

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RESTITUTO FALLER (ALIAS R. AGUILAR), DEFENDANT AND APPELLANT.

G.R. No. 45964. April 25, 1939

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

Restituto Faller was charged with the crime of damage caused to another's property maliciously and willfully. (After hearing the evidence, the Court of First Instance of Rizal found that the damage was not caused maliciously and willfully, but through reckless imprudence, and sentenced Restituto Faller, under paragraph 3 of article 365 of the Revised Penal Code, as principal in the crime of damage through reckless imprudence, to pay a fine of P38 and to indemnify the offended party Ramon Diokno in the same amount, with subsidiary imprisonment in case of insolvency. From this decision, an appeal was taken.

In this instance the appellant assigns as sole error of the court the fact that he was sentenced for a crime with which he was not charged, contending that a crime maliciously and willfully committed is different from that committed through reckless imprudence.

The court has not committed this error. The appellant was convicted of the same crime of damage to property with which he is charged. Reckless imprudence is not a crime in itself. It is simply a way of committing it and merely determines a lower degree of criminal liability. The information alleges that the appellant acted willfully, maliciously, unlawfully and criminally. To this information no objection was interposed. Negligence being a punishable criminal act when it results in a crime, the allegation in the information that the appellant also committed the acts charged unlawfully and criminally includes the charge that he acted with negligence.

The appealed judgment is affirmed, with the costs to the appellant. So ordered.

Villa-Real, Imperial, Diaz, and Moran, JJ., concur.

Laurel, J., see concurring opinion

CONCURRING OPINION

LAUREL, J.:

If malicious mischief (art. 327, Revised Penal Code) is an offense distinct from damage to property by reckless imprudence (art. 865, Revised Penal Code) and the latter is not necessarily included in the former or the situation does not call for the application of other exceptions laid down by this court, the conviction of the accused under article 365 of the Revised Penal Code, notwithstanding his prosecution under article 327 thereof, was erroneous. An accused is entitled to be informed of the nature and cause of the accusation against him (par. 17, sec. 1, Art.

Ill, Constitution of the Philippines, in relation to section 15, par. 2, and section 6, par. 3, of General Orders, No. 58), and for this purpose the law requires that a complaint or information must charge but one offense, subject to a single exception (sec. II, General Orders, No. 58). There are two reasons, however, why the decision of the lower court should be affirmed. First, because the constitutional and legal purpose has been amply served in this case, it appearing that the accused himself, in the course of the trial, put up the defense that he was at most responsible for the offense of damage to property by reckless imprudence. This is apparent from the following portion of the decision of the lower court:

"La defensa del acusado, que por cierto no declaro, Be hace descansar en el hecho, primero, que el sitio donde tuvo lugar la coalicion entre el truck y el automovil mencionado es de muy estrecha dimension, y que no es extraño que ocurriese lo que acaecio. Otra cuestion es la de que no cabe condenar al aqui acusado con danos a la propiedad bajo el articulo 327 delCodigo Penal Revisado, sino a lo sumo por daños a la propiedad por imprudencia temeraria, porque no consta que el acusado habia obrado deliberadamente, esto es, con malicia, y en tercer lugar, se ha discutido principalmente la cuantia de los daños, pues, segun la defensa, estos no debieran montar a mas de diez pesos.

"En cuanto al primer punto de la defensa se vuelve contra el mismo acusado, pues precisamente por ser estrecha la rampa del puente debio obrar con mayor cuidado antes de hacer andar el autobus; en cuanto al segundo punto, concurrimos con la defensa de que no procede aplicar al presente caso las disposiciones del capitulo noveno del Codigo Penal Revisado referente a daños. * * *"

Secondly, assuming that the two offenses here are distinct, I think that they are at least akin "to each other so as to justify the application of the rule laid down in *United States vs. Solis* (7 Phil, 195), and *United States vs. Quevengco* (2 Phil., 412). On these grounds, I concur in the result.

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