

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LIM QUINGSY, DEFENDANT AND APPELLANT.

G.R. No. 31397. December 02, 1929

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Cagayan, finding the appellant, Lim Quingsy, guilty of the offense of arson and sentencing him to undergo seventeen years, four months and one day, cadena temporal, with the accessory penalties prescribed by law, and requiring him to pay indemnity to various persons in the aggregate amount of P393,561.06, and to pay the costs.

Prior to the incident which gave rise to this prosecution the appellant, Lim Quingsy, was a Chinese merchant in the municipality of Aparri, Province of Cagayan, where he had conducted for several years a mercantile enterprise of considerable importance. But in the year 1926 he was unsuccessful in his transactions in tobacco, having lost during this period the amount of P30,000. In the year 1927, prior to September 9, business had also been conducted at a loss of some P2,000 or P3,000. On the date mentioned there were bad debts owing to the accused in the amount of P200,000, more or less, while he was indebted to a single Chinese firm in the City of Manila to the extent of P80,000. These circumstances indicate that the business of Lim Quingsy had fallen upon evil times. At this juncture in his affairs the accused was carrying insurance on goods in his store to the amount of P90,000, while the stock he then had on hand was in a depleted state, and not worth more than P15,000. In addition to the insurance carried upon his stock, the accused had his store and his residential quarters, which were located behind the store, insured in the additional amount of P30,000.

On August 30, 1927, or about eight days prior to the fire on which this prosecution is based, the accused bought four cans of gasoline, a commodity in which he did not deal, from the store of Jose Chan; and only two cans of gasoline were, after the fire, found in his garage behind the store. Contiguous to the store of the accused was a store occupied by a fellow countryman named Co Quiaco, and just behind this structure were the residential quarters of the latter. Concerning this Co Quiaco, the trial court, in the opinion which is the subject of this appeal, makes the following statement: Co-Quiaco is a merchant of more than forty-five years of residence in Aparri without a blot in his conduct so far as the record shows. He testified with such naturalness and such manifest fairness and sincerity that his testimony cannot be stigmatized as in any wise interested or false.

This witness states that at about 10 o'clock on the night of September 8, 1927, the accused entered the part of Co Quiaco's store that is used as an office and in the course of the conversation told Co Quiaco that his business (i. e., of Lim Quingsy) was going to the bad and that he was going to set fire to his store. He also stated that he would give Co Quiaco the sum of P10,000 and further indemnify him for whatever loss he might sustain by reason of the fire. Co Quiaco did not conform to this suggestion and told the accused that he should do no such thing. Nevertheless, at about 2 o'clock a. m. on the same night, a fire broke out in Lim Quingsy's store, and Co Quiaco was awakened by his daughter. Opening his door, Co Quiaco saw smoke coming from the roof of the store of the accused. Going at once in that direction, to which point other persons also presently came, Co Quiaco heard the

accused urging the members of his family to leave their house, for the reason that the store was already on fire. As the accused and the members of his family emerged from their sleeping quarters, they were seen to be well dressed. Co Quiaco's first thought appears to have been with respect to valuables of his own, and directing himself to his own store, he found therein a piece of bamboo, about 2 feet long, with a string attached to one end and recently filled with gasoline. Apparently this container had been thrown into the store of Co Quiaco through one of the holes in a partition separating his store from that of the accused; and the gasoline that had been contained in the tube was scattered over Co Quiaco's floor.

As soon as the policemen and a municipal official could give intelligent attention to the subjugation of the fire, it was found that the doors of the store of the accused were well locked, and the accused refused to open them. Upon this Amando Foz, the municipal secretary, ordered one of the policemen to break in one of the doors with his hatchet. The accused thereupon assumed a hostile attitude and appeared to be about to attack the policeman in order to prevent him from opening the door. Upon this, at the instance of Foz, one of the policemen fired his revolver in the air to frighten the accused, and other Chinese who were present seized the accused in order to prevent him from making an assault. When the door was finally opened smoke poured out, charged with the odor of burning gasoline. Owing, apparently, to the inadequacy of the means available for fighting the fire, the flames spread and before the fire abated, the principal block of business houses in Cagayan was destroyed, inflicting damages upon different owners in amounts which the court fixed at P393,561.06.

An examination of the proof, in connection with the extended and very careful opinion prepared by the trial court, as well as the briefs of the Attorney-General and of the appellant, leaves, in our opinion, no room for reasonable doubt as to the appellant's guilt; and we are of the opinion that the trial court committed no error in finding him guilty of the offense of arson as stated in the opening paragraph of this opinion and requiring him to pay the several amounts of indemnity stated in the dispositive part of the appealed decision. The case for the appellant is based principally upon a pretense of an alibi, it being claimed that at the time the fire occurred he was engaged in playing mah jong in the house of a friend,. Uy Jeng Liong. We are of the opinion that the evidence in support of this alibi is false.

The first error assigned in the brief of the appellant is directed to the refusal of the trial judge to admit in evidence the transcript of the proof taken in the preliminary investigation held before the justice of the peace (Exhibit 11). We are of the opinion that no error was committed in the ruling to which this assignment is directed. If the attorney for the accused was desirous of using particular parts of the testimony contained in said record for the purpose of contradicting the testimony of witnesses, it would have been legitimate in order to lay a basis for the impeachment of such witness to refer to particular parts of said transcript and to ask the witness if he did not make the statements therein attributed to him; But it is not proper -practice to admit an entire transcript of former testimony, merely for the purpose of giving the attorney material for pointing out contradictions in the testimony delivered by particular witnesses at the trial.

The offense committed falls under No. 2 of article 550, in connection with article 560 of the Penal Code, which offense is penalized with cadena temporal. There was present in the commission of this offense the aggravating circumstance of nocturnity without mitigating circumstance, and the penalty prescribed should therefore be imposed in its maximum degree. The penalty imposed by the trial court is in conformity with the provisions mentioned, and the judgment will therefore be affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Malcolm, Ostrand, and Romualdez, JJ., concur.

Johns, J., concurs in the result.

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