

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PO CHENGCO, DEFENDANT AND APPELLANT.*G.R. No. 7819. November 21, 1912*

Ponente: ARELLANO, C.J.

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The case at bar consists in that late on the afternoon of a day in November, 1911, a fire occurred in a building situated in the center of commercial district of Cebu, on the corner of the main streets, Magallanes and Manalili, with numerous neighbors in its vicinity, a fire that, the opportune intervention of Valeriano Bejia, was easily extinguished occurred in the upper part of the building, in a place used as a kitchen. A sleeping mat, a pillow and some empty rice sacks were found burning, appears on page 53 of the record.

The building is divided into dwellings composed of an upstairs for living rooms and a lower floor for shops, occupied by five Chinese: Sy Japco, Chiaoco, Yo Senging, Po Yngco and Po Chengco. The two latter only occupy lower floors or shops, not the upstairs. The building has only two rooms for kitchens, one kitchen for the exclusive use of Sy Japco and another for Jao Chiaoco, Yo Senging and Po Chengco. Po Yngco did not use a kitchen. The fire occurred in the common kitchen of Jao Chiaoco, Yo Senging and Po Chengco. This kitchen communicates with the other for the exclusive use of Sy Japco by a door.

Valeriano Bejia, a boy 18 years old, servant and cook for Sy Japco, was the first to see the fire. He went up into his master's kitchen when the fire was there, but upon reaching there he saw that the fire was in kitchen which throughout the trial has been called Po Chengco's. Upon getting upstairs and going from his kitchen to the one next to it, where the articles mentioned were burning, Bejia saw a gray-haired Chinaman leaving precipitately, and this gray-haired Chinaman could not be other, he says, than Po Chengco, for he was the only one with gray hair among the occupants of those rooms.

Bernabe Digamo, another witness for the prosecution, states that in that common kitchen for three tenants he worked as cook for the defendant and Apolonio Magallanes as cook for Jao Chiaoco; that they had both finished their work that afternoon and he had poured water over the fireplace to put out the fire, then going down into his master's shop, he saw that the latter had gone out into Calle Manalili in the direct of his kitchen and had returned to the shop out of breath. A little while the witness heard the police shooting to give the alarm of fire.

This witness is also a boy 17 years of age. His master, Po Chengco, occupied the lower part of the dwelling of which Sy Japco occupied the upper part, and this dwelling opened upon Calle Magallanes at the corner of Manalili, while the kitchen common to Po Chengco, Jao Chiaoco and another Chinaman had its entrance on Calle Manalili. The provincial fiscal agreed that "in order for the Chinaman Po Chengco to get up into the kitchen where the fire originated he had to pass along Calle Manalili, leaving the shop and going along Calle Manalili and thence ascending to his own kitchen." The witness Digamo further testified: That anybody could go into Po Chengco's kitchen, for its door was always open; that this kitchen was usually closed at 10 p. m.; that before 10 o'clock anybody who wanted to go up into the kitchen could do so.

"Q. You stated that before the fire you saw the defendant go toward the kitchen, did you see the defendant go up the stairway to, the kitchen? I did not really see that the defendant Po Chengco ascended the stairway but I saw that he went toward the kitchen; I was inside the shop.

"Q. You never left the shop, you were always in the shop before and after the fire? - A. I didn't leave, I left when they took me (arrested police).

"Q. Not having left the shop, how could you see that your master Po Chengco was going toward the kitchen? - A. Because he turned toward Calle Manalili and our kitchen is there.

"Q. And then you kept him in sight from the shop? - A. Yes, sir; I kept in sight and saw the defendant turn the corner of Manalili.

"Q. Then you knew that the fire was going to occur? - A. No.

"Q. As you were in the shop on the night of the fire, didn't you notice whence your master came when he entered the shop, as you say? - A. No.

"Q. Then you merely supposed that he came from the kitchen? - A. Yes, s because when I said that my master left our shop going toward the kitchen it was because he turned into Calle Manalili where we have our kitchen just as when he returned he came from the same street."

The court made an ocular inspection of the place of the occurrence, drew sketch thereof, and in its decision gave the result of that search. It says:

"Opening upon said Calle Manalili is a stairway without a door, whereby possible to ascend from the street and immediately to enter the back kitchen that of the Chinaman Sy Japco. In order to get from Sy Japco's kitchen to that of the other Chinaman it is necessary to go through a door that can be fastened by a bar, but this door was open on the day in question; so it is evident that it was very easy for anybody to enter Sy Japco's kitchen from Calle Manalili and leave without being observed."

The Court of First Instance of Cebu classified the crime as frustrated and sentenced the defendant to eight years and one day of prision mayor, with the costs. The Attorney-General, in this instance, classifies crime as consummated arson and asks that the penalty be raised to sixteen years and one day of cadena temporal, the accessories of 56 and payment of the costs but since this penalty appears excessive in consideration of the insignificance of the damage done, he suggests application of article 2, paragraph 2, of the Penal Code.

The grounds for the classification as a frustrated crime Are: (1) "Because real reason that the fire was not spread was the intervention of disinterested parties;" (2) "because the defendant believed that this fire, started would be put out by the intervention of the passersby and other persons, on account of the time it took place, but it is no less true, that he others the frustration of the crime begun by him" (p. 28). The time took place was "at 5 p. m., the time of the greatest crowds in the most frequented portions of the town" (page 25) "* * *" and it is impossible to believe that a fire could have occurred in the whole house any part thereof because of the frequented place in which the house is situated and the crowded hour when the incident occurred, and so plain a evident is the fact that to the court it is impossible that the defend could have intended to burn the house, and this impossibility is much corroborated by the fact established without contradiction that the defendant's goods and articles in his shop carried very little insurance he would have lost at least 2,000 pesos by a fire, and if it is further added that "the defendant had every opportunity to start a fire, had he so wished, during the night without being caught, it becomes very evident that the defendant's intention in the matter was not really to burn th house and shop in question * * *" (p. 26) "* * *" but to arouse against Sy Japco the suspicion and charge of being an incendiary" (p 27).

The following conclusions are, put forward as the basis for the conviction of the defendant:

(1) "That when Po Chengco dealt directly with Senor Pedro Cui," said Po Chengco estimated his rent at only 25 pesos a month, as his share for occupying his shop, while when Sy Japco became agent for Senor Cui, he charged Po Chengco the sum of 45 pesos a month, and because of this change bad feeling and enmity existed between the Chinaman Sy Japco and the defendant Po Chengco * * * (p. 25).

(2) "That on November 18, 1911, the defendant went to Sy Japco's kitchen, already described, and entering by the door on Calle Manalili ascending the stairway to said kitchen, he placed therein some pillows a sleeping mats and a few other rags, soaked in kerosene, and set fire to them, then immediately descending the stairway, but without being discovered by a servant of Sy Japco's" (P. 25).

It is possible that the essential errors discovered in the ground of the decision, which are quoted literally for greater correctness, are an inexact translation and confusion of the names.

The first error in the conclusions set forth consists in taking as a fact that it was Sy Japco who substituted Po Chengco in the lease of the property. It very clearly appears that it was Jao Chiaoco. He was asked (p. 36): "Explain to the court how you came to be the tenant Don Pedro Cui instead of Po Chengco," He explains it, concluding thus: * * * and up to the present time I continue to deal only with Don Pedro Cui for the whole house " (p. 37).

"Q. When you took the place of Po Chengco how did you apportion the rent,, what did you have to pay and how much did you require from Po Chengco? - A. I required 140 pesos a month from Sy Japco.

"Q. And from Po Chengco? - A. 45 pesos.

"Q. And how much did you have to pay to Don Pedro Cui? - A. 280 pesos.

"Q. Then, how much did your shop cost you? - A. 40 pesos.

"Q. When did this substitution of yourself for Po Chengco in renting the place take place? - A. In the month of October (pp. 38 and 39).

"Q. Did Po Chengco become offended at you rather than at Don Pedro Cui? - A. I don't know whether he was offended with me.

"Q. Then you don't know whether Po Chengco was offended with anybody ? - A. No, I don't" (p. 43).

The second error consists in taking as a proven fact that the fire occurred in Sy Japco's kitchen. It is quite evident in the case that occurred in the kitchen of the three Chinamen, adjoining Sy Japco's. The witness Bejia says; "I was in the shop of my master, Sy Japco, on the night of the fire (p. 52); I was the first to notice the fire; thinking that had occurred in the very kitchen of my master, I went upstairs, and it appeared that the fire started was in Po Chengco's kitchen; I was the first to rush to the place and exerted every effort to put out the fire (p. 53); it was I who put it out, I alone, nobody came, although later they arrived but the fire was already put out" (p. 54).

The third error consists in taking as a proven fact that the defendant went to the kitchen in which the fire occurred by ascending the stairway to kitchen and placing therein some pillows and sleeping mats soaked with kerosene and lighting them.

We have not found even the slightest proof that the defendant placed those objects, soaked them in kerosene and lighted them, in said kitchen. The witness for the prosecution, Digamo, says: "When I began to work for my master as a cook these objects were already there, they were placed on a broken chair in the same kitchen; on the afternoon in question they were there in the kitchen, they were not soaked in kerosene; after fire I did not again see them except in the municipal hall and then they smelled of kerosene" (p. 66). The other cook, Apolonio

Magallanes, say same and adds that said articles belong to Po Chengco's servants.

There is no other pertinent evidence in this case which must be examined appeal to decide the defendant's responsibility, except the statements of the witnesses for the prosecution, Bejia and Digamo, and those of the defeat the defendant himself and Sy Siong, and that of the witness for the prosecution, Sy Japco.

The statement of the witness Bernabe Digamo cannot support any conclusion regarding the guilt of the defendant. He states nothing with reference to the commission of the crime by the defendant. This witness merely says that he saw the latter leave the shop before the fire, t the corner in the direction of Calle Manalili, where the kitchen is loc return to the shop, while the fire occurred a little later; he did not all that he saw the defendant go up into the kitchen when he went toward Calle Manalili. What he did say is that his assertion that t accused went toward the kitchen is a mere inference from the fact that the accused went toward Calle Manalili. It cannot be inferred from this that he was in the kitchen and that he there placed articles soaked in kerosene and lighted them.

Aside from the fact that this sole affirmation cannot support any conclusion of the commission of the crime, the defendant and a witness testify regarding the meaning of said fact. The defendant states, and witness Sy Siong corroborates it, that if he then went toward Calle Manalili it was to get from Sy Japco's shop some toys that some people from Bohol were buying in his, and before the defendant had testified Japco had already made his statement, wherein he averred that the defendant had been in his shop three times on the afternoon of the occurrence, and when asked by the defense if "that toy which Po Chengco bought on the 18th in his shop, had been bought on credit," he replied that it had.

The statement of Valeriano Bejia cannot support any conclusion regarding guilt of the accused. In saying that when he rushed to put out the fire he saw a man with gray hair descend the stairway, the inference does not necessarily follow that that man had been in the kitchen, and less that if he had been in the kitchen when the fire was started it was he who had caused it, and that the man with gray hair might be the accused and nobody else. Testimony of this kind is not sufficient to base a conviction upon.

The judgment appealed from is reversed and we freely acquit the accused, with the costs of both instances de oficio.

Torres, Mapa, Johnson, Carson, and Trent, JJ., concur.

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