

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. HACHAW,
DEFENDANT AND APPELLANT.***G.R. No. 6909. February 20, 1912*

Ponente: MORELAND, J.

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The defendant in this case was convicted of the crime of having: opium in his possession without authority of law. His appeal is based solely upon the proposition that the evidence is not sufficient to support the conviction.

The conviction is based upon the evidence of three witnesses of the prosecution, namely, Jose Mendoza, Alejo Hilario, and Antonio Aquino. They assert in substance that while they were on a certain street in the town of Cavite they noticed the accused, a Chinaman, who was passing along the street, acting very suspiciously. They called to him to stop, but, instead of doing so, he started to run. They thereupon pursued and overtook him and compelled him to go with them to the presidencia. Arriving there they compelled him to take everything out of his pockets. Among the things brought forth was, they claim, a small quantity of opium done up in paper.

The accused denies absolutely the story told by these witnesses. He asserts that he never used opium in any way; that he did not deal in the drug; that at the time of his arrest he had no opium in his possession; that the opium, if any, found on him in the presidencia was placed in his pocket by the witnesses above named and then taken therefrom on the search. In support of this story he presented the testimony of three persons, members of the Constabulary, one a sergeant, another a corporal, and the third a private. They were at the time dressed in civilian clothes and were engaged under the orders of their officers in making a quiet search for criminals in that locality. They assert that while standing upon the street on which the accused was arrested Jose Mendoza came to them and asked them if they did not want to make some money; that they asked him in what way he proposed that the money should be made; that he replied that he had some opium and that they should take it and put it in the pocket of some Chinaman, whereupon he would arrest the Chinaman; that in all probability the Chinaman would thereupon try to bribe them and then would come their opportunity to make the money; that he showed them the opium and the paper in which it was wrapped. These witnesses further assert that after they had rejected the proposition Mendoza took the opium and put it in his pocket. They stood there together for a short time afterwards, when they saw a policeman, Alejo Hilario, coming down the street. Mendoza ordered Hilario to arrest the accused, alleging as a reason therefor that he might show some "forbidden thing" in his possession. When the accused came along Mendoza ordered Hilario to stop him, which he did. Thereupon Mendoza approached the accused, took from his pocket the opium he had previously shown the witnesses and surreptitiously inserted it in the pocket of the accused. These witnesses testified that they followed Mendoza and his companions when they took the accused to the presidencia. They saw the accused when he was searched and saw the opium when it was produced at that time. They declared unhesitatingly that the opium was the same that had been shown them by Mendoza and was wrapped in the identical paper in which it was then inclosed. While the witnesses for the prosecution assert that the Chinaman thereupon offered them three 20-peso bills if they would let him go and say nothing about his possession of the opium, the Constabulary soldiers testified that no such thing happened.

Mendoza does not deny that he was on the street at the place and time alleged by the Constabulary soldiers and admits that they were also present at the presidencia when the Chinaman was searched. He does not directly deny the story told by the Constabulary soldiers. The denial results by inference from the contradictory stories told by the two sets of witnesses.

The trial court based its rejection of the testimony of the Constabulary soldiers upon the ground that it was unreasonable that Mendoza should have tried to induce them to enter into a conspiracy to defraud the Chinaman, asserting that if Mendoza had thought of doing any such thing he would have kept it to himself instead of inviting others to participate with him. This is correct without doubt to a certain extent, but we do not regard it as controlling. If Mendoza had carried out the scheme according to the theory of the trial court, while he would not have exposed himself to the mercy of the Constabulary soldiers, he would, nevertheless, have been met with the proposition on the trial that he had placed the opium in the pocket of the accused, and he would have had his testimony alone against the testimony of the Chinaman; whereas, if he had succeeded in inducing the Constabulary soldiers to enter the conspiracy with him, his testimony against the Chinaman would have been supported by that of three other persons. From the record, we regard the story told by the Constabulary soldiers fully as reasonable as that told by Mendoza.

Mendoza presents as the only reason why he ordered the arrest of the Chinaman that he was acting suspiciously. He did not say in what way he was acting suspiciously or what was the particular act or circumstance which aroused his curiosity. He said in that connection:

"I told Alejo Hilario I had suspicions of the Chinaman. I had suspicions that he had some prohibited thing which he carried on his person."

When asked to tell what prohibited thing¹ he suspected, he said:

"There are many things which are prohibited which might be used to assault a person with, or a pointed instrument which might be used to strike with or with which a crime might be done against the government or robbery in some house, or opium on his person."

In another place he said:

"I just said to Alejo Hilario that I had suspicions of this Chinaman, without saying what my suspicions were."

Further on he said:

"Yes, I followed along behind Hilario and the accused to the police station. I wanted to see if he had committed a crime * * *."

This testimony of the witness does not present any clear reason why he arrested the Chinaman. He arrested him because, as he said, "I wanted to see if he had committed a crime." Among free men and under constitutional and statutory guaranties of personal liberty, this furnishes no reason whatever why a person should be arrested.

We believe that the testimony of these three witnesses for the defendant, given as it is by persons whose reputation² is apparently good and whose allegations have not been discredited in any way, is strong evidence in the case and sufficient to raise a reasonable doubt of the guilt of the accused. The trial court itself in no way impeached the credibility of those witnesses except to say that their story was unreasonable. We do not believe it to be so unreasonable that it ought to be rejected entirely. We regard it as reasonable as the story told by Mendoza and as likely to have been the true history of the occurrence as that given by the witnesses for the prosecution.

For these reasons the judgment of conviction is reversed and the defendant acquitted.

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

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