

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TIN TONG GUIM, VICTORIA SANTIAGO, AND PU TO WA, DEFENDANTS. TIN TONG GUIM AND VICTORIA SANTIAGO, APPELLANTS.

G.R. No. 8535. August 06, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with a violation of section 31 of Act No. 1761. The complaint alleged:

"That on or about October 6, 1912, in the city of Manila, Philippine Islands, the said accused willfully, unlawfully, and criminally, combining and conspiring together, at said time and place, were the owners and held, conveyed, kept, possessed, and had under their control and in their possession, and knowingly had on their premises, 16 kilos and 900 grams of opium, of the value of P5,000 Philippine currency, without being in any way authorized thereto; in violation of law."

After hearing the evidence, the Honorable Simplicio del Rosario found that the evidence was insufficient to support the charges against the defendant Pu To Wa, and acquitted her and dismissed the complaint against her and discharged her from the custody of the law; with one-third of the costs de oficio.

After the conclusion of the trial, Judge Simplicio del Rosario found that the evidence was sufficient to support the charges against the defendants Tin Tong Guim and Victoria Santiago, and sentenced each of them to pay a fine of P1,000 and each to pay one-third part of the costs: From that sentence the defendants Tin Tong Guim and Victoria Santiago appeal.

In this court the appellants make three assignments of error as follows:

- (1) That during the trial, while Victoria Santiago was a witness in her own behalf, she was asked certain questions concerning the ownership of the opium which had" been found in her possession, to which question she answered that it belonged to her husband. An objection was made to the question and answer and the objection was sustained.
- (2) The second assignment of error in effect is identically the same as the first.
- (3) The lower court erred in finding defendants Tin Tong Guim and Victoria Santiago guilty as charged.

With reference to the first assignment of error the appellant argues at length that the lower court committed an error in not hearing the testimony of the defendant Victoria Santiago in which she attempted to show that the opium in question belonged to her husband. The appellant attempts to show that the wife is not prohibited from giving testimony in a criminal case against her husband under the circumstances of the present case. The lower court perhaps committed an error in refusing to hear the witness. We do not believe, however, that the error was prejudicial in the present case. The question which the court was investigating did not relate to the ownership of the opium in question. The defendant was charged with having in her possession and under her control a certain

quantity of opium, amounting to nearly P5,000. The Government attempted to prove only that the opium was found in her possession. Whether the opium belonged to her husband or not was a question of no importance except to be taken into consideration in fixing the penalty. Victoria Santiago testified that her husband was a Chinaman; that he had been absent in China for several months; that at the time he went to China he left the opium in a trunk in their house. She does not attempt to explain why the opium, amounting to such a large sum of money, was not left in the house until her husband's return. She does not attempt to explain why she had it in her possession at the time and place mentioned in the complaint. She does not attempt to explain why she had taken it out of the trunk and had beside her a number of empty cans with soldering material and a pipe used in smoking opium. If the Government had attempted to prove that she was the owner, then it might have been proper to have considered the admissibility of her testimony as going directly to disprove the allegations in the complaint. The Government made no attempt to show that she was the owner. The proof all goes to show simply that she had the possession of the opium. Whether a married woman can give testimony against her husband under circumstances like those present in the present case, we find unnecessary now to decide. It is sufficient to say that even admitting her statements that her husband was the owner in no way affects her liability under the complaint. The evidence of the witnesses for the prosecution, as well as the admissions of the defendant herself, shows clearly and beyond a reasonable doubt that she is guilty of the crime charged against her.

With reference to the defendant Tin Tong Guim, the witnesses for the prosecution declare that when they entered the house where the opium was found they looked through an opening in the door and saw inside the house the three defendants; that when the policemen (the witnesses for the prosecution) attempted to enter the house the defendant Tin Tong Guim escaped through a rear door of the house. Tin Tong Guim presented a number of witnesses for the purpose of showing that at the time the opium was found in the house where Victoria Santiago and Pu To Wa were arrested he was in his house at No. 27 Plaza Santa Cruz of the city of Manila. These witnesses swear positively that they were in the house of Tin Tong Guim and talked with him for some time, giving the exact hours covering a period before the other defendants were arrested until an hour or more after the other defendants were arrested. The declarations, of these witnesses seem to be entirely credible until we take into consideration the fact that two of the policemen who assisted in arresting Victoria Santiago and Pu To Wa immediately after the arrest had been completed went to the house of Tin Tong Guim at No. 27 Plaza Santa Cruz and found that he was not there. They then made a search in another part of the city for him and were unable to find him and returned again to his house later on the same night, some time about 9 o'clock or after, and the only person they found in his house on the occasion of their visit was a young girl. The declarations of the policemen and the declaration of the defendant Tin Tong Guim and his witnesses cannot be harmonized. One or the other set of witnesses has declared falsely. The lower court who saw the demeanor of the witnesses upon the witness stand and who hear their declarations gave credit to the declarations of the policemen. The lower court believed that they went to the house of the defendant Tin Tong Guim at No. 27 Plaza Santa Cruz at the time they said they did and that he was not there. The result is, therefore, that he and his witnesses must have falsified in their declarations upon that fact. The lower court believed the declarations of the witnesses for the Government that Tin Tong Guim was at the house of Victoria Santiago and in possession of the opium in question together with Victoria Santiago. The defendant Pu To Wa is the wife of the defendant Tin Tong Guim. It is also a fact that the husband of Victoria Santiago, as admitted by the defendant Tin Tong Guim, was an employee of the latter. Tin Tong Guim admitted that he paid the electric light bill of the house in which Victoria Santiago lived.

The Honorable Simplicio del Rosario, in a very interesting opinion in which he analyzed very carefully the evidence adduced during the trial of the cause, reached the conclusion that the defendants, Tin Tong Guim and Victoria Santiago, were guilty of the crime charged. In our opinion, the evidence adduced during the trial of the cause fully supports the findings of fact. The circumstances under which the defendants and appellants were

found in the possession of the opium, with a number of empty cans, with apparatus for the purpose of soldering and closing the cans, together with the fact that they had a pair of scales in their possession at the same time which were used for weighing opium, clearly indicate that they were engaged in the traffic of selling opium, an offense much more serious than that charged in the complaint. These facts we believe should be taken into consideration in imposing the penalty provided for by law for the illegal possession of opium.

It is our conclusion, therefore, that the sentence of the lower court should be modified and that each of the defendants and appellants should be sentenced to pay a fine of P1,000; that Tin Tong Guim, in addition to said fine, should be sentenced to be imprisoned for a period of six months; that Victoria Santiago, in addition to said fine, should be sentenced to be imprisoned for a period of three months, each to suffer subsidiary imprisonment in case of insolvency, and each to pay one-third part of the costs in the court below and one-half the costs of this instance. So ordered

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

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