

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHING PO, DEFENDANT AND APPELLANT.

G.R. No. 7707. December 06, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with a violation of the Opium Law. The complaint alleged:

"That on or about the eighth day of October, 1911, in the city of Manila, Philippine Islands, the said Ching Po was, willfully, illegally, and the owner of, and had in his power and possession and under his control, 18 grams of opium, a prohibited drug, without being lawfully authorized to do."

After hearing the evidence, the Honorable A. S. Crossfield, judge, found the defendant guilty of the crime charged in the complaint, and sentenced him to pay a fine of and the costs.

From that sentence the defendant appealed. In this court the appellant makes the following assignments of error:

First. That the trial court erred in not sustaining the defendant's plea of former jeopardy.

Second. That the trial court erred in receiving as evidence against the defendant the testimony given by him upon his trial in a certain other cause in the Court of First Instance of the city of Manila, No. 7949, entitled City of Manila vs. Ching Po et al.," over the objection of the defendant.

From an examination of the record it appears that the following statement of facts made by the appellant in his brief is substantially correct:

It appears by the record that the defendant in this cause was tried and convicted before the municipal court of the city of Manila in a certain cause entitled "The City of Manila vs. Ching Po et al.," wherein Ching Po was charged, together with others, "with visiting and being house where opium was kept and used upon the person," in violation of Ordinance No. 152 of the said city of Manila ; that said defendant, together with his co-defendants appealed said cause to the Court of First Instance of the city of Manila; that upon the trial of said appeal in the Court of First Instance on November 3, 1911, the defendant herein testified a certain amount of opium (18 grams) and an opium pipe found by the police at No. 26 Calle Chica, Manila, where said defendant lived, belonged to him and was in his possession and under his control; that upon the said cause No. 7949 in the Court of First Instance said Ching Po was acquitted; that immediately succeeding said trial and acquittal in said No. 7949, the complaint in the present cause was presented and the defendant re-arrested and charged "with having in his possession and under his control the same opium and pipe" referred to and testified to by him in the former trial; that at the time of arraignment, a plea of former jeopardy was presented by the defendant and overruled and due exception taken and that thereafter the prosecution was permitted the trial court, in spite of the objection of said defendant, to introduce evidence in this cause the testimony of the defendant upon his trial in former cause to the effect, as above stated, that he was the owner and in possession of said opium and pipe.

Bearing these facts in mind, with reference to the first assignment of error it will be noted that the crime of which the

defendant had been acquitted i said cause No. 7949 was a criminal action for a violation of ordinance No. 152, which ordinance provided for the punishment of those who "visited houses where opium was kept and used upon the person;" whereas, in the present case, the defendant was accused of the crime of "being the owner and having in his possession and under his control 18 grams of opium in violation of the Opium Law." It will be seen, therefore, that the crime which the defendant was accused and acquitted in cause No. 7949 was a different and distinct offense from that with which he is charged in the present case. Being, therefore, a distinct and different offense, it is imagine how the plea of former jeopardy could effectively be interposed.

The Philippine Bill (Act of Congress of July 1, 1902) in section 5, among things provides, that no person shall be held to answer for a criminal offense without due process of law; and no person, for the same offense shall be twice put in jeopardy of punishment, nor shall he be comp in a criminal case to be a witness against himself.

Under these provisions it will be noted that the prohibition against be twice placed in jeopardy only relates to being placed in jeopardy twice the same offense. If the offenses are not the same, certainly provisions of the Act of Congress can not be invoked for the. purpose of securing the acquittal of the defendant under the second complaint. Unless it clearly appears that the first and second offenses are the said the accused can not claim the benefit of autre fois acquit or autre fois convict In the present case, under the statement of facts of the appellant, it clearly appears that the offenses are not the same. The was a violation of a city ordinance, prohibiting persons from "visiting where opium was kept and used upon the person, etc." The second offense the one under which the defendant is here accused, is that of the violate of a law of the Commission, known as the Opium Law.

A conviction or acquittal upon one complaint is no bar to a subsequent conviction and sentence upon another complaint, unless the evidence required to support the conviction upon one of such complaints would have been sufficient to warrant a conviction upon the other. The test as to form jeopardy is riot whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. (Morey vs. Commonwealth, 108 Mass., 433; U. S. Chan-Cun-Chay, 5 Phil. Rep., 385; U. S. vs. Flemister, 5 Phil. R same case, 207 U. S., 372; U. S. vs. Gavieres, 10 Phil. Rep., 694 case, 220 U. S., 338; U. S. vs. Vallejo, 11 Phil. Rep., 193; Ca McClaghry, 183 U. S., 365, 395; People vs. Hanrahan, 75 Mich., The State vs. Botkin, 71 Iowa, 87; 60 American State Rep 32 N. W. Reporter, 785; Ex Parte Hong Shen, 98 Cal., 681; City Louis vs. Scheer, 235 Mo., 721; In re George Hoffman, 155 Cal., of Louisiana vs. Labatut, 39 La. Ann., 513.)

We find no reason for modifying the sentence of the lower court under the first assignment of error.

With reference to the second assignment of error, to wit, that the trial erred in receiving the testimony of the defendant, given in a former ca evidence against him in this cause and basing his conviction thereon, i be said, again adopting the statement of facts of the appellant in his brief, that "it appears from the record herein (evidence, pp, 20 and 2 that the undersigned attorney (the attorney for the defendant in both ca advised the defendant, prior to the trial of cause No. 7949, that he show testify in said cause that he was the lessee of the house No. 26 Call Chica, and that he lived there, and that the opium found on the upper floor of said house belonged to him and was in his possession and custody that such evidence, so far from prejudicing him, should have the effect freeing him from the charge therein made against him. We have, therefor the express admission of the defendant in cause No. 7949, given in ope court, that he was the owner of the opium with which he is charged of having in his possession in the present case. The fact that this admission was made by the defendant was clearly proved during the trial of the present case by witnesses who heard it. No attempt was made to show that the fact was not exactly as confessed by the defendant.

With reference to the admissibility of the admissions and declarations o defendant charged with a crime, the rule seems to be that the declaration made by a defendant or by a third party, by his authority, if relevant, admissible

against him. If the defendant has made statements constitute an admission of the facts charged in the complaint, or relevant to the charges in the complaint they are admissible against him. (Commonweal vs. Sanborn, 116 Mass., 61; People vs. Bosworth, 64 Hun People vs. Cassidy, 133 N. Y., 612; State vs. Behrman, 114 N. C., 797.)

The foregoing rule is based upon the presumption that no man would declare anything against himself, unless such declarations were true. acts, conduct, and declarations, wherever made, provided they be voluntary, are admissible against him, for the reason that it is fair presume that they correspond with the truth, and it is his fault if the not. (Truby vs. Seybert, 12 Pa. St., 101, 104.)

The procedure in criminal cases in the Philippine Islands provides that defendant in a criminal proceeding may be a witness in his own behalf. When he avails himself of this right, he is subject to a rigid cross-examination and is bound by his admissions, voluntarily given, in such examination. His admissions are presumed to be given voluntarily and when thus given on a previous trial, they may be used against him in a subsequent cause. (State vs. Glass, 50 Wis., 218; People v 47 Cal, 125; People vs. Gibbons, 43 Cal., 557.)

The rule is well established that a voluntary, unsworn statement of a charged with a crime, may be proved against him as a confession. If his voluntary extrajudicial admissions are admissible against him, there see no good reason why his admissions made in open court, under oath, should not be accepted against him.

In the case of People vs. Kelley (47 Cal., 125) the court said:

"If his voluntary, unsworn statements may be proved against him as a confession, his voluntary testimony, under oath, given in a proceeding i he elects and is authorized to testify, ought to stand upon at least a favorable a footing."

The justice of the foregoing rule seems to be fairly well illustrated in following example: Suppose the defendant in the present action, after ma the confession referred to above, upon some ground or other had secured on appeal, a new trial, and on that new trial should give testimony materially different from that which he gave on the first trial. Could be any doubt that in that case his testimony on the first trial might b given in evidence on the second, for the purpose of affecting his credit and for the purpose of influencing the court with reference to his guilt have been unable to find any authority in jurisdictions where a defendant may declare in his own behalf jurisprudence supporting the contention o appellant.

Our conclusions are that the lower court committed no error in the trial the cause and in imposing the penalty in the present case. The sentence of the lower court is, therefore, hereby affirmed with costs.

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

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