

VALENTIN ILO, ET AL., PETITIONERS, VS. COURT OF APPEALS, ET AL., RESPONDENTS.*G.R. No. L-11241. July 26, 1960*

Ponente: BAUTISTA ANGELO, J.

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Valentin Ilo, et al., were charged before the Court of First Instance of Camarines Sur with the crime of arson where, after trial, Valentin Ilo and Silvestre Buela were found guilty under Article 321, paragraph 5, of the Revised Penal Code and sentenced each to an indeterminate penalty of from 4 months and 1 day to 4 years 2 months and 1 day of prision correccional, to indemnify jointly and severally the offended party in the sum of P600.00, and to pay their respective share of the costs. The rest of the accused were acquitted.

Ilo and Buela appealed to the Court of Appeals. The latter court, while it found appellants guilty, held that the crime charged comes under Article 321, paragraph 1, of the Revised Penal Code, and not under the same article, paragraph 5, and as a consequence, it modified the penalty imposed upon them. It accordingly sentenced each of appellants to suffer an indeterminate penalty of not less than 6 years and 1 day of prision mayor nor more than 16 years and 1 day of reclusion temporal, affirming the decision of the trial court in all other respects. Appellants interposed the present petition for review.

The facts as found by the Court of Appeals are:

"Zosimo Taghoy and his family lived in their house located in sitio Ligua, barrio Salvacion, Municipality of Tinambac, Camarines Sur. It appears that prior to December 4, 1950 Valentin Ilo had quarrelled with one Restituto Bona while they were in the aforesaid house of Zosimo. As a result thereof Restituto filed a criminal charge against Valentin in connection with which the latter had warned Zosimo not to testify in favor of his accuser. This notwithstanding, however, Zosimo testified before Sgt. Rivera when the latter investigated the incident.

"The prosecution evidence shows that very early in the morning of December 4, 1950, Zosimo left for Tinambac to buy fish. Between 11 and 12, o'clock that morning, as Bruna Absin, a 60-year old woman who lived in the house aforesaid together with her granddaughter, Salud Piania and the latter's three children, the eldest of whom was only three years old, she heard the voices of some people coming towards the place. She went down to see who they were. The group was composed of eight persons headed by Valentin Ilo. Salud Piania also got up and looked through the window from where she saw them coming. All of them were well-known to both Bruna and Salud because they had been their neighbors in the same barrio for more than ten years.

"Upon their arrival Silvestre Buela poured petroleum from a bottle into the awning of the house, while Valentin Ilo applied a lighted match to the same place after the petroleum had been poured upon it. Their six companions had by then surrounded the place.

"When Bruna asked Valentin why they were burning the house, the latter replied sarcastically; 'What setting fire are you talking about?' Then, as the fire begun to spread, Salud Piania took hold of her youngest child and

ran out of the house through the kitchen door while her grandmother took care of the other two children and hurriedly lead them out of the burning house through the same door, and all of them sought refuge at the house of Salud's mother-in-law located at about one kilometer away.

"The house of the Taghoy was burned to the ground together with all its contents consisting of furniture, clothing, house utensils, farm implements, two sacks of corn, and six sacks of palay, with a total estimated value of more than P1,000.00. The house itself, in the opinion of the trial court, was worth P600.00.

"As stated at the beginning, the evidence shows that Zosimo Taghoy had gone to the poblacion of Tinambac very early that same morning to buy fish. While he was there walking with Restituto Bona towards the municipal building, they met Valentin Ilo, Alfredo Cañizo and Pacifico Carullo. Valentin threw a stone at them hitting Restituto with it on the forehead. Zosimo and Restituto, unwilling to get into further trouble took to their heels, pursued by Valentin and his two companions, but they succeeded in evading them by seeking refuge in the house of Maximo Piania, Zosimo's father-in-law.

"Due to the incident above described and fearful that Valentin and his companions might do harm to the members of his family, Zosimo requested the chief of police of Tinambac, to have a policeman accompany his brother-in-law, Jaime Piania, to his house at sitio Ligua to fetch his wife and children. This the chief of police did, but when Jaime and municipal policeman named Gualberto Cantos reached Ligua, they found Zosimo's house reduced to ashes. Later on they went to the house of Zosimo's mother where they found his wife and children."

The trial court found appellants guilty of arson under Article 321, paragraph 5, of the Revised Penal Code because the information does not allege that the house burned was an inhabited one or that the accused knew it to be inhabited. And in expressing the opinion that the crime comes under Article 321, paragraph 5, it surmised that, while the information does not state in so many words that the building burned was used as a dwelling, it however alleges that it was reduced to ashes together with all the furniture, utensils, clothing and palay deposited therein, from which it may be inferred that the house was inhabited when it was set on fire.

The Court of Appeals, however, is of a different opinion. It expressed the view that the defendants are guilty of the offense under paragraph 1 of the same article, which is penalized with reclusion temporal to reclusion perpetua, or from 12 years and 1 day to reclusion perpetua, because the information alleges that they "set fire to the house of one Zosimo Taghoy", and the evidence shows that when they burned the house they saw two occupants therein in the persons of Bruna Absin and Salud Piania, from which, according to said court, it may be deduced that they knew that the house was then inhabited and such knowledge is an essential ingredient of this form of arson.

Counsel for appellants, on the other hand, disagrees with both the trial court and the Court of Appeals, for he contends that the information does not contain any allegation that the building burned is used as a dwelling and is located in an uninhabited place to make it come under Article 321, paragraph 5, of the Revised Penal Code, nor does it allege that the accused set fire to the house "knowing it to be occupied at the time by one or more persons", even if it does allege that the house was that of Zosimo Taghoy and it was burned together with the furniture, utensils, clothing and palay deposited therein. He contends that such averment, as well as the proof adduced that the accused saw two occupants of the house at the time of the burning cannot convert the crime charged into a more serious one, or one under paragraph 1 of the same article.

We find merit in this contention. In one case, where the defendant was accused of arson upon the allegation that he set fire to the dwelling house of one Rosa Dani which was inhabited by her, it was held that it was error to find him guilty under Article 321, paragraph 1, because there is no allegation that he knew that the house was inhabited. This Court said: "Knowledge on the part of the accused that the building set fire to is occupied, is an

essential element of the form of arson defined in Article 549 of the Penal Code, (now Article 321, paragraph 1) and the information must contain allegations to that effect that the accused had such knowledge at the time of the commission of the crime in order to sustain a conviction under the article" (People vs. Macalma, 44 Phil., 170). On the other hand, it is trite to say that the guilt of appellants and their subsequent conviction cannot rest on a mere presumption, but upon clear proof, while a substantial defect in the information cannot be cured by evidence, for that would jeopardize their right to be informed of the true nature of the offense they are charged.

We, therefore, agree with counsel that the offense of which appellants may be convicted is that defined and penalized in Article 322, paragraph 3, of the Revised Penal Code which governs cases of arson not included in Article 321 and imposes the penalty of prision correccional in its minimum and medium periods if the damage caused is over P200.00 but does not exceed P1,000.00.

Considering that the crime was committed with the aggravating circumstance of dwelling, not offset by any mitigating circumstance, that penalty should be imposed in the maximum period, or from 2 years 11 months and 11 days to 4 years and 2 months. And applying the Indeterminate Sentence Law, appellants should be sentenced to suffer an indeterminate penalty of from 4 months and 1 day of arresto mayor to 4 years and 2 months of prision correccional.

Wherefore, with the above modification, the decision appealed from is affirmed in all other respects, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

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