4 Phil. 218

[G.R. No. 1768. February 17, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CATALINO GERALE ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

On August 3, 1903, a complaint was filed by the deputy provincial fiscal of Cebu charging Catalino Gerale and Bartolome Gerale with the crime of causing injury to property. The complaint stated that these defendants on July 23 of that year, in the barrio of Tanque, town of Talisay, in that province, at about 8 o'clock in the morning, maliciously and without legal motive therefor, did enter the property of Eugenia Bacho in said town without her consent and cut eighty cocoanut shoots, the damage amounting to 400 pesos, Mexican, all contrary to law.

The case came on for trial in pursuance to said complaint and it appeared from the evidence that in the early hours of the morning of July 23, 1903, the defendants, Catalino and Bartolome Gerale, father and son, proceeded to the property in question, situated in the barrio of Tanque, town of Talisay, Province of Cebu; that they climbed some cocoanut trees which were growing upon said property and immediately proceeded to cut about eighty shoots and forty small trees that were producing *tuba*; that when Eugenia Bacho saw them she scolded them and asked how and why they cut the cocoanut shoots on her property and warned them not to continue damaging her property; that the defendants becoming angry, came down out of the trees and advanced toward her, raising their bolos and saying, "Here we shall all die;" that as the woman started to run, crying for help in order to bring the

neighbors to her assistance, the defendants followed her as far as the road; that each one of the shoots was of the value of 5 pesos and that said shoots produced *tuba* to the value of 2 *reale* per day; that the cocoanut trees which were planted on the land had been planted abont twelve years previously by said Eugenia Bacho and her husband, Luis Abarques; that the land was part of the hacienda of Santo Nino, the property of the friars; that this hacienda was then transferred to the *Compañia Agricola de Ultramar*; that Abarques and Bacho, after leasing the land from the manager of said hacienda, planted therein some cocoanut trees some twelve years ago, and that for this reason they were the persons who, by their laborers called *mananguetes* cleaned off the land and cultivated the same and obtained *tuba* from the trees thereon, without any opposition whatever for about four months prior to September of said year.

The defendants pleaded not guilty. They state that the land on which the cocoanut trees grew was the property of Marcelo Gerale,, and that after the latter's death one of the defendants, Catalino Gerale, son of Marcelo Gerale and father of the other defendant (Bartolome), succeeded in the tenancy of the land; that he continued in possession of the land from ,1883 to 1889; that in the latter year he was expelled from the land by the friars for failure to pay the rent; that at that time Eugenia Bacho and her husband, Luis Abarques, took possession of the land; that they cultivated the same; that in 1889 there were no cocoanut trees growing in the place and that the trees there at the present time had been planted by the friars; that in 1898, by virtue of an order of the revolutionary government, these lands were restored to the former tenants thereof, who had been expelled by the friars; that the defendant Catalino Gerale took possession again of the said land in 1899 and in that year there were no more friars in the hacienda of Talisay. He offered to present a document which he received from his father, in which document it is stated that the latter bought the land in the year 1864 from the former owners, Mariano Fortick and Casimira Fortick. This document was not admitted as evidence because of the objection interposed by the prosecution.

The proof shows that two laborers called *mananguetes* worked on the land by order of

Eugenia Bacho, extracting the *tuba*
from the cocoanut trees; they state that they do not know who profited thereby; they say that they were on said land on the morning of the 23d of July; that that morning Catalino had a quarrel with Eugenia Bacho. The defendants deny having threatened her or having cut the cocoanut shoots.

The crime of damage to property is not determined solely by the mere act of inflicting injury upon the property of a third person, but it must be shown that the act had for its object the injury of the property merely for the sake of damaging it. Without this circumstance the essential element of the crime is lacking and the criminal intention of the culprit can not be established. Such is the doctrine laid down by the decision of the supreme court of Spain dated February 23,1884. This doctrine is based precisely on the provisions of articles 562 and 566 of the Penal Code, The first of these articles says:

"Those who cause any damage to property of others not specified in the preceding chapter are guilty of injuries to property and subject to the penalties of this chapter."

One of the facts clearly proven in this case is that the two defendants cut eighty cocoanut shoots, which were producing *tuba*,
without having any right so to do; that they occasioned thereby serious damage to the interests of those who planted the trees; that the damage caused amounted to 400 pesos The defendants executed this act, prompted, doubtless, by grievance, hate, or revenge, because the injured party and her husband had leased the land from the manager of the hacienda after Catalino Gerale, one of the defendants and the father of the other defendant, had been expelled from said land by the attorney of the owners. When the injured party tried to stop the damage they were causing to the property, defendants threatened her and followed her as far as the road.

This court will not decide the question as to who is the owner of the property whereon grew the cocoanut trees, because it is not necessary for the determination of the crime and the guilt of

defendants. Even granting that Catalino Gerale was the owner of the property, he would not be justified in doing as he did, nor would he, together with his codefendant, be free from liability. Both defendants have stated that they were not the owners and that they did not plant the cocoanut trees; that Eugenia Bacho was the one who profited by said cocoanut trees and the one who distilled the *tuba*, employing laborers for that purpose for some weeks or months previous. Therefore, the defendants proceeded without any right or reason for doing what they did and their intention in injuring the trees was solely for the pleasure of causing damage thereto, since they did not profit by cutting the trees. This is also established from the fact that had these shoots been their own property they would not have done it. Even admitting that Catalino Gerale had taken possession of the land in 1898 with cocoanut trees already planted by the injured party herein and her husband, this circumstance does not relieve him or his codefendant from liability. Eugenia Bacho and her husband had planted the cocoanut trees twelve years previous; they acted in good faith and had the consent of the manager of the land, and, therefore, could not be deprived of their property in the violent manner herein described.

As for the rest, it is clearly proven that the defendants knew very well that they were not the owners of the property; they had consented to the injured party herein profiting by said trees, extracting the *tuba* by means of her laborers, *mananguetes*,
and therefore, when the defendants cut said shoots, they acted with malicious intention of injuring the property of the offended party.

For the reasons, therefore, above stated, and taking into consideration the provisions of articles 83 and 92 of the Penal Code, we are of the opinion that the judgment below, rendered November 23,1903, should be affirmed. Catalino Gerale and Bartolome Gerale are sentenced to pay a fine of 400 pesos, Conant, each, to indemnify, jointly and severally, to Luis Abarques and Eugenia Bacho, 400 pesos, and to pay the costs of the suit, it being understood that the defendants shall suffer subsidiary imprisonment in case of insolvency, but such subsidiary imprisonment not to exceed that which they might have to suffer for failure to pay the fine herein imposed.

Let the case be returned to the court below, with a certified copy of this decision and of the judgment that shall be rendered in accordance herewith. So ordered.

Arellano, C. J., Mapa, Johnson, and *Carson, JJ.,* concur.

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