

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS MARIANO BOSTON, DEFENDANT AND APPELLANT.

*G.R. No. 4795. November 23, 1908*

Ponente: CARSON, J.

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### CARSON, J.:

The accused in this case was convicted in the Court of First Instance of the Province of Pangasinan of the crime of abortion as defined and penalized in paragraph 3 of article 410 of the Penal Code.

The guilt of appellant is conclusively established by the evidence of record, the testimony of the witnesses for the prosecution leaving no room for reasonable doubt, despite the fact that there are some inconsistencies and discrepancies in their statements. Counsel for appellant insists that the evidence does not conclusively establish the fact that he intentionally caused the abortion, because there is no evidence in the record disclosing the character and medicinal qualities of the potion which the accused gave to the mother whose child was aborted. The evidence clearly discloses that the child was born three months in advance of the full period of gestation; that the appellant, either believing or pretending to believe that the child in the womb of the woman was a sort of a fish demon (which he called a balat), gave to her a potion composed of herbs, for the purpose of relieving her of this alleged fish-demon; that two hours thereafter she gave premature birth to a child, having been taken with the pains of child birth almost immediately after drinking the herb potion given her by the appellant; that after the birth of the child the appellant, still believing or pretending to believe that the child was a fish-demon which had taken upon itself human form, with the permission and aid of the husband and the brother of the infant child, destroyed it by fire in order to prevent its doing the mischief which the appellant believed or affected to believe it was capable of doing. These facts constitute, in our opinion, prima facie proof of the intent of the accused in giving the herb potion to the mother of the child, and also of the further fact that the herb potion so administered to her was the cause of its premature birth. The defense wholly failed to rebut this testimony of the prosecution and we are of opinion, therefore, that the trial court properly found the defendant guilty of the crime with which he was charged beyond a reasonable doubt.

The sentence imposed is in strict accord with the penalty provided by the code, and should be and is hereby affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.

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