt that the circumstances under which the prohibited articles were found justify the inference that they were in the defendant's room with his knowledge, and that they were in his possession and control at the time of his arrest.

In the case of *The United States vs. Tan Tayco* (12 Phil. Rep., 739), we acquitted the defendants who were charged with unlawfully having an opium pipe in their possession and control on the ground that the animus possidendi did not appear, although the evidence introduced by the prosecution in that case was of a very similar character to the evidence of the prosecution in this case. But it is to be observed that in the former case one of the defendants introduced testimony which furnished "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 defendants that those utensils were not at that time in their possession, and therefore, entirely consistent with the innocence of the defendants." In the case at bar no explanation was offered of the fact that the opium and the opium pipe were found in the bedroom of the defendant, which would even tend to put in doubt the reasonable inference therefrom, that under all the circumstances these articles were in the possession and control of the defendant, knowingly on his premises, and that as to these articles the animus possidendi did in fact exist at the time of his arrest.

The judgment of conviction and the sentence imposed upon the appellant should be affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Moreland, and Trent, JJ., concur.

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