

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGAPITO ROSAL, DEFENDANT AND APPELLANT.

G.R. No. 4557. November 24, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This case was instituted in the Court of First Instance of Ilocos Sur, for the crime of arson, against Agapito Rosal, who was thereby sentenced to sixteen years and one day of cadena temporal, to the accessory penalties thereof, and to pay an indemnity of P3,000, with costs, from which judgment the defendant appealed to this court. It appears from the record, that—

The court below convicted the defendant, basing its decision upon circumstantial evidence which was found to be sufficient to produce a reasonable belief in the guilt of the accused. Such evidence is as follows:

"That in the place where the fire occurred a piece of bamboo was found, in the end of which there was certain material for starting a fire; that in the place where the fire occurred, or in the vicinity, the accused was seen at the very moment of the occurrence riding on a black horse and dressed in black and with a black hat; that, after the fire took place, the municipal president and several policemen went to the house of the accused and there seized a shirt and a salacot of black color, as well as the black horse of the accused, still perspiring, with the saddle on its back; and that some misunderstanding existed between the accused and the family damaged by the fire."

The first of the above-stated facts, that is, the fact that in the place where the fire occurred a piece of bamboo provided with a wick was found, does not appear to be in any way proven in the case; there is only the following cross-examination of the municipal president, a witness for the prosecution:

"Q. Did you find in the place of the occurrence or in the house of the accused, any proof sufficient to show that he was the author of the crime?—A, I do not remember to have seen any; they only showed me a piece of bamboo the end of which was provided with some material to burn the roof of the kitchen.

"Q. Are you sure that the accused used that bamboo?— A. No, sir."

Such testimony is not sufficient to prove that the piece of bamboo provided with a wick was found in the place where the fire occurred; and even in the case it was found there, the most that could be presumed is that the fire was not accidental. The accused can not, therefore, be charged with having caused the fire, or being the author thereof. Moreover, regarding the nature of the fire, Mauro Lazo, the man who appears to have been the promoter Of the prosecution, says, that he was selling kerosene in his store situated close by the kitchen which was burned, which oil was at that time deposited in the same house and that it was the second time that that kitchen was burned, because some time before, when his father was a gobernadorcillo, the said kitchen was also burned.

Therefore, the first of the alleged facts mentioned as a source of evidence of criminal responsibility on the part of the accused, can not be so considered, inasmuch as it can not be admitted even as evidence of the criminal fact itself; because, as the witness declares, they only showed him a piece of bamboo with a wick attached; the witness

did not see at the place of the fire, nor in the defendant's house, any evidence that the latter was really the author of the fire.

The first of the facts alleged in the judgment being stricken out, there only remains to be discussed the fact that, when the fire commenced, the accused was seen passing in the vicinity, riding on horseback; the fact that he did not want to halt when they tried to stop him, and the fact that his horse was found saddled and moist with sweat when the policemen reached his house, are only details of the main fact that he passed on horseback in the neighborhood in which the fire occurred.

This other fact, so differently stated by the same witness who was the promoter of the prosecution, Mauro Lazo, viz., that the municipal president had said that "on hearing the cries of alarm he went out of his shop and saw the kitchen already burning, and that he nearly caught the accused," whereas in his declaration as a witness he said that, on going out of his store the fire was just beginning, and that he then saw the accused on horseback, accompanied by another man who was walking, is the one on which the circumstantial evidence is based, and the only one which has been mentioned in the declarations of the three policemen and the two strangers; they declare that they saw the accused riding on horseback on the night in question, but that he was alone, not with the other man said to have gone with him, and that one of the policemen cried out "Stop the man who fired Faustina Castillo's house," and that the two others said, "Stop the man who fired the house of our corporal" (Mauro Lazo); and that the two strangers attempted to stop the one who was fleeing on horseback, but they did not succeed because the latter menaced them with a weapon.

The only suspicious fact is that he was seen riding on horseback near the place of the fire; but the fact that he fled on horseback toward his house, where the horse was found with the saddle and moist with sweat, and the fact that he refused to follow the policemen when the latter ordered him to do so, do not constitute a new fact which, together with the previous one, may constitute circumstantial evidence.

The municipal president declares that, when he went in the morning to the defendant's house for the first time, he asked a boy who was in a cottage whether or not the accused had left on horseback on the previous night, and the boy replied in the affirmative, but that he did not notice the hour when the man returned because he was asleep; the president further declared that, when he directed the accused in the latter's house to follow him, the said defendant received him with a bandage on his abdomen and told him that he had been sick since he returned from Vigan. If he had come from Vigan on that night, and if, as described in a plan exhibited in the cause, the road from Vigan to San Vicente, the place of the fire, is crossed by another road at the point of intersection of where the burned house was located, it remains to be determined what suspicious circumstance might arise from the fact that a man riding on horseback, and accompanied by another man on foot, was seen upon either of the roads at the very moment when the fire began. The following are the exact words of Mauro Lazo:

" * * * and I opened the northern door of the store, I went down through the same, and went directly toward the west of our store and outside the inclosure. I could see there Agapito Kosal and his companion who were approaching the store, but, on seeing me, they turned aside; I cried out immediately, saying that Agapito Kosal should be stopped because he had come to fire our kitchen.

"Q. Why did you cry out that Agapito Rosal should be stopped, saying that he had fired the kitchen? Why? Was there any fire?—A. Because I saw our kitchen was burnt.

"Q. What was the distance between the burnt kitchen and the place where you saw Agapito Rosal?—A. About 3 meters; but when I saw them, they were walking.

"Q. How did they walk?—A. The companion of Agapito Rosal, who went on foot and before Agapito, was commencing to walk in haste, and Agapito Rosal was commencing also to make his horse trot."

The entire and the only ground on which the complaint against the defendant is based, is that, according to the statements of one of the policemen, the said defendant is one of the three councilors of the pueblo of San Vicente consolidated with that of Vigan, and that he is the uncle, as stated by Mauro Lazo, of the latter's wife; this witness had asked the municipal president, a few days before, to remove the accused, or at least to transfer him to another place, and there had been some family disagreements between him and the corporal of the police, Mauro Lazo, as stated in the judgment, and quarrels of another kind, according to several witnesses, which lead one to suspect the veracity of the witness Mauro Lazo, whose statements are supported by the three witnesses for the prosecution, all of whom are policemen, and by the stranger Paulino Lagasca, only as to the fact that the accused was seen on horseback and did not permit himself to be stopped by the said Paulino and another companion who was with him.

Moreover, even were the declarations of Mauro Lazo true as to the points above-mentioned, we can not see in them sufficient circumstantial evidence, which requires more than one circumstance, that the fact from which the circumstance is derived shall also be proven, and that the conviction produced by the combination of circumstances be such that there can be no reasonable doubt as to the criminal responsibility of the accused, in the natural order of tilings; all of which is far from being found in the conclusion upon which the judgment rests.

Therefore, reversing the judgment appealed from, we acquit the accused Agapito Rosal, with the costs of both instances de oficio. So ordered,

Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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