

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NICOLAS APIGO, DEFENDANT AND APPELLANT.

G.R. No. 8815. October 22, 1913

Ponente: CARSON, J.

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CARSON, J.:

The appellant in this case was convicted of "reckless negligence" (*imprudencia temeraria*), and sentenced to one year and one day of prision correccional, upon an information charging "that the said accused Nicolas Apigo, on or about March 31, 1912, in the sitio of Rajal, pueblo of Balungao, Province of Pangasinan, set fire to the straw in his ricefield, despite the high wind, so that the fire spread to some cogon-grass in the same field and to the house of Pantaleon Tinoria, which was burned with all its contents, the damage thereby caused Pantaleon Tinoria amounting to the sum of P60, equivalent to 300 pesetas; an act constituting said crime of reckless negligence, committed within the jurisdiction of this Court of First Instance and in violation of law."

Counsel for appellant attempts to discredit the testimony of the witnesses for the prosecution by pointing out certain contradictions in their testimony. These contradictions arose in regard to the distance between the ricefield which belonged to the defendant and the house that was destroyed by fire. The various witnesses did not pretend to do more than to estimate the distance, and as might be expected, the estimates varied considerably. But there is nothing in the record which would justify the inference that these witnesses were not testifying in good faith, or that their statements as to the material issues involved were not true. The variances in their estimates are not vital, or of such a character as to put in doubt the findings of fact by the trial judge or his conclusions as to the guilt of the defendant and appellant.

Similar reasoning to that employed in our opinion in the recently decided case of *United States vs. Cañada* (R. G., No. 8449)[1], applied to the facts developed by the evidence in this case, leads inevitably to the conclusion that the defendant and appellant is guilty of setting fire to and destroying a nipa shack, the property of the complaining witness, worth about P60, by setting out a fire, with reckless negligence, in his own ricefield, at a time when a high wind was blowing, which carried the fire from the field of the defendant to the shack.

But while a judgment of conviction must be sustained, we think that the penalty imposed should be modified. Article 568 (Penal Code), defining and penalizing the offense, is as follows: "Any person who by reckless imprudence shall commit any act which, had it been intentional, would constitute a grave felony shall suffer a penalty ranging from *arresto mayor* in its maximum degree to *prision correccional* in its minimum degree; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium degrees shall be imposed."

Under the provisions of this article, the penalty prescribed for the offense committed ranges from *arresto mayor* in its maximum degree to *prision correccional* in its minimum degree. The trial judge having found that none of the aggravating or extenuating circumstances set forth in the first book of the Code marked the commission of the offense, imposed the minimum of the medium degree of this penalty, that is to say, one year and one day of

prision correccional. From a reading of his judgment we would infer that he, like ourselves, had arrived at the conclusion that under all the circumstances of this case the interests of justice would not demand the imposition of anything more than the minimum penalty prescribed by law, but that he overlooked the authority conferred upon him to waive the ordinary rules in imposing penalties in this class of cases. Article 568, after defining and penalizing the offense, further provides that "in the application of these penalties the courts shall act upon their own discretion without subjection to the rule established by article 81," that is to say, without the obligation of imposing the penalty in its minimum, medium or maximum degree according as the proof adduced at the trial establishes the existence or nonexistence of the aggravating and extenuating circumstances mentioned in the first book of the Code.

As we have said, the penalty prescribed for the offense of which the defendant and appellant was convicted is that of arresto mayor in its maximum degree to prision correccional in its minimum degree, or from four months and one day of arresto mayor to two years and four months of prision correccional. We think that the minimum penalty, that is to say, four months and one day of arresto mayor, together with the provision requiring the payment of the value of the house and its contents (P60) to its owner, with subsidiary imprisonment in case of insolvency and failure to pay, is a sufficient penalty for the offense committed.

The sentence imposed by the trial court should therefore be, and is hereby, modified by substituting for so much thereof as imposes a penalty of one year and one day imprisonment, the penalty of four months and one day of arresto mayor, and thus modified the sentence of the trial court should be and is hereby affirmed, with the costs of this instance de oficio.

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

[1] March 18, 1913; not reported

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