

[G.R. No. 389. November 05, 1901]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FLORENTINA JARRILLA, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

It appears from the record that on the morning of August 21, 1897, Florentina Jarrilla, moved by the passion of jealousy and resentment against Natalia Diño on account of the amorous relations maintained between the latter and the former's husband, Norberto Disglasan, proceeded to destroy with a bolo one of the partitions of the house of the complaining witness, Natalia Diño, while the latter was absent from the same and while her two minor daughters—the elder of whom was 12 years of age and is the only one who could testify at the trial—were playing near by. After having dragged the partition some distance from said house she set fire to the same, and as the wind then blowing was in the direction of the house, that burned likewise, together with its contents, valued together with the house at 9 pesos 4 reales and 4 cuartos.

The facts above related, fully proved by the testimony of witnesses, expert testimony, ocular inspection, and confession of the accused, constitute the crime of arson by reckless negligence and the misdemeanor of malicious mischief included in article 568 in connection with articles 553, 554, 555, and 601 of the Penal Code. Therefore the destruction of the complainant's house by Florentina Jarrilla is not a felony but only the misdemeanor of malicious mischief. The entire house was not worth more than 3 pesos. Only one of the partitions which was separated from the house was destroyed and this part of the dwelling could not possibly exceed 125 pesetas in value. For this reason the justice of the peace had jurisdiction to punish this misdemeanor of malicious mischief.

The burning referred to, as has been said, constitutes a crime by reckless negligence, since it is conclusively established that the accused set fire to the partition screen of the house

which had previously been separated and placed a certain distance from it. It does not appear that in doing so she had any malicious intent to burn any other part of the house. Although the entire house was burned, this was due to the wind, which communicated the fire from the ignited partition screen to the house. For this reason the act done without premeditated malice by reason of the lack of criminal intent to burn the house merely constitutes arson by imprudence.

Under this view, as the facts only constitute a minor offense, and as this arson, had the element of malice been present, would have fallen under the provisions of article 555, it is evident that as this element is lacking the offense must be classified as arson by reckless negligence. As the accused acted under the impulse of the passion of jealousy, circumstance No. 7 of article 9 of the Code must be considered in mitigation, and therefore the proper penalty is that of *arresto mayor* in its minimum and medium degrees, applied in the minimum grade, and therefore we are of the opinion that Florentina Jarrilla should be condemned to the penalty of one month and a day of *arresto mayor*, to the accessories of article 61, to the indemnification of the damages occasioned or subsidiary imprisonment corresponding thereto, and to the payment of costs. In computing the principal and subsidiary penalty allowance should be made of one-half of the provisional imprisonment suffered and the order declaring the insolvency in the incident of attachment should be approved. The judgment of the court below is reversed. It is so ordered.

Arellano, C. J., Cooper, Willard, Mapa, and Ladd, JJ., concur.
