

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE MENDOZA, DEFENDANT AND APPELLANT.

G.R. No. 7540. September 23, 1912

Ponente: TORRES, J.

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TORRES, J.:

Appeal by the defendant from a judgment of conviction rendered in this case by the Honorable Julio Llorente, judge.

About 8 o'clock in the evening of August 1, 1910, Bernabe Mangunay, mounted on a carabao, approached the house of Mateo del Rosario, situated in the barrio of Apulid, of the pueblo of Paniqui, Tarlac, to ask for something to eat. As he was then carrying a papaya firebrand and got too close to the house, the eaves thereof caught fire and its nipa roof immediately started to burn, a large part of it being consumed. Thereupon Silveria Marcoleta, wife of the owner of the house, Rosario, who was not in at the time but at a neighbor's, called out for help and immediately left the house to escape from the fire, taking her two children and little brother with her. Owing to the prompt arrival of the husband and several neighbors, the fire was put out before it had burned the whole house.

On the following day the owner of the house, Mateo del Rosario, reported the occurrence to Vicente Mendoza, the lieutenant of the aforesaid barrio, and accused Bernabe Mangunay of starting the fire. Mendoza thereupon ordered the junior lieutenant, Candido Yabut, to summon the accused. But when the latter appeared, said Mendoza took no action whatever, nor did he even report the facts to the proper higher authority, but, on the contrary, permitted the incendiary to return home.

For the foregoing reasons, and in view of the preliminary investigations made by the justice of the peace of Paniqui, the provincial fiscal, on September 5, 1910, filed an information in the Court of First Instance of Tarlac, charging Vicente Mendoza as accessory after the fact in the crime of arson. After due trial, judgment was rendered on May 22, 1911, whereby the defendant was sentenced to the penalty of two years four months and one day of presidio correccional, to the accessories, with allowance of one-half of the time of his detention, and to payment of the costs; from which judgment he appealed.

Had the accused barrio-lieutenant incurred responsibility by his conduct, he should have been charged with the crime of "prevaricacion" under article 355 of the Penal Code, for neglect of the duties of his office by maliciously failing to move the prosecution and punishment of the delinquent.

However, the present case was instituted through an information for concealment of crime, and as it has been proved that the alleged incendiary, Bernabe Mangunay, was acquitted for lack of evidence, by judgment rendered in Case No. 544 prosecuted against him in the same court of Tarlac, so it remains to be determined whether, notwithstanding the acquittal of the principal actor in the crime, said complaint for concealment can be maintained, and the alleged accessory after the fact convicted.

The responsibility of the accessory after the fact is subordinate to that of the principal in a crime, because the accessory's participation therein is subsequent to its commission, and his guilt is very directly related to the principal delinquent in the punishable act; for if the facts alleged are not proven in the prosecution instituted, or do not constitute a crime, no legal grounds exist for convicting a defendant as an accessory after the fact of a crime not perpetrated or of parties not guilty. (U. S. vs. Abison, 3 Phil. Rep., 191.)

In the case at bar there are indications that the fire was accidental and, if so, the acquittal of the accused in the other case was perhaps due to the lack of proof of his guilt as an incendiary and to the fact that the acts charged do not constitute a crime. Therefore, upon this hypothesis, and because the alleged incendiary was acquitted, it is neither proper nor possible to convict the defendant, Mendoza, as accessory after the fact, of Bernabe Mangunay, who was acquitted of the said crime of arson.

For the foregoing reasons, with reversal of the judgment appealed from, it is proper to acquit, as we do hereby, Vicente Mendoza, the lieutenant of the barrio of Apulid, Paniqui, with the costs of both instances de oficio.

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

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