

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GO FOO SUY AND GO JANCHO, DEFENDANTS AND APPELLANTS.

G.R. No. 8217. September 05, 1913

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal from a judgment of the Court of First Instance of Cebu, sentencing the appellants, Go Foo Suy and Go Jancho, each to eight years and one day of cadena temporal, to the accessory penalties provided by law, and to the payment of one-fifth of the costs of the cause for the crime of frustrated arson. The complaint in this case also included Go Juat Chiong, Go Cho Jim, and Go Quip as defendants, the first two being acquitted by the court and the last not having been apprehended at the time of the trial.

On the night of February 24, 1912, house No. 30 on Calle Norte America of the city of Cebu was partially destroyed by fire. While this fire was in progress, fire also broke out in house No. 26, which was separated from No. 30 by a passageway having a width near the street of about 3½ meters and in the rear (where the fire in No. 30 was) of 9½ meters. Both buildings were built entirely of strong materials. The first floor of house No. 30 was occupied by Go Chico, a Chinese carpenter. The second floor was occupied by Marcelina Sabugan, her husband, and her husband's brother. The appellants, Go Foo Suy and Go Jancho, conducted a dry goods store in No. 26, and used the upper portion as living quarters. Antipas Paquipo and her husband, a Chinaman, occupied the upper story of the last section in the rear of No. 26 as tenants of the appellants. The appellants rented the entire building from its owner, Filomena Burgos. The first floor of No. 26 consisted of three rooms. The first was devoted to the sale of dry goods. The second was used as an office and to store a reserve supply of dry goods. These two rooms were connected by a door. The stairway to the upper portion of the house, as near as we are able to determine from the record, was in the office or trastienda. The third room was a bodega, where were stored lumber, sauale, and other materials belonging to the firm. There was no communication between the trastienda and this bodega. They were separated by a partition built partly of interwoven bamboo, as shown in the photograph. (Exhibit F of the prosecution.) On the side nearest No. 30 were two doors, one leading into the tienda proper and the other into the trastienda, as near as we are able to determine from the record, the latter being used at night by the occupants on entering and leaving the house after the tienda had been closed.

From the statements of the various witnesses, it is apparent that the fire in No. 30 had been burning a considerable time before No. 26 caught fire. The witness Cuico, who lived in a nipa shack a few meters from No. 30, stated that it was half past 2 by his watch when he first discovered the fire in No. 30. The municipal president who lived "two or three minutes" from the scene of the fire arrived after Cuico discovered it. The president brought a hose, which was first turned on Cuico's house to dampen it so as to prevent its catching fire. Cuico also testified that when fire broke out in No. 26 the fire in No. 30 was so far under control that there was no longer danger of its spreading. Albert Bryan, an electrician, stated that he was notified of the fire by telephone, and that just as he reached the scene fire broke out in No. 26. Miguel Bototo, a municipal policeman and a witness for the defense, testified that he arrived at 15 minutes past 3 o'clock; and that when the fire in No. 30 was about put out, fire broke

out in No. 26. Pedro Noel, another municipal policeman and also a witness for the defense, testified that he arrived at what he thought was about 3 o'clock. He entered No. 26, warning a Chinaman (whom he identified as the appellant Go Jancho) who was in there gathering up papers that he should leave, and then, at the Chinaman's request, went upstairs with him to get his trunk, which they carried as far as the stairway and then abandoned it and went downstairs and left the house. When he left the trastienda he saw no signs of fire. He testified that he then assisted with the hose at the fire in No. 30 and was employed when the Constabulary arrived.

Lim Bian Chong, who was a guest of the appellants on the night of the fire, testified that upon the alarm being given, he became scared and started downstairs immediately. Everyone went downstairs ahead of him except the woman Antipas, who followed him. Upon leaving the house he went to a plaza a short distance away, and found all the accused there. The woman Antipas testified that her husband's brother awakened her. She seized a picture and immediately ran downstairs and went to the plaza. As she passed through the trastienda she saw the appellants gathering up books. She returned to the house the second time to get her trunk. She saw no more Chinamen as she left the house the second time. She denied that in her sworn declaration in the preliminary investigation she had stated that when she left the house the second time the two appellants were still there. Go Jancho testified that he went downstairs immediately upon ascertaining that there was a fire, opened the safe, and took out important papers. These he put in a sack with the aid of Go Foo Suy and Go Cho Jim, and then ordered them to open the door. Go Cho Jim carried the sack out of the door. Witness remained looking for his certificate and some receipts. A little later a policeman entered. He and the policeman then went upstairs to get the trunk, which was abandoned at the head of the stairway. He left the house immediately, carrying nothing with him. All of his coaccused were outside of the house then, but he saw Lim Bian Chong near the door. He went to the plaza and there found Go Foo Suy, Go Cho Jim, and Go Juat Chiong. He ordered the latter to return and get his (Jancho's) trunk, but Go Juat Chiong came back in a little while saying that the policemen would not let him enter the house.

Go Juat Chiong testified that he was sleeping downstairs; that he was awakened by the alarm of fire and saw the appellants come downstairs and enter the office. He himself went directly upstairs to get his trunk. He was still in the house when Lim Bian Chong and Go Quip came downstairs. Upon coming downstairs he did not see Go Cho Jim, Go Foo Suy or Go Jancho in the trastienda. He did not wish to say that he was the last to leave the house, but simply that he did not notice anyone when he came downstairs. He left the house carrying his belongings and went to the plaza, where he saw the others Go Jancho ordered him to return to get a trunk, but upon reaching the house the policemen refused to allow him to enter. He saw persons inside the house then.

Go Cho Jim testified that he was sleeping in the lower part of the house near the stairway when he heard some one upstairs give the alarm. He got up and after he had dressed himself Go Jancho ordered him to open the door so that he could leave with the money and books. When he opened the door he saw no one. As he left with the money he saw some policemen outside. There remained in the tienda Go Foo Suy, Go Jancho, and Go Juat Chiong. He did not go upstairs or return to the house after he left it.

It will be noted that while there is some disagreement between the inmates of the house as to the order in which they left it, none of them claim to have spent more than a few minutes in the house. All, further, state positively that there was no fire in the house when they left. According to this testimony, then, they must have been standing on the plaza a considerable time before No. 26 caught fire.

Captain Hemmett of the Constabulary, whose attention was attracted to the fire in the trastienda of No. 26 immediately upon his arrival, and who went directly to that fire, stated that on entering the trastienda he saw a policeman with four or five Chinamen who had just come out of the trastienda.

Pablo Navarro, the municipal policeman who on arriving went directly to the fire in No. 26, testified that he went

to the door of the trastienda, and upon entering saw a Chinaman in the doorway and three others seated at a table, one of whom was writing and identified them as being, respectively, Go Juat Chiong and Go Jancho, Go Foo Suy and Go Cho Jim; that when they saw him they began to run; that he asked them why they did so as there was a fire in the house; that he told the chief of police about this upon the latter's arrival shortly afterwards; and that the chief ordered him to go and arrest the Chinamen. He found and arrested two of the Chinamen on the plaza.

Enrique Tabada testified that he saw Go Juat Chiong and Go Cho Jim in the house upon entering. A curtain which was on fire he tore loose and threw out of the house. Besides the Chinamen that he saw, he heard the voices of others but could not say whether they were outside or inside the tienda. The policeman Bototo testified for the defense and stated that upon arriving at the trastienda a Chinaman came up, and that acting under instructions from the policeman Tabada he arrested the Chinaman and refused to let him enter. The sworn declaration of the chief of police, made on February 26, contains the following statement:

"The accused Go Cho Jim is the one who was arrested by me at the moment of coming out of the door and at the time when the rear end of the bodega was broken open by order of the president for the purpose of putting out the fire which had been discovered within."

The conflict between the statements of these witnesses and the declarations of the inmates of the house is most evident. According to these witnesses, a number of Chinamen were found in or near the house after the trastienda had caught fire, all of them being actually identified as the accused persons by one or more of the witnesses; while the accused declare positively that they had left the building very shortly after the alarm of fire in No. 30 was given and had gone directly to the plaza, which would make them standing there a considerable time before the fire in No. 26 broke out. In this connection Go Jancho testified that he did not return to the store after leaving it; that he was arrested on the plaza, and that it was not until he arrived at the police station that he learned that a fire had occurred in No. 26. Presumably, therefore, where he was standing on the plaza, it was impossible to observe the fire. It does not seem probable that the owner of a stock of goods, if prompted by good motives, would thus desert his property when there was so little danger of personal injury. Even if the defendants' statements that they remained on the plaza and did not go near the fire were accepted as true, only an unfavorable inference could be drawn from such conduct.

Gil de la Cruz, an employee of the city garbage system, testified that while waiting at No. 26, between 1 and 2 o'clock on the morning of the fire, for the cars to come and carry away the pails he had collected, he saw Go Jancho coming into the passageway between Nos. 30 and 26 from the Street Norte America, and go as far as the kitchen of No. 30 and then return to the street again. Jancho was fully dressed with the exception of a hat. Jancho declared that after going to bed that evening about 11 or 12 o'clock he did not get up until the alarm of fire "awakened him.

Three fires were discovered in No. 26 almost simultaneously. One was in the bodega, where some rolls of sauale lying on the floor were afire. This fire was practically in the center of the room. One was in the trastienda where bolts of cloth stored on impromptu shelves made of boxes piled one above the other were afire. The bed in the living quarters of the woman Antipas also caught fire.

As to the fire in the room of the woman Antipas, counsel for the defense say in part: "This," referring to the testimony of the chief of police, "is the only evidence as to how and when the hole was burnt in the bottom of the bed."

Again they say: "Several witnesses for the prosecution were allowed to give hearsay evidence to the effect that the bed was burnt in the room of the woman, but nobody testified that they saw it burning or that they extinguished the fire. As has been noted, the fiscal asked a few adroit questions relating to the bed, and then promptly changed

his questions to other topics. This is so noticeable that there is only one deduction to be drawn from it, namely, that nothing definite was known about the fire in that room and that the testimony relating to it is mere conjecture."

Aldanese, the chief of police, identified Exhibit G as a photograph of the burnt bed, and pointed out the bed standing at the window as shown in Exhibit B. He also testified that the bed was burned at the same time the other fires in No. 26 occurred.

The witness Bryan testified that when he entered the trastienda there was a fire on the second floor and that he could hear it burning. He stated that he did not go upstairs. Captain Lucas testified that he did not go Upstairs. The policeman Tabada testified as follows:

"When we saw fire in the rear of this house (No 26) we called to the firemen to put it out, and when the fire which was burning in the street was put out, we saw also that there was a fire in the lower part of the same house. As it was difficult to put out the fire which was in the lower part of the house, we went to the bodega underneath the part where the fire had occurred, and tore off some pieces of zinc * * *."

The first question put to him on cross-examination was:

"Q, So that the first fire you saw in house No. 26 was upstairs?—A. Yes, sir.

"Q. Afterwards you saw that there was also a fire in the place below the fire, where the store was?—A. Yes, sir."

Pedro Noel, another municipal policeman, who testified for the defense, stated that the three fires in No. 26 were burning at the same time; that when he saw the fire in the window upstairs, he said to the man who had charge of the house, "Let us throw water on this fire." In another place he says that after throwing" water on the bed they went back to No. 30 and heard one Fructuoso Ramos crying, "Here is another fire," and on going back began to put out the fire in the bodega. Aside from this evidence of the witnesses, an empty bottle which had contained petroleum and a small kerosene lamp, also empty, were found underneath the bed. The photograph of the bed was also admitted as evidence and shows that only the matting which formed its bottom and the furnishings were burned. This evidence establishes the fact that there was a fire upstairs at the same time the other fires in No. 26 were burning. We confess our inability to perceive any ulterior motive on the part of the prosecution in neglecting to make a more extended investigation of this fire. Counsel for the defense were equally at liberty to sift this matter to the bottom on cross-examination of the witnesses for the prosecution who testified in regard to this fire, and in the direct examination of their own witness, Pedro Noel. It certainly cannot be denied that this bed was afire at or nearly at the same time as the other two fires in No. 26, and that it was put out. These are the important facts, and from the testimony of the witnesses Tabada and Noel, it would appear that the hose was simply directed at the window near which the bed was standing and that the fire was easily extinguished in this manner. The chief of police testified that there was no wind blowing at the time of the fire. Photographs submitted by the prosecution show two nipa shacks located on the opposite side of No. 30 within 3 or 4 meters, which were not damaged. The witness Cuico, who lived in one of these shacks, stated that it was about 3¼ meters from No. 30 and that it did not suffer the slightest damage from the fire. The only openings in the side of No, 26 nearest No. 30 were two windows. From the record it appears that at least one of these windows opened into the trastienda and that it was closed up to the time the fire was discovered in this room. Pieces of paper in this window were not touched by the fire. There were two windows in the upper floor opening at the rear, the bed standing near the one farthest from No. 30. The window nearest No. 30 was closed when the photograph (Exhibit B) was taken, while the other was open, and the bed in question can be seen standing near it. The record does not show whether this window was open or closed when the fire occurred, but assuming that it was open, sparks from No. 30 would have had to cross

the passageway of 9½ meters to No. 26, as well as the additional space between the nearest wall of No. 26 and the window near the other side, and in so doing must necessarily have described an arc, as the end walls of both houses were practically on a line. As noted above, the fire in No. 30 had no inclination to spread and houses of highly inflammable material much nearer than the bed in question, and which sparks could have reached without impediment of any kind, were not touched by the fire. The shed or lean-to attached to No. 30 and directly between that house and No. 30 was left intact. It seems highly improbable that sparks from No. 30 could have entered the window and set fire to the bed. Nor does this explanation dispose of the evidence of incendiarism in the way of empty kerosene receptacles found in the room where the bed was.

Counsel for the appellants also contend that the fire in the trastienda caught from the fire in the bodega by passing through the partition between the two rooms. All the evidence of record appears to negative this proposition. The witness Bryan, it is true, says that the fire in the trastienda appeared to be entering through a wall, and in another place says that the flames came from behind the wall from the burning sauale in the bodega, but a little later in his testimony he says that there was a fire in the trastienda at the same time as the fire in the bodega was burning, and that although they took down many bolts of cloth looking for a possible connection between the two fires, they could not find any signs of the flames passing from one room to another, either above or on the sides of the room. Captain Hemmett testified that he went to the house on the following day and saw no signs of fire on the partition between the two rooms. Captain Lucas said it was possible that the fire in the trastienda could have caught from the fire in the bodega, but that the fire in the bodega was more to the left. Several of the witnesses stated that only the outer edges of the bolts of cloth were burned. It would seem that if there was as a matter of fact any connection between the two fires, the bolts of cloth would have caught fire on the ends nearest the partition. But it appears that the fire in the bodega (or, for that matter, either of the other two fires in No. 26 did not damage the building in the slightest. The fire in the bodega could not, therefore, have assumed large proportions, and its insignificance is also an indication of the improbability of its igniting a fire in another room. The court, after an ocular inspection of the premises, also decided that the fire in the bodega could not have started the fire in the trastienda. That, the burning bolts of cloth in the trastienda were covered with petroleum is indisputably established by the testimony of competent witnesses. In his deposition taken the day after the fire, the appellant Go Jancho is recorded as saying that he could not explain why this cloth was covered with petroleum, but the fact was, nevertheless, that there was petroleum on it. In the court below he denied making this statement, saying that what he did say was that he did not know whether petroleum or water had been poured on it. As the appellant must have had sufficient sagacity to know that water-soaked cloth will not burn, the insincerity of this statement is apparent. Three bottles were found under the table and one was found behind the door in the trastienda, all of which had contained petroleum.

As to the fire in the bodega, it is practically conceded by the defense that it was of incendiary origin. The only thing that was burning in this room was some sauale lying on the floor. The witness Rosello testified that he found two bottles in the bodega near the burning sauale, together with a broken match box. He stated that he saw signs of petroleum on the sauale. The policeman Bototo, a witness for the defense, testified that he found a bottle in the bodega which had contained petroleum. Witness Bryan testified that the burning sauale was taken out of the bodega and that as it was unrolled it would burst into flame. But it is urged by the defense that some unknown person found access to the bodega through its door and deliberately started the fire. It is strongly insisted that the evidence of record not only shows that the door to the bodega was not locked, but that those who came to put out the fire found the door open. Upon this point the witness Cuico testified that while he was assisting at the fire in No. 30 the president told him to look around, and on so doing he saw smoke issuing from the bodega of No. 26. He immediately started for the bodega, followed by the president and two policemen. On arriving there the president ordered that an opening be made in the wall of the bodega. Cuico remembered there was a door on the

other side of the bodega and ran to open it. While he was trying to push the door open, he heard something moving in the bodega. He could not say whether it was an animal or a person. He knocked on the door and called out, "Open, open" several times, but receiving no response he left the door and went to the rear where they were making an opening in the wall by tearing off some pieces of iron. Again, he says that as they had no tools with which to make an opening in the bodega he went to get some, and upon their return they began to force the door open and finally it yielded. He says the hole in the wall in the rear was made first. After the fire he looked around the bodega as he was not certain about the noise he had heard inside and saw a hole in the bamboo matting forming the partition between the bodega and the trastienda. When the fiscal came to the house to conduct an investigation, Cuico called his attention to this hole and told him about the noise he had heard in the bodega. The hole shows plainly in the photograph (Exhibit F, of the prosecution). Although we agree that Cuico's testimony with regard to the door being closed and in reference to hearing" something moving in the bodega is not corroborated by any other witness, it does not appear that he was flatly contradicted by Captain Lucas, as counsel insist. As stated above, when Captain Lucas arrived, both houses were on fire. He first entered the trastienda. But he was not, by his own testimony/the first person to enter the trastienda, as stated by counsel for the appellants. He found a policeman and a clerk, Mr. Bryan, and one or two other persons whose names he could not remember, when he entered the trastienda. The fire in this place, according to Captain Lucas, had burned some time when he arrived. It will be noted that Captain Lucas first entered the trastienda and that he spent some little time there. There could have been plenty of time, then, for Cuico to find the door in question closed and to hear the noise within the bodega and to secure aid in forcing it open before Captain Lucas actually arrived at the bodega. The same is true with regard to the other witnesses who testified that they found the door open. Before convicting Cuico of a deliberate falsehood in testifying that he found this door closed upon the strength of the testimony of other witnesses who found it open, it seems necessary to show that they reached the door first or at least at the same time as Cuico. Neither can it be presumed that the witnesses who actually testified in regard to this door (some half dozen at the most) were the only ones who assisted in putting out the fire in the bodega. It must be remembered that a number of persons were assisting in this work who were not called as witnesses, and the aid rendered Cuico in forcing the door could easily have come from persons who were not called as witnesses at all. It seems that Cuico was familiar with the location of this door, while the others were not; and instead of obeying the president's orders to make an opening in the wall of the bodega, he went to open the said door, which accounts for his reaching it first. Captain Hemmett, who visited the place by daylight, testified that the only connection between the bodega and the trastienda was a hole apparently made by some person trying to escape. This was the hole to which Cuico referred. The defense were eloquently silent in regard to this hole. No attempt was made to show that it was impossible or even tolerably difficult to enter the trastienda by means of this hole; and it must be held proven beyond question that the hole was made on the night of the fire. After a very careful examination of all the testimony bearing upon the question as to whether the door to the bodega was open or not when the fire in that room was discovered, we do not find that Cuico's testimony in this respect is contradicted by anyone.

None of the accused were able to say whether the empty kerosene bottles found in various parts of the house belonged to them or not. There were no electric lights in the house and the occupants depended entirely upon kerosene lamps. The appellant, Go Jancho, admitted at the trial that bottles were used in transferring petroleum from the cans in which it was bought to the various lamps, but said that all this work was done by two muchachos, who were not in the house on the night of the fire.

We conclude (1) that certainly the fires in the bodega and in the trastienda were of incendiary origin, with a strong probability that the fire in the room upstairs was of like character; and (2) that the fire in the trastienda did not catch from the fire which was burning in the bodega, but was started separately.

No insurance was carried by the owner of either building at the time of the fire, and the Chinese carpenter who

lived in No. 30 carried no insurance on his stock of goods. The appellants carried an insurance of P25,000 on their stock of goods. Accompanied by the fiscal and the then counsel for the appellants, a committee of three business men, having experience in the appraisal of merchandise, went to the tienda of the accused the day following the fire and appraised the stock found there. The highest valuation placed upon the stock by one was P5,500; by another, between P6,000 and P7,000; and by the third, not more than P8,000. Nevertheless, in the court below the appellant, Go Jancho, testified that according to the books of the firm the stock of goods was worth P14,000, and the furniture in the store P1,000. According to his testimony, the books (which were in Chinese) further showed a profit of about P4,000 for the period September 5, 1910, to February 24, 1912. This profit, however, depends upon the existence of a stock of goods worth P14,000, and P1,000 worth of furniture, as well as debts owing to the firm amounting to P22,673.08. We cannot accept the testimony of the appellant that the books showed a profit of about P4,000 for the period in question, for the reason that the statement that according to the said books the value of the stock in the tienda was P15,000 cannot be accepted as true. The appraisal of the stock was made in the presence of the accused and their counsel by persons accepted by them in the court below as qualified to make it correctly. The highest figures submitted by any of them are scarcely more than half of what the appellants claim the stock was worth. Notwithstanding the fact that the committee's estimates were so far below the value of the stock as represented by their books, the accused made no effort to take a detailed inventory of the stock to substantiate the figures shown in their books and show that the committee was in error. Under these circumstances, we do not feel justified in accepting the figures of the appellants. There can be no question but that the figures of the committee were reasonably accurate.

Considerable effort has been made on this appeal to destroy the value of the testimony of various witnesses on the ground of minor differences in their testimony. We have carefully examined the points made by counsel. It will be found that most of them depend upon the establishment of the fact that the persons concerned had equal opportunities for observation. We have already pointed out this fact in the case of Cuico and Captain Lucas. But in any event we do not consider any of these alleged inconsistencies as reflecting upon the credibility of the witnesses. It is to be expected that testimony of several witnesses as to events which transpired in rapid succession, which were attended by hurry and excitement, and with the opportunity for observation so greatly hindered by the darkness of night, will disagree in the details. If the witnesses in the present case should agree in their testimony that all the events occurred in precisely the same order and in the same manner, that fact would itself be a suspicious circumstance. It must be remembered that much of the work of putting out the fire was done by persons who did not appear as witnesses at all. With so many assisting in putting out the fires, and the fact that it occurred in the nighttime, it is not strange that some should see what others did not see, that two witnesses observing the same incident should differ in some respects in describing it later, or that gaps in the evidence should appear because persons who assisted in putting out the fire were not called as witnesses. The fact that a united and orderly narrative of the fire in the bodega cannot be drawn from the testimony of the various witnesses who took part in extinguishing it tends rather to stamp the testimony of each as being truthful to the best of his observation. Furthermore, the conflicting testimony was for the lower court to weigh. This court has repeatedly refused to disturb a finding of guilt when the evidence was conflicting and there was enough before the court to warrant a conviction were evidence of the prosecution true, and conflicting evidence offered by the defense false, unless from the record it appeared that there was reasonable doubt as to the correctness of the trial court's classification of the evidence as true or false.

The testimony of the accused in the present case is far from convincing. Go Jancho denied that he was out in the passageway between 1 and 2 o'clock on the morning of the fire, saying that he went to bed about 12 and did not get up until the alarm of fire, or about half past 2 o'clock. Yet we have the positive and unshaken testimony of De la Cruz that he was there between the two houses between 1 and 2 o'clock, fully dressed. Of all the empty

petroleum bottles scattered over the house the defendants were unable to either deny or affirm that any of them belonged to the house. These bottles, according to them, were intrusted to the care of muchachos who were not in the house on the night of the fire. Yet, it would seem that some of the inmates of the house would have been able to recognize some of the bottles. It is difficult to account for the presence of these bottles, empty, in the places where the fires occurred. Were they thus carelessly left by the muchachos the last time the lamps were filled? That would be possible, but it does not account for the oil found upon the cloth and upon the rolls of sauale. Nor is it shown that any lamps or other oil-burning receptacles were used in the bodega, where some of these bottles were found. Were they taken from the place where the oil was usually kept by unknown persons on the night of the fire and their contents used in starting the fires? If strangers did this, they must have known the house and its contents intimately and have spent considerable time passing from one room to another while securing and distributing the oil. Furthermore, they must have been daring enough to do these things after the crowd had gathered to put out the fire in No. 30, since it has been shown that the fires in No. 26 were not started until after No. 30 had been burning for a considerable time. Or were the defendants cognizant of the location of the bottles and did they deliberately use them to carry oil to the places where the fires occurred and pour their contents upon the cloth and the sauale? Of all possible explanations of these empty bottles and the traces of oil found in the places where the fires occurred, this is the most convincing. Go Jancho testified in the court below that he saw the saturated cloth but did not know whether oil or water had been poured upon it. The sincerity of such an answer is obviously to be doubted, especially in view of the fact that in his deposition he had admitted that it was oil. The accused stated that they remained on the plaza for nearly an hour while the fire raged in No. 30, without once venturing near to see the fate of their own property. In fact, according to them, they were ignorant of a fire having occurred in their own house until after they had been brought to the police station. Such testimony is not above suspicion. Especially is this so when it is remembered that, according to witnesses for the prosecution, they were all recognized at the very scene of the fire after it had broken out. The defense seemed content to allow the theory of the prosecution that the hole in the partition was made on the night of the fire and that a man could make his escape from the bodega through it. Would strangers have gone to all this trouble and risk in setting fire to the house? Or would it be more likely that the defendants would do this? The trial court was called upon to decide these questions. He heard the testimony, saw the witnesses testify, observed their demeanor on the stand, and refused to credit the testimony of the defendants. But in addition to the adverse inferences suggested by this testimony, it was conclusively proven at the trial: (1) That neither the fire in the bodega nor that in the trastienda of No. 26 caught from the fire in No. 30; (2) that there was no connection between the fire in the bodega and the fire in the trastienda of No. 26; (3) that both the latter fires were of incendiary origin; (4) that the value of the stock of goods in No. 26 was between P5,000 and P8,000; (5) that P25,000 worth of insurance was carried on this stock by the appellants; (6) that the appellants, Go Foo Suy and Go Jancho, were the owners of this merchandise and consequently the beneficiaries of the insurance; (7) that their business operations over a period of approximately eighteen months just prior to the fire had resulted in a loss of at least P4,000. Here we have a fire of incendiary origin and a very powerful motive for starting it. The appellants had been conducting their business at a loss for nearly eighteen months. The success of their crime meant that they would receive about twice the value of their stock of goods and thus convert a losing investment into a profitable one.

In *State vs. Ross* (77 Kan., 341), an arson case, it was said that the testimony showed a singular state of affairs, but its weight and credibility was for the jury. Having been found true by the jury and approved by the trial court, the appellate tribunal decided that its sufficiency could not be successfully controverted before it.

To the same effect is *People vs. Stewart* (163 Mich., 1). In this case there was evidence tending to show that the buildings were insured for less than they were worth.

In *State vs. Henriksen* (116 Minn., 366), it was said in sustaining a conviction;

"That some one deliberately set the house on fire after making careful plans for the success of the deed is a conceded fact in the case. The only question before the jury was whether defendant either alone or in collusion with his wife laid these plans and fired the building, or whether it was the act of some third person."

In *People vs. Mix* (149 Mich., 260), the evidence used in securing a conviction was wholly circumstantial, but the appellate court sustained the verdict of guilty, notwithstanding that evidence was offered by the defendant tending to prove an alibi, the court saying that the persons who so testified could have been mistaken. In this case the building was insured, but evidently not to an exorbitant figure.

In *United States vs. Benitez and Lipia* (18 Phil. Rep., 513), an arson case, this court said:

"In a conflict of testimony such as is presented in this case, this court must depend to a considerable extent upon the discernment of the judge who sits at the trial. A careful and discriminating trial judge has unequalled advantages in determining the relative credibility of opposing witnesses. If he exercises his faculties with shrewdness and sagacity, he performs a most valuable work for the appellate court. We have considered this case in a very painstaking manner. We have searched the record for any evidence indicating that the learned trial court was mistaken in his judgment as to the relative credibility of the witnesses or that he had overlooked some fact or circumstance of weight or influence in passing upon the evidence, or that he had misinterpreted the significance of the facts as proved. We have been unable to find from the record that the learned trial court has fallen into such error; and, in accordance with the rule which we have so often laid down, namely, that this court will not interfere with the judgment of the trial court in passing upon the relative credibility of opposing witnesses unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or its significance misinterpreted by him, we decline to interfere with the judgment of the trial court upon the facts in this case."

In the present case the motive for committing the crime was powerful; the incriminating evidence is strong; and suspicion rests upon the exculpatory evidence submitted by the defense in many places.

After a most careful examination of the entire record, we are of the opinion that the finding of guilt by the lower court ought not to be disturbed.

The appellant Go Foo Suy was offered as a witness in his own behalf by counsel, but upon being refused a Chinese interpreter, counsel declined to permit him to testify. Go Foo Suy himself testified that he had been a resident of Cebu seventeen or eighteen years, and the court observed that the witness was able to testify in the local dialect if he had wished to do so. Moreover, the court stated that an interpreter would translate his statements whenever he found any difficulty in making them. We cannot say that there was any prejudicial error in not allowing the appellant an interpreter.

The court found the appellants guilty of frustrated arson and sentenced them under article 549 of the Penal Code for setting fire to a building which they knew at the time to be occupied by one or more persons. It is urged by the defense that the court erred because the evidence shows that all the inmates had left No. 26 when the fires occurred, and, accepting the theory of the prosecution that the appellants started the fire in order to collect the insurance on the merchandise which belonged to them, the offense would fall under article 561 of the Penal Code.

Article 561 provides that if the burned things shall be the exclusive property of the incendiary, he shall suffer a penalty of arresto mayor in its maximum degree to prision correccional in its minimum degree, if the arson shall have been committed with intent to defraud or cause damage to another.

In view of the disposition we propose to make of the case, this proposition requires no attention. In its decision of December 31, 1898, the supreme court of Spain laid down the doctrine that setting fire to the contents of a building constitutes the consummated crime of setting fire to the building. We agree with this doctrine, and it is

therefore immaterial that the contents of the building in the case at bar belonged to the defendants themselves while the building belonged to a third person.

We think, however, the court erred in applying article 549. An essential element of the crime punished by this article is knowledge on the part of the wrongdoer that the building was "occupied at the time by one or more persons." That all the essential elements of a crime must be proven beyond a reasonable doubt does not require elaboration. The facts of the present case do not justify the assertion that the defendants knew the building to be occupied at the time.

In view of the considerable time which intervened between the discovery of fire in No. 30 and its discovery in No. 26, and considering the noise which must have been made by the crowd which assisted in putting the fire out in No. 30, it is not probable that any person residing in No. 26 was caught unawares when the fire broke out in this house. And also bearing in mind the suspicion which rests upon the conduct of all the inmates of this house, we are of the opinion that the defendants ought not to be charged with knowledge that the building was occupied at the time they set it on fire. As the damage occasioned by the fire did not exceed 6,250 pesetas, the crime of the defendants is punishable under article 550, paragraph 2, in connection with article 551, paragraph 1. The aggravating circumstance of nocturnity being present in the commission of this crime, with no extenuating circumstances, the penalty should be imposed in its maximum degree.

The judgment of the lower court is therefore modified accordingly and the appellants sentenced to ten years and one day of presidio mayor. In all other respects the judgment appealed from is affirmed. The appellants will pay the costs of this instance. So ordered.

Arellano, C. J., Johnson, Carson, and Moreland, JJ., concur.

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