45 Phil. 89

[G.R. Nos. 19744, 19745. August 20, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. M. TANONAKA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

STATEMENT

In R. G. No. 19744, the following information was filed against the defendants:

> "That on or about the night of the third, or the dawn of the 4th day of July, 1921, in the *sitio* of Mintal, municipal district of Tugbok, Province of Davao, Philippine Islands, and within the jurisdiction of this court, the aforesaid accused and some other persons, conspiring and acting together, did wilfully, unlawfully, maliciously, and feloniously burn the house inhabited by Z. Yokota, which was completely reduced to ashes, together with all of the properties contained therein, causing a damage or loss to said Z. Yokota amounting to a total of about P4,911, more or less.
>
> "Contrary to law."

In R. G. No. 19745, it is charged that at the same time and manner, and in the *sitio* of Mintal, the defendants "did unlawfully, maliciously, and feloniously burn the house (formerly occupied by one Hamamotus) belonging to the Mintal Plantation Company worth about P1,000," reduced it to ashes, causing the loss of that amount.

The two cases were styled in the Court of First Instance of Davao as Nos. 706

and 707. By stipulation of the parties, both cases were tried jointly. As a result in R. G. No. 19744, the defendants were found guilty of the crime of arson, as defined and penalized in article 550, with the extenuating circumstance in their favor of drunkenness not habitual, and each was sentenced to twelve years and one day of *cadena temporal*, to indemnify jointly and severally the offended party Yokota in the sum of P3,500, and to pay the costs in equal parts, and in R. G. No. 19745, they were found guilty and each of them was sentenced to six months and one day of *presidio correccional* under article 557, paragraph 3, of the Penal Code, to indemnify jointly and severally the Mintal Plantation Company in the sum of P1,000, or to suffer subsidiary imprisonment in case of insolvency at the rate of one day for every twelve and a half *pesetas* which they may fail to pay, which subsidiary imprisonment should not exceed one-third of the principal penalty, and to pay the costs in equal parts, from which the defendants have appealed, claiming, first, that the trial court erred in finding that a conspiracy existed between the defendants to burn the property, and in imposing the sentence, and, second, in sentencing the appellants under paragraph 2 of article 550 of Penal Code, and to indemnify the offended party, Z. Yokota, in the sum of P3,500.

JOHNS, J.:

In a well-prepared opinion the lower court made a correct and complete analysis of the facts, from which it appears that the defendants were members of a mutual association between which and the Mintal Plantation there was trouble and friction. The defendants believed that Yokota was a spy for the Mintal corporation and informed it of the secrets and movements of the association. July 3, 1921, a notice was sent to the members of the association, requesting them to assemble that evening in the house of a Japanese named Mijitaka, to discuss what should be done with the association. About 6 p. m., the majority voted for its dissolution. The question then came up as to what should be done with the P30 in the treasury. It was suggested that the money should be donated to a Japanese hospital, but after some discussion the majority voted in favor of investing the fund in the purchase of wine and groceries to drink and eat on the occasion, which were later purchased and consumed. Some time afterwards, while the members were more or less under the influence of liquor, one of the lamps in the house was put out, and it was noticed that someone had left the house, and it was later ascertained that it was Yokota. As the trial court found, someone

said: “Let’s go to Yokota’s house,” and all the accused with their companions as moved by one single spring went to the house of Yokota, and on reaching it, they set fire to it, pouring petroleum on the dry leaves of hemp and cogon which some of them had placed downstairs. The house was not destroyed at that time, because another Japanese, Marouka, put out the fire. Upon leaving Yokota’s house, the defendants, being tired and hungry, went to the house of the defendant Miyata, and there ate some rice. After eating all of them signed their respective names to a paper to the effect that no one would reveal the names of those who set fire to the house of Yokota. After this they agreed to return to Yokota’s house to see whether or not it was burned. In returning they passed an unoccupied house belonging to the Mintal Plantation. One of the group stated that it should be burned, and they all shouted: “Let’s burn it,” and they set fire to it. From there they went to the house of Yokota, to which they again set fire, and as a result the house was completely reduced to ashes.

The trial court found that the defendants Miyata, Furuta, Sinchi, and Nichi were the persons who actually set fire to Yokota’s house the first time, and that Miyata and Furuta and Utsuka and Mimura set the fire the second time, and that Miyata, Furuta, and Tanonaka were the persons who set fire to the house of the Mintal Plantation. The remaining defendants contend that there is no proof of conspiracy, and for such reason they are not guilty of the crime of arson. That claim is not tenable. The proof is conclusive that the defendants were all together at the meeting in the house of Mijitaka; that they all left there and went direct to the house of Yokota, and were all present when an attempt was made to burn his house the first time. Together they left and went to the house of Miyata where they ate some rice, and all of them left there and were together at the time the house of the Mintal Plantation was burned. They left that house and again went back to the house of Yokota to which they again set fire, and it was destroyed.

The action and conduct of the parties is conclusive evidence of a conspiracy to do that which was done, and, as the trial court found, all of the defendants are guilty of the crime.

The defendants contend that the information as drawn will not sustain a conviction under paragraph 2 of article 550 of the Penal Code, and the Attorney-General cites the decision of this court in the case of People

vs. Miyata and Furuta, R. G. No. 18812.[1] The information there is the identical information in the instant case, and the decision in that case was signed by every member of the court present, including the writer of this opinion.

In construing the information, the opinion in that case says:

> "It is not alleged in the information that the accused were ignorant of the fact that there were any persons in the house, and article 550 of the Penal Code, applied by the trial court, is not applicable, but article 557, subsection 4, there being to be imposed, in view of all the circumstances of the case, the penalty of six years of *presidio correccional*." (Citing U.S. *vs*. Evangelista, 39 Phil., 825.)

After careful consideration, the writer is clearly of the opinion that the information is sufficient to sustain the conviction under paragraph 2 of article 550, and that the sentence imposed by the trial court in the instant case is correct, and upon that question, the opinion in R. G. No. 18812 is not legally sound. The information in R. G. No. 19744 specifically alleges that the defendants did "maliciously and feloniously burn the house inhabited by Z. Yokota," and the proof is conclusive that it was the usual place of residence and abode of Yokota. Even though Yokota was temporarily absent at the time of the fire, the house was "inhabited by Z. Yokota" within the meaning of the law. Be that as it may, the construction placed upon the information in case R. G. No. 18812 is *stare decisis*, as to the instant case, in particular, and, for the purposes of this decision, must be deemed the law.

The proof is conclusive that the defendants were bent upon the malicious destruction of property, and that their conduct was vicious and revengeful.

In case R. G. No. 19744, the decision of the lower court, convicting the defendants of the crime, will be sustained, but, following the decision of this court in R. G. No. 18812, the sentence will be reduced from twelve years and one day of *cadena temporal* to the period of six years of *presidio correccional*, and that the appellants indemnify the offended party jointly and severally in the sum of P1,200, or to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay one-sixteenth of the costs.

In a well-prepared, analytical brief, the Attorney-General recommends that, in case R. G. No. 19745, the medium penalty, under paragraph 3, article 557, of the Penal Code, instead of the minimum, should be imposed upon the appellants, and with that we agree. In that case the sentence of the lower court will be modified, and increased, and, instead of a sentence for the period of six months and one clay of *presidio correccional*, each of the appellants is hereby sentenced for the period of two years, eleven months and ten days, and in all other respects, the judgment of the lower court in that case is affirmed. Each of the appellants to pay his *pro rata* share of the costs in this court.
So ordered.

Street, Malcolm, Avanceña, Villamor, and *Romualdez, JJ.,* concur.
Araullo, C.J., did not take part.

---

[1] Promulgated December 29, 1922, not reported.

Date created: October 08, 2018