

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHUA LUI DEFENDANT AND APPELLANT.

G.R. No. 8995. November 06, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila convicting Chua Lui and Koh Kieng Sien of the illegal possession of opium and sentencing the said Chua Lui to five years' imprisonment and to pay one-fourth of the costs and Koh Kieng Sien to six months' imprisonment and to pay one-fourth of the costs. The two other defendants who were jointly charged with Chua Lui and Koh Kieng Sien were acquitted. Koh Kieng Sien did not appeal.

In the early part of March, 1913, Chua Lui, a resident of the city of Manila, became one of the parties to a written lease in which he secured the possession, use and occupation of a house in Caloocan, a short distance beyond the city limits of the city of Manila, for a period of five years. Soon after the execution of the lease Chua Lui, Chua Tong and Chua Bee Cho moved into the house and occupied the same. Two or three weeks later George W. Marshall, acting chief of secret service of Manila, in company with three other American officers and one Filipino officer, went to the house. At the approach of the officers Koh Kieng Sien jumped from the rear window of the house and ran across the fields. The officers gave chase, overtook, and arrested the fleeing Chinaman. They testified that the fugitive had with him a piece of bamboo containing an opium pipe and a can of opium and that when he saw himself hard pressed he threw them away, evidently hoping to dispose of the incriminating evidence in such a way as to deceive the officers. Having captured Koh Kieng Sien, the officers then arrested Chua Lui, Chua Tong, and Chua Bee Cho and preferred against them the following charge:

"The undersigned accuses Chua Lui, alias Chua Lui Sane, alias Luis Sane, Chua Tong, Chua Bee Cho, and Koh Kieng Sien of a violation of section 31 of Act No. 1761 of the Philippine Commission, as amended by section 3 of Act No. 1910 of the Philippine Legislature, committed as follows:

"That on or about the 25th day of March, 1913, in the municipality of Caloocan, Province of Rizal, Philippine Islands, within 2½ miles from the limits of the city of Manila, P. I., and within the jurisdiction of this court, the said accused conspiring among themselves and helping each other, did then and there willfully, unlawfully, and feloniously have in their possession and under their control and knowingly in their premises about 75 grams of opium. Contrary to law."

It is admitted that after a very close and thorough search of the house and premises no opium was found or anything which led to the suspicion that there had been opium on the premises at any time except that found in the possession of Koh Kieng Sien. It is also conceded, as a necessary result, that unless the fact that the accused Koh Kieng Sien had the opium in his possession is sufficient to convict the other occupants of the house of the crime charged the prosecution must fail. It is the undisputed evidence in the case, except by mere inference, that Koh Kieng Sien, the only person who was found in the possession of opium, was a casual visitor at the house, having been there but a few hours when the policemen arrived; that he was then under sentence following a conviction of

a violation of the Opium Law; that the reason of his presence at the house at that time was to borrow money of the accused Chua Lui to pay the fine imposed upon him by such sentence.

All of the accused, except Koh Kieng Sien, denied that they had had possession of opium or that there was opium in the house, and they denied all knowledge of the fact that Koh Kieng Sien had opium in his possession at the time.

There is some claim on the part of the prosecution that Koh Kieng Sien was engaged in smoking opium just prior to the arrival of the police officials, and that the other accused, being then in the house, must have known that fact. It is asserted that there was an odor of opium fumes in the house when it was entered by the police and that the pipe found in the possession of Koh Kieng Sien was still warm. There is not entire agreement among the police officials relative to these facts. Some claimed to have noticed the odor, others did not; some claimed to have observed the warmth of the pipe, others did not. We doubt very much if there is evidence sufficient to establish clearly that Koh Kieng Sien was engaged in smoking opium when the officers arrived. There are facts and circumstances, in addition to the absolute denial of the accused, which go to show that such an allegation is not altogether well founded. It seems that the same officers who made the arrests, or part of them, had visited and searched the house the night before; that on the following morning the inmates thereof, in company with the *teniente* of the *barrio*, went to a justice of the peace for the purpose of making a complaint against the officers for the unlawful entry of their premises; that the justice of the peace requiring more evidence, the accused, in company with the *teniente* of the *barrio*, returned to the house, arriving there but a few minutes before the appearance of the police which resulted in their arrest. There was present, therefore, at the house at the time it is claimed that Koh Kieng Sien was engaged in smoking opium, the *teniente* of the *barrio*, who was an officer of the law and whose business it was to prevent the commission of crime. He testified that there was no opium being smoked there at that time. It should be noticed also that Koh Kieng Sien was at the house but temporarily; that he was there on a business matter; that in all probability he brought the contraband articles with him and he certainly took them away with him when he attempted to escape; that there was no lamp found in the house in such condition or in such a place that it could have been used by Koh Kieng Sien. Moreover it should be noted that the house having been searched or at least visited, the night before, by the police, the accused were fully aware that they were under surveillance, and if they were engaged in the commission of crime, they had every reason to believe that they were liable to be apprehended at any moment. But even if it be true that Koh Kieng Sien was smoking opium, it has not been shown that any of the other accused were aware of it. Certainly the *teniente* of the *barrio* knew nothing of it, and the accused and he were talking together at the time.

In the case of *United States vs. De los Reyes* (20 Phil. Rep., 467), it appeared that a few days prior to the 5th of November, 1910, one Gabriela Esguerra, who lived in San Miguel de Mayumo, being a friend of De los Reyes and his wife, came to visit them at their home in the city of Manila. While Gabriela was still there, certain revenue officials went to the house to search for opium. While some of the officers were in the house prosecuting the search therein, others were on the outside watching to see that no one left the house. During the progress of the search in the front part of the house one of the officers outside saw the accused Gabriela throw a package from the window of the kitchen into the grass. Upon recovering the package it was found to contain a considerable quantity of morphine. Upon these facts together with his refusal to permit the officers to enter the house, the trial court convicted De los Reyes of the crime of illegal possession of opium. Upon an appeal to this court, the judgment was reversed upon the ground that the mere fact that a temporary visitor at the house of De los Reyes had in her possession a quantity of morphine and that fearing discovery she threw it from the window of his kitchen was not sufficient to charge him with knowledge of the fact in such a way as to make him liable for the fact that the opium was on his premises.

In the case of *United States vs. Tan Tayco* (12 Phil. Rep., 739), the court said at page 743:

"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 to do so. 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), * * *

"The statements of the witness Abila * * * 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 the time in their possession; and, therefore, entirely consistent with the innocence of the defendants charged with a violation of the provisions of the Opium Act."

There is no evidence in the record showing or tending to show that the house occupied by the accused was an "opium joint" or that it had been built or constructed for that purpose, or that it had been changed and modified by the appellant Chua Lui so as to make it an "opium den," or that it had any of the qualities, whatever they may be, of such a resort, or that he intended to use it for any illicit purpose. There is no evidence in the record showing or tending to show that Chua Lui was acquainted with any gang of opium smugglers or persons connected with such gang, or that he was himself connected therewith or with such persons, or that he had ever been convicted of any violation of the Opium Law. Even though all these things were true, it does not necessarily follow that he is guilty of the crime charged. Persons may not be convicted on general principles, but only on evidence which establishes the precise charge lodged against them.

We are satisfied from the whole case that the guilt of the appellant has not been shown beyond a reasonable doubt. The judgment of conviction is reversed and the accused acquitted. The sureties on his bond will be exonerated.

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

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