

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ONG CHIAT LAY ET AL., DEFENDANTS. ONG CHIAT LAY, APPELLANT.

*G. R. No. 39086. October 26, 1934*

Ponente: ABAD SANTOS, J.

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### ABAD SANTOS, J.:

Appellant and two others, Ong Ban Hua and Kua Sing, were jointly informed against by the provincial fiscal of Zamboanga, charging them with having feloniously burned a building in which was located a store belonging to the appellant. Upon a plea of "not guilty" appellant and his codefendants were tried jointly upon said information; and, after trial, while Ong Ban Hua and Kua Sing were acquitted, appellant was found guilty of the crime of arson and sentenced to suffer sixteen years and one day of reclusion temporal, with the accessory penalties provided by law, to indemnify Francisco Barrios and Mariano Atienza in the sums of P16,000 and P5,000, respectively, and to pay one-third of the costs.

In support of this appeal, appellant has assigned the following errors:

"First. The lower court erred in holding that the evidence presented against the accused Ong Chiat Lay is sufficient to establish the *corpus delicti*, namely, that the crime of arson had been committed.

"Second. The lower court erred in holding that the evidence presented against the accused Ong Chiat Lay is sufficient to establish his guilt of the crime charged beyond reasonable doubt."

In order to convict a defendant as principal in the commission of a crime, it must be shown either (1) that he took a direct part in the execution of the criminal act; (2) that he directly forced or induced another or others to commit it; or (3) that he cooperated in the commission of the offense by an act without which it would not have been accomplished. (Revised Penal Code, article 17.) They take direct part in the execution of a criminal act who, participating in the criminal design, proceed to carry out their plan and personally take part in its execution by acts which directly tend to the same end. (Viada, *Codigo Penal*, 5th ed., vol. 1, p. 341; *Albert's Revised Penal Code Ann.*, 144.)

In the instant case, it is not claimed that appellant had taken a direct part in the burning of the building. In fact, the prosecution lays stress on appellant's absence from the scene of the fire as one of the suspicious circumstances indicating his guilt. Appellant was prosecuted on the theory that he induced his said codefendants to set fire to the building. Hence the three were charged jointly on an information alleging conspiracy among them. This allegation of conspiracy, however, has been negated by the acquittal of appellant's codefendants. The same may be said with regard to the theory that appellant had induced his codefendants to perpetrate the unlawful deed; for it seems clear that one can not be held guilty of having instigated the commission of a crime without its first being shown that the crime has been actually committed by another.

In acquitting Ong Ban Hua and Kua Sing, the lower court said: "Pero las pruebas de la acusacion, a juicio del

Juzgado, no establecen que los acusados Ong Ban Hua y Eua Sing hayan cooperado directa o indirectamente a su coacusado Ong Chiat Lay en la comision del delito. Las pruebas indiciarias preentadas contra los referidos acusados Ong Ban Hua y Kua Sing no pueden producir mas que mera sospecha de que dichos acusados tuvieron conocimiento de lo que habia realizado Ong Chiat Lay, pero esta sospecha no puede servirse de base para una sentencia condenatoria, y por ende se debe absolver a los mismos acusados Ong Ban Hua y Kua Sing de la querella."

While not exactly in point, the principle discussed in *State vs. Join* (13 N. C. [2 Dev. L.], 669), is pertinent to the question now under consideration. In that case, the court held that although more than two persons are charged with conspiracy, the acquittal of all but one of those charged amounts to the acquittal of that one, since there can be no conspiracy unless at least two unite. Ruffin, J., therein said: "Conspiracy being a crime, requiring the guilty cooperation of two, at least, to constitute it, in which there is a mutual dependence of the guilt of each person upon that of the other, principle would seem to demand that all the accused should be jointly tried and convicted, or acquitted. In other cases of dependent crimes, that upon which the rest depends must be first established. Such is the law between principal and accessory. The reason is that there may be as full defence as possible upon the very point of the principal's guilt, by that principal himself, who is best able to make it. To make that rule effectual, it became necessary to establish another that, but by the accessory's own consent, no proof of the principal's guilt should be heard against him until it was first established against the principal himself. The rule arises out of the nature of dependent criminality. Now conspirators may be said to be co-principals. The guilt of both must concur to constitute that of either; and it must consist of a joint act, and it makes one crime in both. As the trial of one need not precede that of the other, the trial of both ought to be concurrent I think it more than probable that anciently such was the course. But, clearly, now it is otherwise. There are many precedents of the separate trial of person indicted for offences that could not be committed by less than two. (\* \* \* *Rex vs. Kinnersly* [1719], 1 Strange, 193; *Rex vs. Niccolls* [1745], 2 Strange, 1227.) It is too late now to question it. But it can never follow from those cases that where one of the persons, the establishment of whose guilt is essential to the conviction of the other, has been legally acquitted, the other does not thereby become discharged. It cannot be that a man can be held guilty to any purpose who has, in due course of law, been found not guilty. The analogy between this case and that of the accessory is strict. The acquittal of the principal is an immediate and absolute discharge of the accessory. For there can be no aid given to a deed when the deed itself was never perpetrated. So, where guilt consists in the joint act or intent of two, and it is found that one of them did not join in the act or intent, it is conclusive as to both. For A could not conspire with B if the latter did not conspire at all. In all the cases, therefore, a verdict affirming the guilt of fewer persons than could commit the crime, and affirming the innocence of all others charged, has been held to be an acquittal of all." (4 B. R. C, 930.)

While the crime charged in the present case is not conspiracy as a distinct offense, it is clear from the nature of the evidence presented that appellant alone could not have committed the unlawful act. As already stated, the theory of the prosecution was that he conspired with or induced his codefendants to commit the crime. The gravamen of the charge was conspiracy, and the acquittal of his codefendants is clearly inconsistent with appellant's guilt.

This leads us to the consideration of another aspect of this case. Appellant was convicted wholly on circumstantial evidence. As stated in the decision of the trial court: "Las pruebas de la acusacion son todas indiciarias, que son las que siempre se presentan para probar esta clase de delito, porque su autor o autores ordinariamente no lo practican en presencia de un tercero." Continuing, the court further said: "El traslado de los muebles del acusado Ong Chiat Lay a varios sitios antes de ocurrir este incendio, su indiferencia a todo lo que ocurría en la madrugada de autos, su ausencia del lugar donde estaba instalado su bazar mientras ardía el edificio ocupado por este, y el hecho de no haberse negado que fuera el autor del incendio ante el teniente Piccio, son pruebas indiciarias muy fuertes contra este acusado. El hecho de que se oía a gasolina dentro de la casa ocupada por el establecimiento

'China Bazaar' en la ocasion en que el repetido Ong Chiat Lay trasladaba sus muebles y su residencia a otro sitio, y el haber sido encontradas varias latas de petroleo o gasolina vaciasen el mismo terreno donde estuvo levantada dicha casa inmediatamente despues de ocurrir el incendio de esta, son tambien pruebas indiciarias muy fuertes contra el susodicho acusado Ong Chiat Lay. Todas estas pruebas apreciadas en su conjunto constituyen una evidencia clara de la culpabilidad del acusado Ong Chiat Lay."

It is a well-settled principle of criminal law that a conviction for crime can not be had unless the corpus delicti is first established. (State vs. Sullivan, 17 L. R. A., 902.) To establish the corpus delicti in arson the proof of two elements is required, namely, (1) the burning of the house or other thing, and (2) the criminal agency in causing it. (Spears vs. State, 16 L. R. A. [N. S.], 285.) The corpus delicti may be proved by circumstantial evidence. (State vs. Sullivan, supra.) However: "Before a conviction can be had upon circumstantial evidence, the circumstances proven should constitute an unbroken chain which leads to one fair and reasonable conclusion, which points to the defendant, to the exclusion of all others, as the guilty person. It is indispensable that the evidence be derived from interrelated facts and duly proven in a manner that will lead to a logical and rational conclusion, beyond all reasonable doubt, that the accused is the author of the crime. In other words, there must be, from all the circumstances, a combination of evidence which, in the ordinary and natural course of things, leaves no room for reasonable doubt as to the guilt of the accused." (Moran, The Law of Evidence, 453; numerous cases cited in support of the text)

While the facts proved in the present case are sufficient to raise grave suspicions against the appellant, they fall far short of establishing his guilt clearly and satisfactorily, as required by the well-settled rules of evidence. This court held in United States vs. Levente (18 Phil., 439), that to warrant a conviction upon circumstantial evidence, all the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. The chain of circumstances which would have pointed to the appellant as the guilty person was broken by the acquittal of Ong Ban Hua and Kua Sing. As already explained, the acquittal of his said codefendants is not only consistent with the hypothesis that the appellant is innocent, but is inconsistent with the hypothesis that he is guilty.

It results that the judgment appealed from must be reversed and the appellant acquitted, with costs de oficio. So ordered.

Avancenia, C. J., Street, and Vickers, JJ., concur.

**BUTTE, J.;**

I concur in the result.

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