

[G.R. No. 2158. April 29, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JULIAN BUDIAO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MAPA, J.:

The crime charged against the defendants here is arson. The complaint states "that on the evening of April 21, 1904, the defendant Julian Budiao, by order of his codefendant, Bernabe Rojas, set fire to a sugar plantation situated in Sugud, barrio of Calitan, municipality of Panay, Province of Capiz, belonging to Pascual Barza, and causing the latter damages to the value of 800 pesos." The court below found the two defendants guilty and sentenced them to the penalty of three years six months and twenty-one days of *prision correccional*, to jointly and severally indemnify the injured party, Pascual Barza, in the sum of P222, Philippine currency, as damages, and to pay the costs of the suit. From this judgment only Bernabe Rojas appealed.

The proof of the liability of this defendant exists principally and almost exclusively in the testimony of his codefendant, Budiao. The latter testified at the trial that the plantations of sugar cane belonging to Pascual Barza were burned because, having set fire to the plantation of his master, Rojas, by order of the latter, with the object of cleaning it, the fire was transmitted to the injured party's plantation, for the reason that Barza and his workmen pursued him and he was obliged to abandon the burning plantation, fleeing from his pursuers. On being asked if Bernabe Rojas told him to burn the plantation of Pascual Barza he answered as follows: "No, sir; he did not tell me anything; he only told me to set his own plantation of sugar cane on fire." This same statement was substantially that made by Julian Budiao to the municipal president, who was a witness for the prosecution immediately after he was captured after the occurrence. "I asked him," the president says, "why he had done that, and he answered me that he had set fire to the plantation of Bernabe Rojas, of Sugud, and for that reason the plantation of Pascual Barza was also burned. He told me," the

president adds, "that Bernabe Rojas told him to set his own plantation on fire, but that the fire was communicated to the plantation of Barza." In the same or like terms Budiao expressed himself to the sergeant of police, who is also a witness for the prosecution. This witness testifies that after Budiao was turned over to him as a detention prisoner he asked him why he had been arrested and he answered because he had set fire to some sugar cane by order of his master and that *the fire was communicated to the plantation of Barza*. The injured party, Pascual Barza, says that, having asked Julian Budiao *if he really was the author of the fire*, he replied, "Yes," but that he had done so by order of his master, Bernabe Rojas. The question, as may be seen, did not refer specifically to the fire on the plantation of Barza, but referred in general terms to the fire occurring on the evening of the occurrence in which not only the plantation of Barza was burned but also that of Rojas. This being so, the answer of Budiao could very well refer to the fire on the plantation of Rojas, and not to that of Barza. At least, there is no reason why the latter should be precisely understood as referring to the fire on the plantation of Barza, and, this being so, evidently no concrete charge against Rojas can be substantiated from his answer. The same thing may be said as to the statements of Budiao to the witness for the prosecution Simeon Bucbuc. This witness was a laborer on the plantations of Barza and relates the occurrence in the following manner:

"We three being working—Doroteo, Ignacio, and myself—on that occasion, when we turned our faces we saw that the fire was in the property of Pascual Barza, and we then went to the place of the occurrence and saw Budiao was setting fire to the cane which was not yet burning. We then asked him why he set the sugar cane on fire and he answered me that he was doing so by orders which he received from his master, Bernabe Rojas."

The witness does not say specifically to what cane he referred on questioning Budiao although it is probable that in his declaration he might have referred to the cane of Barza and not to that of Rojas, yet so far it does not appear established as certain and indubitable. Furthermore, the statements of this witness contain so many inconsistencies that he is placed in open contradiction with the rest of the witnesses for the prosecution. After his statement above quoted he adds the following:

"When we arrived in the presence of Barza we presented to him the individual who set his sugar cane afire, and, once there, Pascual Barza asked Budio *why he*

had set his sugar cane afire, and he answered him that he had done so because his master, Bernabe Rojas, had told him to do so.”

And then he adds:

“The municipal president asked Budiao what crime he had committed, and he answered him that he *had set Barza’s sugar cane afire because* his master, Bernabe Rojas, had told him to do so.”

We have already seen that the testimony of Barza and that of the municipal president is completely different from this. What Barza asked Budiao was whether he had been the author *of the fire*, and what Budiao answered to the municipal president, according to the latter, was that “Rojas told him to set his cane afire, but that the fire caught also in Barza’s plantation.”

Examining carefully the several statements made by the defendant Julian Budiao, we arrive at the conclusion that what he has said and what he has always meant at all times, both at the trial as well as outside, has been that Bernabe Rojas ordered him to set his own sugar cane afire, but not that of Pascual Barza. That such was really the order given by Rojas to Budiao is expressly affirmed by a witness for the defense, whose testimony has not been contradicted by any of the witnesses for the prosecution. There is, then, in the statements made at the trial and in those made outside of the court room by Julian Budiao, nothing to incriminate Bernabe Rojas. If the order which the latter gave the former was only to set his own cane on fire, and there being an absence of proof that in giving that order he had any malicious intention of setting Pascual Barza’s plantation on fire by means of the fire on his own plantation, although in fact the fire caught the former’s by the negligence or carelessness of Budiao or for any other motive, we can not charge him with any criminal liability for that occurrence, without prejudice to the civil liability which he might have incurred from the act of his employee. That liability in any event must be the object of another suit in the proper manner and form. The statement made by Rojas himself and the witness for the prosecution about the fact that he had *some resentment* against Barza for having required from him an exorbitant indemnity for a carabao, and that he had a suit pending against the said Barza (referring, perhaps, to the present suit), and that if he lost it Barza “would have to expect something from him,” does not prove the liability of defendant for the crime charged to him. The fact that he was somewhat estranged from Barza does not

mean that he hated him or had any rancor against him, as urged in the argument of the prosecution, and even were it so, it could not be concluded necessarily from this that he had committed the crime with which he is charged.

Therefore we reverse the judgment appealed from as regards the sentence imposed on Bernabe Rojas, whom we freely acquit, reserving to Pascual Barza the action for damages which he may have against said Rojas, which action may be pursued by him in the civil suit, declaring the costs in both instances *de officio* as regards the defendant Bernabe Rojas. So ordered.

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