3 Phil. 116

[G. R. No. 1423. December 29, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. EDUARDO ABAROA, DEFENDANT AND APPELLEE.

D E C I S I O N

MCDONOUGH, J.:

This is an appeal from the judgment of the Court of First Instance of the Province of La Union, acquitting the defendant on a charge of *incendio* (arson), alleged to have been committed by him on the night of March 1, 1903, in San Fernando de la Union. The camarin of one Lucino Almeida Chan Tanco, otherwise called Tana, was burned on that night. It was claimed that Eduardo Abaroa Chan-Em, the accused here, had set fire to the building, and he was arrested and put upon trial at San Fernando de la Union on June 3, 1903.

After eleven witnesses had been sworn and had testified in behalf of the prosecution, and 47 pages of testimony taken, the court discharged the accused for the reason that the prosecution had not made out a case against him.

It was proved satisfactorily that the building and its contents, a stock of goods, valued altogether at about 60,000 pesos, Mexican currency, were destroyed by fire, but the testimony adduced to show that the accused set the building on fire was not direct and positive, but rather of a circumstantial and contradictory nature, and which, apparently, was not strong enough to convince the learned judge who tried the case of the guilt of the accused.

After carefully reading the evidence and considering its bearing and weight, we have concluded that the judgment of the Court of First Instance should be affirmed.

We do not, however, approve of the practice adopted of dismissing the case, on motion of the attorney for the accused, when the fiscal announced that he had no more testimony to

offer.

Such practice should not be followed for the reasons (1) if this court should not agree with the conclusion reached by the court below it would be authorized to reverse the judgment and enter judgment convicting the accused upon the facts proved by the prosecution, and thus depriving the accused of making a defense below, if he had a defense, and (2) if this court, on disapproval of the judgment below, should order a new trial the result would be that the prosecution would be obliged to place the defendant on trial twice, when all the evidence could have been obtained in one trial; and the defendant would have the benefit of delay and the possible death or disappearance of witnesses for the prosecution.

We are of opinion, therefore, that the better practice is to require the defendant to make his defense, if he desires to offer evidence in his own behalf, and not to dismiss the case, on motion, until both parties have presented all their evidence.

The judgment below is affirmed with the costs of both

instances *de oficio.*

Arellano, C. J., Torres, Cooper, Willard, and *Mapa, JJ.,* concur.

Johnson, J.: I concur in the result.

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