46 Phil. 745

[G.R. No. 19290. January 11, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MENANDRO CONSTANTINO, DEFENDANT AND APPELLANT.

D E C I S I O N

ROMUALDEZ, J.:

The defendant is accused of the crime of arson. The lower court found the crime to have been proven, and sentenced the defendant to twelve years and one day of *cadena temporal*, with the accessories provided by law, to indemnify the municipality of Bigaa in the sum of P2,300, and to pay the costs. The defendant appealed from said judgment and makes six assignments of error, to wit:

> "1. The trial court erred in not allowing the accused time to read the information on the day of his appearance.
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> "2. The trial court erred in applying to this cause article 550, first case, of the Penal Code.
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> "3. The trial court erred in imposing upon the accused a penalty which is unconstitutional, being excessive, unusual, and cruel.
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> "4. The trial court erred in finding the accused guilty as principal of the burning of the school building of Pulongubat, Bigaa.
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> "5. The trial court erred in not permitting the defense to make certain questions in the cross-examination which would have shown the lack of consistency and veracity of the testimony of some witnesses for the prosecution.

> "6. The trial court erred in not permitting the defense to prove certain facts which would have weakened the prosecution."

The trial court did not commit any error in refusing to give the accused the time he applied for to read the information. To what section 19 of General Order No. 58 refers is to the time to *answer the information*. Neither did it err in applying article 550 of the Penal Code in this case, in spite of the fact that the edifice burnt had not been inaugurated, which was to be used as a public school. The evidence shows that said edifice had already been delivered by the contractor to the municipality of Bigaa. What makes a building public is not its inauguration for the purpose intended, but the fact of the State or any of its agencies having the title thereto.

We do not find ftie penalty of *cadena temporal* imposed by the law (art. 550 of the Penal Code) upon a person convicted of the burning of a public building to be unconstitutional by reason of being excessive, unusual, and cruel, when the damage caused exceeds 6,250 *pesetas*. Taking into consideration the gravity of the crime, which, as observes the illustrious commentator Viada, causes devastation, terror, and alarm, and accepting the considerations made by the trial judge about the grave consequences in the Philippines of the burning of an edifice used as a public school, we are of the opinion that the penalty provided by the law is not excessive. Neither is it in itself unusual and cruel. (U. S. *vs*. Pico, 18 Phil., 386.)

Turning to the fourth assignment of error, which, according to the appellant, is the principal basis of his defense, we find the evidence to have established sufficiently and beyond a reasonable doubt the identity of the accused as the person who set fire to the public school mentioned in the information. The record shows that the accused was disgusted with the erection of said building in the barrio of Pulongubat and not in that of Santol of which he was a resident, or on a place midway between the two barrios; that Eugenio B. Cruz surprised the appellant in the act of setting fire to said school building, and Feliciano Gonzalez saw him emerge from a side of the edifice when it was already burning; that some footprints found in the place where the accused was seen on the night in question coincide with one of the feet of the accused, with the circumstance of a finger being lacking from the footprints as well as from said

foot of the appellant.

We find in the record no sufficient reason for not giving credit to the witnesses for the prosecution who testified to the facts above stated. Nor is there sufficient evidence that the accused is a victim of political intrigues, which would justify us in disturbing the findings of fact of the lower court.

Among the circumstances that the defense discussed in his oral argument before this court, our attention was specially called to two, namely, the two pieces of bamboo, Exhibits A and B which, it is contended, should have been burnt much more than they are, if not totally, which are alleged to have been used by the accused for raising the burning wick to the eaves of the school building, the said building having been completely reduced to ashes; and the footprints which extend to the heel of the foot, which the defense argues cannot be those of a man who is running, the soles of whose feet do not ordinarily press upon the ground to their full length, but only their anterior parts, the heels being raised.

As to the canes Exhibits A and B, their ends exhibit traces of burns. The witnesses for the prosecution do not positively say that these two canes were not taken out from the eaves after the setting of the fire. The witness Eugenio B. Cruz says that he has not seen anybody take them out. (Fols. 13, st. n.) Even supposing that such canes were left resting upon the eaves of the building, it was not absolutely impossible for them not to be burnt totally or more than said Exhibits A and B are. The school building had a nipa roof and wooden walls; the roof to which fire was set would burn before the rest, and as the canes were resting on the eaves, they could have fallen to the ground when they lost their support, the flame, if there was any, extinguished upon their falling, and once on the ground, which was humid, according to the evidence, they could not have been burnt either by the fire of their own, or by that of the edifice. It is not impossible for these canes not to be entirely dry, being, as can be presumed, the surplus canes of an edifice that had just been terminated.

As to the footprints, also it was not impossible in the instant case for the full length of the foot of one who was running to be marked on that ground, which was humid, nor is it impossible for the earth to be loose like that taken

out from the excavations of the posts which are usually spread near them in buildings thus constructed.

In the last two assignments of error the defense contends that the court below should not have sustained the objection of the fiscal to certain questions made by defendant's counsel. The question put in the cross-examination to the witness Eugenio B. Cruz was properly disallowed, as unnecessary, as well as the other one put to Feliciano Gonzalez. As to the question made by the court (fol. 21, st. n.), it does not constitute an abuse of discretion, nor of authority, it being really, as the Attorney-General says, a question to make the previous one clear, for it leads one to believe that what was intended to get from the witness was the reason why the accused was caused to tread upon the footprints and not whether or not the accused had seen such fact.

We hold that the trial court was right in finding the accused guilty of the crime of arson and in imposing upon him the penalty provided by article 550 of the Penal Code.

We find, however, no circumstance whatever modifying the penalty, which must, therefore, be imposed in its medium degree.

Wherefore, the judgment appealed from is modified, and the appellant is sentenced to fourteen years, eight months and one day of *cadena temporal*, said judgment being affirmed in all other respects.

The costs shall be taxed against the appellant. So ordered.

Araullo,
C.J., Street, Malcolm, Avanceña, Ostrand, and *Johns, JJ.,*
concur.

DISSENTING

VILLAMOR, *J.*:

I dissent. In my opinion the evidence does
not prove the guilt of the accused beyond a reasonable doubt. It is said that the pieces of bamboo exhibited at the trial, with burning wicks in their ends, were placed so as to rest upon the eaves of the school building in order to initiate the fire. The house was completely burnt, and I do not find in the record any reason why these canes were saved. As to the footprints, it appears that the accused was taken twice to the place the day following the fire. Under such circumstances how can it be affirmed with reasonable certainty that said footprints on the ground were the footprints on the night of the fire and not on the first time that the accused was taken there after the fire? I think that the accused is entitled to an acquittal.

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