

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JESUS BALMORI AND CECILIO APOSTOL, DEFENDANTS AND APPELLANTS.

G.R. No. 5724. February 02, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

The defendants in this case were convicted of the crime of having maliciously and criminally set fire to a quantity of personal property located in a room in a house occupied by and in possession of other persons, and thereby having damaged or destroyed the same. They were found guilty of the crime charged, by the Court of First Instance of Manila, Hon. Charles S. Lobingier presiding, and sentenced to imprisonment for one year and one day, to indemnify the injured party for the value of the property damaged or destroyed, and to pay the costs of the trial.

The questions involved in this case are very largely of fact. The learned trial judge in his opinion, which forms the basis of his judgment of conviction, presents the facts with clearness and force. He says:

"The following are established by the undisputed evidence as facts in this case:

"On the afternoon of July 6, last, the two accused after spending several hours together and drinking freely of intoxicating liquors (p. 48) entered a house of prostitution on Calle Balic-Balic in the District of Sampaloc, each occupying a room with one of the inmates (pp. 24, 44). The accused remained in the house at least a quarter of an hour and were the only men there (p. 32). As they were leaving, an alarm of fire was given and the defendant Balmori ran from the house and was pursued and later overtaken and apprehended by one of the women employed in the house who then and there charged the said accused with causing the fire (p. 49). The other accused, Apostol, disappeared and was not seen after Balmori left him (p. 51). The fire for which the alarm was given was in a room occupied at the time by one Agapita Rivera. A policeman (Woodward) who arrived soon after found the walls and roof scorched and the bedding, bed-trimmings and a quantity of woman's apparel partially burned and the bed itself ruined (p. 41).

"The only real points in dispute are the identification of the incendiaries and the extent of the damage. Agapita Rivera, who was in the room where the fire occurred, testifies (pp. 23, 24, 29, 30) that the two accused entered there from the other rooms where they had been staying, that Balmori lit a cigarette and then struck a match which he applied to a bundle of skirts hanging on the wall and handed it to Apostol who applied it to the bed-trimmings, and that both accused then started to run down the stairs. A rigid cross-examination leaves this testimony unshaken.

"Pilar Fajardo, who was below and pursued and apprehended Balmori, testifies (pp. 33, 35) that she did so because Agapita Rivera called out to her from the room in question which she was just leaving, to pursue the accused as the incendiaries. Petra Angeles also testifies (p. 3) that she heard the cries to detain the accused and that she saw them descending the staircase. Agapita Rivera's cries, at the moment the fire broke out are part of the *res gestae* with all the weight which belongs to such evidence and her identification of the accused is thus corroborated to a certain extent by two other witnesses. It is only contradicted by the testimony of one of the accused, Balmori, who says that he did not enter the room in question. Either his testimony or that of the

women and especially that of Agapita Rivera must be rejected on this point and we think that the surrounding circumstances render the testimony of the women more trustworthy. In the first place it is doubtful if the only accused who testified was in a position to remember what he actually did at the time in question. As already stated he had been drinking freely and he himself admits (p. 46) that his mind was not entirely clear until the next morning after a night in jail. We are disposed also to agree with the prosecuting attorney that the act which is charged is just such a one as would be committed by men in the initial stages of intoxication. The person or persons who started the fire evidently did not intend to burn the building, else they would have applied the match to some more inflammable portion. Their purpose apparently was malicious, though less serious, mischief with a possible view of enjoying the scare which the act would cause to the inmates.

"In the second place the defendants' theory would leave no reasonable explanation as to the cause of the fire, which, it is conceded, occurred. It is unreasonable to suppose that the inmates themselves would cause the destruction of their own property and it is shown by the defense (p. 32) that the accused were the only men in the house at the time. The testimony offered by the prosecution affords an adequate explanation of the cause of the fire. The testimony for the defense leaves this wholly unexplained.

"Finally, no motive is suggested on the part of these women for falsely imputing the crime to the accused. The latter were patrons of the house, the injured woman's testimony (p. 31) is undisputed, that there was no preceding trouble and, if the conduct of the accused was not different than as described by defendant Balmori, such a concerted effort on the part of the inmates against the accused as Balmori testifies to would be unnatural and inexplicable.

"Counsel for the defense lays stress upon certain alleged inconsistencies and improbabilities in the testimony of the women, but we do not find anything of this sort which materially affects the essential elements of the case made by the prosecution. If the witnesses do not all agree on the minor points it at least negatives the idea of collusion and if the principal witness for the prosecution is not entirely clear as to the details of the occurrence it must be remembered that the latter was an occasion of much confusion. But on the whole we can find no sufficient reason to doubt the correctness of the main points related by these witnesses and we accordingly find the accused guilty of the offense defined in article 557 of the Penal Code.

"THE PENALTY.

"For this offense depends upon the amount of the damage caused. At the trial this question appears to have been confused with that of the value of the property destroyed but the two questions are not necessarily identical. We take it that the owner of the property was "damaged" in an amount which would be needed in order to replace the articles although these might not have sold in the open market for the same amount. The list of articles with the value of each as detailed by her (pp. 4, 5, 6) is as follows:

Eight skirts.....	
P16.00	
Two blankets.....	
8.00	
One colgadura	
4.00	
Three pillows.....	
9.00	
Pour camisas (waists)	

28.00

Twelve camisas.....

36.00

Total.....

101.00

"There is no contrary testimony on the question of the value. This witness says that she based her estimates on the cost price and she also states, (p. 17) what is notoriously true, that the prices of such articles were formerly lower than at present. So that we can not fairly presume that if she had gone into the open market to replace these articles they could have been purchased for any less than the original cost, especially as some of them were practically new (p. 14). None of them were unserviceable and for those, like the skirts, which were partially worn a deduction was made from the cost price (pp. 2, 13).

"It is not necessary to call an expert to prove the value of wearing apparel in common use (12 Am. & Eng. Encyc. of Law (2nd Ed.) 478 n 9; Parmalee vs. Raymund, 43 111. App., 609; State vs. Finch, 70 la., 316; 59 Am. Rep., 443). In this case the witness testifies (p. 17) that she has resided some fifteen years in Manila and during that time has been purchasing articles of this class. Under these circumstances and the fact that she purchased these identical goods, we think her testimony, undisputed as it is, regarding their value, must be accepted. But we repeat that the question is not so much one of value as of damage and in the absence of any showing on the part of any of the defendants that the complaining witness could replace the destroyed or injured articles for a sum less than that testified to by her we must find that such is her damage and that the penalty falls within paragraph 2 of article 557.

"As to the attending circumstances we find that the offense was committed by the accused in a state of intoxication, not shown to be habitual, which is therefore an extenuating circumstance under Penal Code article 9 (6). On the other hand the offense was committed in the dwelling of the aggrieved party which is an aggravating circumstance under article 10 (20). By virtue of article 81 (4) we are authorized to counterbalance one of these circumstance against the other, and it not being shown that either of the accused had committed a previous offense we shall apply the penalty in its medium degree, giving the accused also the benefit of the lower medium.

"Each of the accused is therefore sentenced to imprisonment for one year and one day, to indemnify the injured party, Agapita Rivera, in the sum of 252 pesetas with subsidiary imprisonment according to law in case of insolvency and to pay the costs of this prosecution."

We have made a careful study of the evidence and have given careful attention to the very elaborate printed briefs and arguments of the appellants. We are unable, after diligent inquiry, to find any reasons upon which we could base ourselves in reversing the judgment of the court below. The question before us is very largely one of fact. The court below saw the witnesses testify, observed their manner upon the stand, and drew his conclusions as to the weight which ought to be given to the testimony which they gave. We have many times laid it down as a rule, that we will not interfere with the conclusions of the court below based upon the relative credibility of witnesses who give conflicting testimony, unless there appears in the record some fact or circumstance of weight or influence which has either been overlooked by the court or has been misinterpreted by him, or has not been given its due weight and significance. We have searched this record in vain for such error. We are painfully aware of the effect which a conviction may have upon the future of these two young men and have given the matter thorough and deliberate consideration. We are also aware that property of individuals must be protected, and that when their rights therein have been invaded, maliciously and criminally, the only redress is in justice.

We believe, however, that the judgment should be modified. The facts as presented by the evidence do not

warrant the finding of the aggravating circumstance of morada. (Supreme court of Spain, decision of June 16, 1884.) Eliminating this, the penalty must be imposed in its minimum degree. With the modification, that each of the accused is sentenced to four months and one day of *arresto mayor*, the judgment appealed from is affirmed. So ordered.

Arellano, C. J., Torres and Trent, JJ., concur.

ON MOTION FOR REHEARING

JULY 14, 1911.

MORELAND, J.:

This court in its written decision of this case did little, as appears therefrom, but quote the salient features of the opinion of the trial court and very largely adopt it as the foundation for the decision. While that opinion of the trial court did not go into the evidence in exhaustive detail, we regarded it, after a very thorough, painstaking and continued consideration of the proofs presented in the record, as a fair and judicial expression of the real and substantial merits of the cause under all the circumstances. There was some question in our mind, and we considered it in detail, as to the conclusiveness of the proof, held sufficient by the trial court, relative to the value of certain articles destroyed in the fire; but it clearly appeared that, even if we found, which we eventually did not, that the court below had erred in this particular, the error affected so small a part of the property destroyed that its correction would in no sense alter the criminal penalty imposed. There was also much consideration of the question whether or not the defendants ought to be charged with the aggravating circumstance of morada. The trial court had found that they should. After much study and repeated discussion, we came to the conclusion that they should not be so charged. While we gave the most painstaking consideration to the evidence, we were much less perplexed in arriving at a conclusion as to the guilt of the accused than in arriving at a conclusion upon the two matters, among others, above referred to. We regarded, and still regard, the guilt of the accused as plainly proved. We saw and see no way to escape that conclusion. The more thorough the study of the proofs, the more impossible it appears to arrive at any other result.

The learned counsel on this motion presents, in the course of his ingenious and able analysis of the evidence, various arguments attacking our decision. We desire to refer to them for a moment. He opens his argument with this admission:

"That the fire occurred and that the apparel and household furnishings were consumed, as alleged in the complaint and by the court, are facts not questioned. It is also admitted that the record shows that in all probability the fire was occasioned by the defendants; but it is insisted that there is no creditable testimony whatsoever that defendants either criminally or intentionally caused the fire."

The whole argument of counsel is, by these admissions, confined to the proposition that the accused set the fire accidentally and not intentionally; that they set it innocently and not criminally.

It is to be noted that these admissions are in open and direct contradiction to the testimony of the appellant Balmori, who stated under oath, as a witness in his own behalf, that neither he nor Apostol was at any time whatever on the day in question in the room where the fire occurred, nor did they on that day see the woman who was within that room when the fire started, nor did they cause said fire either accidentally or intentionally, or in any manner whatsoever. This fact might not be, ordinarily, of very great importance; but when it is observed that the whole essence and soul of counsel's argument is the good faith, the lack of criminal intention, the innocence of

mind, of the accused in causing the fire, this denial, in open conflict with every line of the evidence and with express admissions of counsel, should be given at least some significance.

Counsel further says:

"1. The sole question in this case is the single question of fact whether or not Agapita Rivera saw the accused intentionally, and in her presence, without motive on their part or protest on her part, commit the act of incendiarism that she claims to have witnessed. * * * Hence the inquiry is: Did Agapita Rivera see the origin of the fire, or was her attention first attracted to it after the defendants had left the room?" [The italics are his.]

In our opinion, this is not the "sole question" in this case. At most it is only one phase of the evidence in the case. It is at least an open question whether the accused could not properly and legally be convicted without recurring to the testimony of Agapita Rivera at all. We are inclined to think they could. When two men are seen running hastily down a pair of stairs leading from a burning room just set on fire, with no reason whatever for such haste except to quit the locality before the fire is discovered and they apprehended; who, on hearing from the cries of inmates of the house and bystanders, that the room was on fire, instead of halting and lending assistance to smother the flames, continue their flight; who, while it is asserted that they were running to reach a fire alarm box to call a company to the burning house, and although one was apprehended' and arrested before he accomplished his laudable purpose, the other was left entirely free to effectuate his design, but, nevertheless, did not send in an alarm or return to the burning house to assist the people in preventing its destruction, but, rather, maintained the advantage which the more vigorous pursuit of his comrade had given him and made good his escape; one of whom, when brought to trial, told a story so at variance with all the facts and the evidence that counsel, on this motion, skilled in the analysis of fact and learned in the law applicable thereto, found it necessary to repudiate it substantially in toto; when all these facts and circumstances concur and combine, what is the almost inevitable inference as to the responsibility of said persons for the fire in question? And all these facts were presented by witnesses other than Agapita Rivera.

It is clear, therefore, that the proposition set forth by counsel as the only question in this case comes far short of being such. It is simply one phase of the evidence which may be, according to the point of view, the main or merely the corroborative evidence in the case. When, to the facts above set forth as having been presented by witnesses other than Agapita Rivera, is added the corroborative evidence of the latter, where can a doubt of the sufficiency of the proofs reside ?

These considerations, we believe, dispose of that part of counsel's argument in which he says, referring to Agapita Rivera:

"If she did not see the fire until after the defendants left the room where it broke out, then the natural presumption, and the clear legal presumption, is that the fire, though probably occasioned by an act of the defendants, was purely accidental. The mere fact that after defendants left the room where they and Agapita Rivera were a fire broke out does not of itself tend to prove, or raise a presumption, that the defendants intentionally and criminally caused the conflagration." [The italics are his own.]

This argument is without weight because it leaves wholly out of consideration perhaps the most important and possibly the very strongest evidence of the case, already referred to, namely, the conduct of the accused themselves. This argument forgets entirely the fact that the accused were seen hastily running down the stairs leading from the room in which a fire had just been started; that they gave every evidence of desiring to escape from that locality with the greatest possible dispatch; that while one was captured, charged at the time with the commission of the crime, the other effected fully his escape for the time, not staying either to call the assistance of the fire department or to aid in smothering the flames from which he was apparently fleeing. This argument forgets entirely that, from every line of the credible proof in the case, there springs the inevitable conclusion that

the accused were fleeing from something which they dreaded, and that that something was the fire in the room of Petra Angeles. Why flee if innocent? This question is not fully answered in this case by the statement that having caused the damage, even accidentally, under stress of the excitement and on the spur of the moment, their fear got the better of their judgment and they fled, though innocent. The proofs are all to the contrary. It is very difficult indeed to believe that two innocent men, having accidentally set in operation an agency which, if unchecked, would produce inevitably the destruction of a large amount of property and possibly, if not probably, the loss of human life, would flee from the scene where the destruction initiated by their acts was being wrought, not only without lending the slightest assistance to prevent the destruction of property, but without the smallest regard to the safety of the women whom they left alone in the burning room hemmed in by the flames which they had created. If innocent, they acted strangely at a moment when real innocence would have called most loudly for vindication. If guiltless, they did the very thing that innocence rarely does, put on the trappings of guilt. When persons are charged with crime, it is their present acts rather than their future words which lend color to their intentions.

Counsel, proceeding with his argument, attacks vigorously that portion of the testimony of Agapita Rivera in which she declares directly and positively that she saw the two accused set fire to certain wearing apparel and the hangings of the bed, asserting that the force of her direct statement is destroyed by her testimony given on cross-examination, which testimony, he says, seems to indicate that she did not see the accused in the room until after the fire was in progress. His strictures upon her and her testimony, based upon isolated and detached portions of her declaration, are, in our judgment, in the main, not justified under a fair construction of her evidence as a whole. We must not forget that the presence of the accused in the room in question before the fire started, and that said fire had its origin in acts performed by them, are facts admitted. Her direct and positive statement that the accused intentionally and deliberately set fire to the articles named is so thoroughly and richly corroborated by the conduct of the accused, themselves, as well as by the other evidence of the case, that, even though it be admitted, for the sake of argument, that such statement is somewhat weakened by the vigorous and searching cross-examination to which she was subjected at the hands of two different lawyers, such weakening does not rise to the importance asserted by the learned counsel. If her direct testimony is weakened by cross-examination, a thing not admitted as having occurred to any material extent, it is more than compensated by the other corroborative evidence of the case.

Moreover, touching further the particular point under consideration, as well as the subject of motive "to which counsel often refers in his argument, it may not be impertinent to inquire why the accused were in the room at all. It is the uncontradicted proof of the case that they went to that house for a particular purpose; that each one, in company with the woman of his choice, entered a room— neither of them the room where the fire occurred; that having, as would naturally be inferred, accomplished fully the purpose of their visit, they quitted their respective rooms and entered the hall on their way to the street. Now, the question is, why did they enter the room in question? What was their purpose? Counsel says, merely to light a cigarette. In view of the fact that a cigarette may be lighted as well in a hallway, as in a furnished room, that answer is not sufficient. How can their purpose in entering that room be interpreted except by subsequent events? No fact of evidence, no theory of counsel, offers the slightest explanation of that purpose, of that entry, other than that given by the clear-speaking events that followed. Only imagination, that creature unchained by fact and unhampered by reality, can furnish a different explanation upon the evidence.

But, argues counsel, why should they set the fire in the presence of Agapita Rivera, well knowing that their act was seen. We do not definitely know. Neither did we know, in a case before us some months ago, why the accused, in apparent cold blood, killed three grown persons and a little babe in plain view of several persons. We know only that he did it. While motive is generally of great importance in a criminal case, it is not absolutely

indispensable. The evidence in the case relating to the actual commission of the crime may be so overwhelming that the question of motive may become secondary.

It is possible that the accused in this case did not see Agapita Rivera in the room when they set the fire. When they entered she was at the farther end of the room, quietly combing her hair, probably partially hidden by the bed and its hangings. Moreover, the accused being in a state of intoxication (it appears from the testimony of the accused Balmori that he was so intoxicated that he fell down while running from the scene of the fire, that his head was not clear until sometime the next day, and that the accused Apostol drank as often as he did) would not naturally have that keenness of perception and clearness of observation which normally would have characterized them. The probabilities are that they knew of her presence for the first time when they heard her protest and call for assistance. The statement of counsel wherein he says:

"It seems to the writer manifestly apparent why this woman (Agapita Rivera) contradicts herself. The accident occurred. The effects were destroyed. Defendants being the immediate cause it mattered not to the women of the house whether they had intentionally or accidentally occasioned the loss. The women were resolute in holding them responsible and thus reimbursing themselves for this loss. The simplest way was to present the situation in such a light that the public prosecutor would proceed against the defendants for the crime of incendiarism. But since, as they well knew, the mere fact of the occurrence of the fire did not prove incendiarism, someone must testify to the act of starting the blaze intentionally. This fell to the lot of Agapita because she was in the room where the blaze occurred at the time defendants left the room."

has little force when it is observed that, from the uncontradicted evidence, Agapita denounced the accused on the spot as being the intentional authors of the fire. That was the reason why they were pursued. That was the reason why the police were called to take them into custody. There was no time for the fabrication of the elaborate conspiracy suggested by counsel. Moreover, none of the women lost anything by the fire except Petra Angeles.

For these reasons, the motion for a rehearing is denied.

Arellano, C. J., Mapa and Carson, JJ., concur.

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