

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ONG TO, DEFENDANT AND APPELLANT.*G.R. No. 9415. October 13, 1914*

Ponente: CARSON, J.

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Ong To, the appellant in this case, and another Chinaman named Lim Cui, were arrested about midnight in a house of which Ong To was the lessee. The two were found in the same room. Lim Cui was on a bed smoking opium, and Ong To was standing near by. Opium and some smoking utensils were found in the room. At the time of the arrest Lim Cui at first denied ownership of the prohibited articles, but after being addressed in the Chinese language by Ong To, claimed that they belonged to him.

The only fact as to which there is any real dispute is as to the place of residence of Lim Cui, the contention of the defendant being that the opium and smoking utensils were his property and that he lived in the room where they were found. On the night of the arrest he gave his residence at an unknown number in Calle Dasmarinas, but at the trial he testified that he lived with the defendant Ong To. Cross-examination, however, developed that his wife lived on Calle Dasmarinas and that she kept his registration certificates and other papers. One of the witnesses for the prosecution testified that he knew all the residents at Ong To's house, and that he had never seen Lim Cui there. The trial judge found that Lim Cui was not a resident of the house leased by Ong To, where the arrest was made; and we are of opinion that the evidence of record sustains this finding.

Evidence was admitted to show that the house had been searched on various former occasions, at which times smoking paraphernalia had been found there, the object sought to be obtained by the introduction of this evidence being to establish the contention of the prosecution that the house was what is commonly known as "an opium joint."

The admission of this evidence was strongly opposed in the court below on the ground that it was incompetent and immaterial, and its admission by the trial judge is now assigned as error. We think, however, that in cases of this kind such evidence is competent and admissible, provided it is shown that the former searches resulting in the finding of opium or smoking utensils, took place at a time when the house was occupied by, and under the control of the defendant, who of course should not be held responsible for acts of former tenants or owners. (Underhill on Criminal Evidence, sec. 482.)

The evidence introduced at the trial as to the tenancy of the defendant and appellant at the time when the former searches were made is not satisfactory. It is true that there was no evidence to the contrary, but there is nothing in the record which would sustain an affirmative finding to that effect without unduly straining the testimony of the witnesses as to the facts connected with the previous searches. We do not however consider the failure of proof in this regard as vital, because the other evidence of record conclusively establishes the guilt of the defendant of the offense of which he was convicted. It is urged that under all the circumstances the presence of opium and smoking paraphernalia in Ong To's house is not sufficient to sustain a conviction of the illegal possession of these articles.

We are satisfied however, that the case comes clearly within the doctrine of *United States vs. Bandoc* (23 Phil. Rep., 14), wherein it was held that proof of facts substantially similar established a prima facie case against the accused.

There was no satisfactory explanation of the presence of these articles in the defendant's house, and under all the circumstances we see no reason for disturbing the finding of the trial judge that the articles in question did in fact belong to the defendant and not to the defendant Lim Cut. It was shown at the trial that the accused had been previously convicted of the illegal possession of opium on April 23, 1910, and this fact, taken together with the fact that at the time of the arrest the accused was found furnishing his companion Lim Cui with the place and the means for indulgence in the prohibited vice, sufficiently maintains the sentence imposed by the court below. We find no error in the proceedings prejudicial to the rights of the accused. The judgment of the court below convicting and sentencing him is therefore affirmed, with the costs of this instance against him.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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