

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FELIPE DITTO ET AL., DEFENDANTS. FELIPE DITTO AND FORTUNATO LAUBISTO, APPELLANTS.

G.R. No. L-22345. October 10, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The Court of First Instance of Samar sentenced the appellants to be imprisoned for ten years and one day of presidio mayor, with the accessories prescribed by law, to indemnify Casimiro Abria jointly and severally in the sum of P10, and to- pay the costs.

The defendants are charged with the crime of arson committed, according to the complaint, as follows: "That on or about midnight of the 4th of May, 1923, in the sitio of Capipian, barrio of Lope de Vega, municipality of Catarman, Province of Samar, Philippine Islands, and within the jurisdiction of this court, the above named defendants with premeditation and confederating together, provided themselves with dynamite or other explosive substance, and did willfully, unlawfully and criminally place it and cause the same to explode on the door of the house inhabited by Casimiro Abria and his family, which dynamite or explosive substance exploded and burnt the ceiling of said house; as a result of which a part of said house was destroyed, the damage caused not exceeding 6,250 pesetas.

"Contrary to law."

The appellants pray for the reversal of the judgment appealed from, while the Attorney-General prays for the modification thereof in the sense that the penalty of from four months and twenty-one days to six months of arresto mayor be imposed upon the defendants, under the provision of article 557, paragraph 1, of the Penal Code. After a careful study of the record, we are of the opinion, and so hold, that the guilt of the defendants does not appear duly proven beyond a reasonable doubt, as is required for the imposition of the penalty fixed by the law.

There is in the record no direct evidence of the commission of the crime by the defendants. None of the witnesses has seen the dynamite which, it is said, they caused to explode in the house of the offended Casimiro Abria. Indeed the Attorney-General says in his brief: "It is true that none of the witnesses for the prosecution has seen the defendants Felipe Dino and Fortunato Lauristo on the night of May 4, 1923, at the act of firing the dynamite that set fire to the ceiling of the house of Casimiro Abria and unnailed several boards from its wall, but the circumstances of record in this case are so clear and conclusive that no other conclusion is possible than that the herein appellants Felipe Dino and Fortunato Lauristo were the authors of the explosion that caused a part of the ceiling of the house of Casimiro Abria to burn."

What are these circumstances? They are made to consist in the facts testified to by Andres Borca and Enrique Horogon.

The witness Andres Borca says that about the month of February, 1923, the accused Felipe Dino proposed to him

to cause a dynamite to explode in the house of Casimiro Abria, telling him, "Andres there is a dynamite here; fire it in the house of Casimiro Abria," which the witness refused to do, because he did not know how to fire a dynamite. This seems to indicate the guilt of the accused Felipe Dino; but if it is considered that the testimony of the witness Borca is not corroborated in any manner and is denied by the accused Felipe Dino, and that Borca has not seen any dynamite or other explosive substance in Felipe's possession, it cannot be said in reason that his testimony constitutes a strong and conclusive evidence of the guilt of the accused Felipe Dino.

The witness Enrique Horogon says that he was invited by Gabriel Dino on the night of the 4th of May, 1923, to go out fishing on a boat. This witness says, further, that upon their arrival at the place known as Iraya of the barrio of Lope de Vega his companions left them on the boat; that then he heard an explosion and a little later the accused came back in a hurry to the boat and in their return Felipe Dino warned him not to reveal to anybody that he (Felipe Dino) had ordered the accused Lauristo to fire a dynamite in the house of Casimiro Abria.

But is it true that Horogon was invited by Gabriel Dino on the night in question to go out on a boat with the defendants up to the place known as Iraya? The record does not disclose any confirmation of the testimony of Horogon; on the contrary it is denied by the Dino defendants and the circumstances of the voyage on the boat and of the warning that Horogon puts in the mouth of Felipe make it completely incredible. If after all, Horogon had no part to perform in connection with the supposed igniting of the dynamite, what necessity did the accused have to take him on the boat? If Horogon, at any rate, did not know where the defendants went after they had left him on the boat, nor did he see Lauristo fire the dynamite in the house of Abria, what necessity did Felipe have to caution him not to tell anything about what they (the defendants) had done? By instinct the criminal avoids the presence of witnesses who may denounce the commission of the crime; and the case now related by the witness Horogon is so rare that without a strong corroboration, as is the case here, we cannot believe it. And upon this ground, the case must be dismissed as to the defendant Gabriel Dino.

The fact itself of the explosion of the dynamite related by the offended Abria is not free from doubt. According to this witness, at about midnight of May 4, 1923, while he was sleeping in company with eight persons in his house situated in the sitio of Capiplan, barrio of Lope de Vega, municipality of Catarman, Province of Samar, he was awakened by a strong explosion, which he supposed had burst out in his house; he immediately stood up, and went to the place where he believed the explosion had taken place, and found a part of the wall that was contiguous to the door destroyed, and the ceiling of the house burning; he called his servant and both of them succeeded in putting out the fire. As a result of said explosion, the hemp fiber baled and deposited behind the main door of the house was scattered and a part of the ceiling, which was of anahaw, burnt, thus presenting a hole which was one foot in diameter, four boards having been unnailed and a hole made on the wooden floor. On the next day he reported the matter to the municipal president of Catarman who repaired to the place of the event and saw that the damage caused by the explosion would amount to P10.

According to the testimony of the witness Abria the explosion seems to have taken place on the exterior part of his house near the main door, destroying the wall contiguous to the door through which it entered scattering the hemp fiber which was baled and deposited behind said door, and unnauling four boards of the wall; but such a hypothesis cannot be reconciled with the fact of an opening one foot in diameter having been made on the wooden floor of the house, and another of equal size on the ceiling of anahaw, unless it is granted that the explosion was so strong that a part of the explosive was thrown against the unnailed boards, another part against the floor, making an opening thereon, and still another against the ceiling. But then it cannot be explained how the eight persons who were sleeping in the same room, which contained an area of only about 12 square brazas and formed one single compartment, did not suffer the slightest injury.

Without the necessity of expounding other hypotheses which may be drawn from the testimony of Abria, and

taking into account that the same witnesses, Borca and Horogon, have not seen any dynamite in possession of the defendants, or in the house of Felipe Dino, or in the boat on the night in question, we conclude that if the circumstances stated by said witnesses indicate anything, they are not so convincing or conclusive as to establish the guilt of the defendants beyond a reasonable doubt.

According to Rule 52 of the Provisional Law for the Application of the Provisions of the Penal Code, in order that a conviction may be sustained upon circumstantial evidence alone, it is necessary, first, that the circumstances be more than one; second, that the facts upon which they are based be proven; and third, that, taken together, they convince the mind in such a manner as not to leave any room for reasonable doubt as to the guilt of the accused in the natural and ordinary course of things. And this is substantially the same rule established by the jurisprudence of this court. (U. S. vs. Perez, 2 Phil., 171; U. S. vs. Douglass, 2 Phil., 461; U. S. vs. Reyes, 3 Phil., 3; U. S. vs. Villos, 6 Phil., 510.)

For all of the foregoing, the judgment appealed from must be reversed, and the appellants Felipe Dino and Fortunato Lauristo be, as they are hereby, acquitted with the costs de oficio. So ordered.

Johnson, Malcolm, Avanceña, Ostrand, and Romualdez, JJ., concur.

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