

FRANCISCO QUIZON, PETITIONER, VS. THE HON. JUSTICE OF THE PEACE OF BACOLOR, PAMPANGA, ET AL., RESPONDENTS.

G.R. No. L-6641. July 28, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

On December 19, 1952, the respondent Chief of Police of Bacolor, Pampanga, filed a criminal complaint against the herein petitioner, Francisco Quizon, with the Justice of the Peace Court of said municipality charging Quizon with the crime of damage to property through reckless imprudence, the value of the damage amounting to P125.00. Quizon filed a motion to quash on the ground that, under Article 365 of the Revised Penal Code, the penalty which might be imposed on the accused would be a fine or from P125.00 to P375.00, which is in excess of the fine that may be imposed by the justice of the peace court. The Justice of the Peace forwarded the case to the Court of First Instance of Pampanga, but the latter returned it to him for trial on the merits, holding that the justice of the peace court had jurisdiction. The defendant appealed from this ruling of the Court of First Instance to this Court on the question of law raised.

Section 44 of the Judiciary Act of 1948 (Republic Act No. 296) provides in part as follows:

"Original jurisdiction.—Courts of First Instance shall have original jurisdiction:

"(f) In all criminal cases in which the penalty provided by law is imprisonment for more than six months, or a fine of more than two hundred pesos:".

Sections 87 of said Acts reads as follows:

"Original jurisdiction to try criminal cases.—Justices of the peace and judges of municipal courts of chartered cities shall have original jurisdiction over:

"(c) All criminal cases arising under the laws relating to: (6) Malicious mischief;".

In the cases of *People vs. Palmon*, 86 Phil., 350; *People vs. Penas y Ferrer and Key y Rochas*, 86 Phil., 596; and *Natividad, et al. vs. Robles*, 87 Phil., 834, it was held that in the cases provided for in Section 87 (c) of the Judiciary Act of 1948 above quoted, the jurisdiction given to justices of the peace and judges of the municipal courts is not exclusive but concurrent with the courts of first instance, when the penalty to be imposed is more than six months imprisonment or a fine of more than P200.00.

The question, therefore, is whether the justice of the peace court has concurrent jurisdiction with the court of First Instance when the crime charged is damage to property through reckless negligence or imprudence if the amount of the damage is P125.

We believe that the answer should be in the negative. To hold that the Justice of the Peace Court has jurisdiction to try cases of damage to property through reckless negligence, because it has jurisdiction over cases of malicious mischief, is to assume that the former offense is but a variant of the latter. This assumption is not legally

warranted

Article 327 of the Revised Penal Code is as follows:

"Art. 327. Who are liable for malicious mischief.—Any person who shall deliberately cause to the property of another any damage not falling within the terms of the next preceding chapter shall be guilty of malicious mischief".

It has always been regarded of the essence of this felony that the offender should have not only the general intention to carry out the felonious act (a feature common to all wilful crimes) but that he should act under the impulse of a specific desire to inflict injury to another; "que en el hecho concurra animo especifico de danar" (Cuello Calon, Der. Penal [6th Ed.] Vol. II, p. 869; Sent of Tribunal Supremo of Spain, 21 Dec. 1909; 12 Feb. 1921). ,

"El elemento interno de este delito requiere, ademas de la voluntad de ejecutar el hecho danoso y de la conciencia de su ilegitimidad, el animo de perjudicar, la intencion de danar. Si no eariste semejante animo el hecho no constituye delito." (II Cuello Caldñ, p. 870-871).

The necessity of the special malice for the crime of malicious mischief is contained in the requirement of Art. 327 of our Revised Penal Code, already quoted, that the offender "shall deliberately cause to the property of another any damage not falling within the terms of the next preceding chapter", Le., not punishable as arson. It follows that, in the very nature of things, malicious mischief can not be committed through negligence, since culpa (negligence) and malice (or deliberateness) are essentially incompatible. Hence, the Supreme Court of Spain in its decisions of 12 Feb. 1912, 7 Oct. 1931, 13 Nov. 1934 and 5 Oct. 1942, has expressly recognized that this crime is one of those that can not be committed by imprudence or negligence.

The proposition (inferred from Art. 3 of the Revised Penal Code) that "reckless imprudence" is not a crime in itself but simply a way of committing it and merely ; determines a lower degree of criminal liability" is too broad to deserve unqualified assent. There are crimes that by their structure can not be committed through imprudence: murder, treason, robbery, malicious mischief, etc. In truth, criminal negligence in our Revised Penal Code is treated as a mere quasi offense, and dealt with separately from wilful offenses. It is not a mere question of classification or terminology. In international crimes, the act itself is punished; in negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the imprudencia punible. Much of the confusion has arisen from the common use of such descriptive phrases as "homicide through reckless imprudence," and the like; when the strict technical offense is, more accurately, "reckless imprudence resulting in homicide"; or "simple imprudence causing damages to property".

Were criminal negligence but a modality in the commission of felonies, operating only to reduce the penalty therefor, then it would be absorbed in the mitigating circumstances of Art. 13, specially the lack of intent to commit so grave a wrong as the one actually committed. Furthermore, the theory would require that the corresponding penalty should be fixed in proportion to the penalty prescribed for each crime when committed wilfully. For each penalty for the wilful offense, there would then be a corresponding penalty for the negligent variety. But instead, our Revised Penal Code (Art. 365) fixes the penalty for reckless imprudence at *arresto mayor* maximum, to *prision correccional* minimum, if the wilful act would constitute a grave felony, notwithstanding that the penalty for the latter could range all the way from *prision mayor* to death, according to the case. It can be seen that the actual penalty for criminal negligence bears no relation to the individual wilful crime, but is set in relation to a whole class, or series, of crimes.

It is difficult to believe that the Legislature, in giving Justices of the Peace jurisdiction to try cases of malicious mischief, did so in total disregard of the principles and considerations above outlined. Our conclusion is that

"malicious mischief" as used in Section 87, par. 6, of the Judiciary Act, has exclusive reference to the wilful and deliberate crimes described in Arts. 327 to 331 of our Revised Penal Code, and to no other offense.

A further reason for this restrictive interpretation of the term "malicious mischief" used in section 87 of the Judiciary Act, is that the same constitutes an exception to the general jurisdiction of the Justice of the Peace Courts in criminal cases, which had always stood prior to the said Act at offenses punishable with not more than 6 months' imprisonment or a fine of not more than P200.00 or both. To this traditional jurisdiction, the Judiciary Act added eight (8) specific exceptions in the form of felonies triable in said courts without reference to the penalty imposable; and malicious mischief is one of these exceptions, while imprudence resulting in damage to property is not one of them.

For the foregoing reasons, we declare that the jurisdiction over the offense in question lies exclusively in the Court of First Instance. Hence, the writ of certiorari is granted and the order of remand to the Justice of the Peace Court is reversed and set aside. Without pronouncement as to costs.

Bengzon, Padilla, Bautista Angelo, Labrador and Concepcion, JJ., concur.

CONCURRING OPINION

MONTEMAYOR, J., concurring:

There is no question that the offense of malicious mischief, that is to say, causing damage to another's property willfully and for the sake of causing injury, because of hate, revenge or other evil motive (Art. 327, Revised Penal Code), is much more serious than damage to property without intent or malice but through negligence (Art. 365, Revised Penal Code). If the Justice of the peace court has jurisdiction, as Republic Act 296, Sec. 87 gives him, to try and decide cases of malicious mischief, logically and with more reason, it should also be allowed to try and decide cases of the less serious offense of damage to property through negligence. Actually, however, under the law, this is not always so. Under Art. 365, in damage to property thru negligence, "the offender shall be punished by a fine ranging from an amount equal to the value of the damage to three times such value." In the present case, the value of the damage is P125 and three times that amount would be P375 which is beyond the P200.00 which a justice of the peace court may impose as fine in criminal cases. For this reason, although I am not convinced of the wisdom and rationale of the law in this respect, I vote with the majority because the law is on its side.

REYES, A., J., concurring:

While it may not be good law to invest municipal and justice of the peace courts with "original jurisdiction" over criminal cases involving damage to property where the damage was deliberately cause, but not where the damage was the result "of mere negligence, I am constrained to concur in the majority opinion, because our duty, is to apply the law as we find it and not as we think it should be.

The law has extended the criminal jurisdiction of the above-mentioned courts to cases of "malicious mischief," but not to cases of damage to property resulting from mere negligence. We should not legislate by arbitrarily considering the latter as comprehended in the former. The two are essentially different. Damage to property constitutes "malicious mischief" only" when the object of the perpetrator is "injury of the property merely for the sake of damaging it." (U. S. vs. Generale et al., 4 Phil. 216.) It would be an incongruity to apply the term to cases of damages to property where that object is lacking, as where the damage was due to mere negligence.

I therefore vote to grant the writ.

DISSENTING OPINION

JUGO, J., dissenting:

The majority opinion seems to hold that there is no crime of damage to property through reckless negligence, for the reason that in the crime of damage to property there should be malice or deliberate intent to cause it. If that is so, then why remand the case to the court of first instance? If there is no such crime neither the court of first instance nor the justice of the peace court can punish it. The result would be that the numerous crimes committed almost daily of damage to property through reckless negligence would go unpunished. Reckless negligence alone without any damage is not penalized by the Penal Code. Article 327 of the Penal Code provides "Any person who shall deliberately cause to the property of another any damage not falling within the terms of the next preceding chapter, shall be guilty of malicious mischief." That does not mean that a person who causes damage to property, without deliberate intent, could not commit it through reckless negligence, for the deliberate intent to commit a crime is common to all crimes.

Article 3 of the Revised Penal Code defines crimes as follows:

"Acts and omissions punishable by law are felonies (delitos).

"Felonies are committed not only by means of deceit (dolo) but' also by means of fault (culpa).

"There is deceit when the act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill".

In the present case damage to property was committed through culpa "imprudence, negligence, lack of foresight, or lack of skill". We should not be misled by the word "malicious" in the phrase "malicious mischief" for that is only a translation of the word "daños" as used in the Spanish text which governs. (People vs. Abilong, 46 Off. Gaz., 1012.) The drafter of Article 327 of the Revised Penal Code in using the word "malicious" in the phrase "malicious mischief" did not add anything to the general concept of crimes as defined in Article 3, but may have used the word "mischief" simply to distinguish it from damages which may give rise only to civil liability. However that may be, it is clear that he referred to damage in general which may be committed with deliberate intent or through reckless negligence.

In the case of People vs. Faller, 67 Phil., 529, it was held by this Court through Chief Justice Avanceña that a person accused of malicious mischief may be convicted of damage to property through reckless negligence. If the latter crime is essentially different from malicious mischief, then the accused could not have been convicted of it.

For the above reasons, I dissent.

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