

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGUSTIN CASTOR, ISIDORO PALOMADO AND JUAN PALMA, DEFENDANTS AND APPELLANTS.

G.R. No. 13498. September 30, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

The three defendants maliciously and voluntarily set fire to, and destroyed, the house of one Concepcion Castellana, knowing that it was occupied at the time. The nighttime was selected for the commission of the dastardly deed. The house was valued at P40. Fifty-five cavanos of palay was stored in the house but no evidence of the value of this rice was introduced.

These facts, fully established by the proof, fall within the provisions of article 549 of the Penal Code, and there being present one aggravating circumstance, offset by no mitigating circumstance, the maximum penalty must be imposed. While, as suggested in the concurring opinion in the *United States vs. Butardo and Butardo* ([1908], 11 Phil., 60), the penalty for arson in the Spanish Penal Code is of exceptional severity, it is to be remembered that the enormity of the offense is not measured by the value of the property that may be destroyed but rather by the human lives exposed to danger. Arson was considered, and still is considered in a few jurisdictions, to be a capital offense. At common law, it "was accounted a heinous and exorbitant felony." (*Poulter's Case* 11 Coke 29a.) Such principles of jurisprudence in conjunction with the aggravated facts before us, justify the increase of the sentence of six years handed down by the trial court to life imprisonment.

Judgment is reversed and each defendant and appellant is sentenced to life imprisonment, to the accessory penalties provided by law, and to pay one third of the costs of both instances, while the defendants shall jointly and severally indemnify Concepcion Castellana in the sum of P40. Appellant Castor's motion for a new trial is denied, since not supported by affidavits of witnesses and since no showing of newly discovered evidence material to his defense is made. So ordered.

Torres, Street, Avanceña, and Fisher, JJ., concur.

DISSENTING OPINION

ARAULLO, J., dissenting in part:

I do not agree with the majority opinion, insofar as, with respect to the commission of the crime, it takes account of the aggravating circumstance of nocturnity, and consequently imposes upon the defendant the penalty in its maximum degree, to wit, *cadena perpetua*.

As the Attorney-General says in his brief, the Government has established, by the evidence taken at the trial, the following facts:

"Engracio de la Cruz, who was a resident of Manila, went, on April 4, 1917, accompanied by his wife, Feliciano Palermo, to the barrio of Mambiranan, municipality of Passi, Province of Iloilo, for the purpose of visiting the parents of his wife. He carried baggage, which people of that barrio went to see when he took it off the train and conveyed it in a narria [sled] to his mother-in-law's house where he took lodging. During his sojourn in the barrio, his wife, Feliciano Palermo, wore dresses unlike those used by any of the women of the barrio, and so became quite noticeable. Agustin Castor, one of the herein defendants, three times visited Engracio de la Cruz at the house of Concepcion Castellana, his mother-in-law. The first visit was for the purpose of selling him three big carabaos and a young one, which the defendant did not then bring with him and which Engracio de la Cruz did not buy. The second visit was for the purpose of asking him for a loan of P4, which Engracio did not lend the defendant. The third visit was at 7 o'clock in the evening of the same day, and was for the purpose of borrowing P2 from him, which, likewise, he did not lend to Castor. On the following Saturday, April 14, 1917, at 9.30 o'clock at night, while Engracio, his wife, and her parents were in the house abovementioned and were getting ready to retire, a group of people came, armed with lances and bolos and bearing four torches. Two members of the group, Isidoro Palomado and Juan Palma, two of the herein defendants, approached the door and said: 'Open the door!' As the door was closed, Engracio and his companions did not obey nor reply to the command. Thereupon, Agustin Castor arrived, and, also approaching the door, asked his companions: 'Why don't you enter the house?' to which they replied: 'We cannot push open the door, because they are holding it from the inside.' Then Agustin Castor replied: 'If they don't surrender, set fire to the house.' Thereupon, Isidoro Palomado and Juan Palma commenced to set fire to it. Engracio and his companions, who were inside looking through the holes in its walls, saw the herein defendants and recognized them by the light of the torches and the first glares of the fire. While the front of the house was burning, Agustin Castor divided his companions into groups, and ordered the members of the first group to go and watch at the other side of the house and, if anyone jumped out from it, to kill him. At this juncture, Engracio de la Cruz and his companions called for help. Then the malefactors fled. Later, the entire house, including the 55 cavanos of rice it contained, was reduced to ashes. Nothing could be saved from the fire, except the lives of Engracio, his wife, and her parents, and the baggage belonging to the first named. None of the offended parties had had any trouble with the defendants prior to the occurrence of the fire."

From the facts above recited, it clearly appears that the defendants, armed and carrying torches, went on the night in question to the house of Concepcion Castellana—in which Engracio de la Cruz and his wife, the latter being a daughter of Castellana, were temporarily residing—for the purpose of entering it, by permission or by force, and accomplishing therein some design, which might have been the satisfaction of a personal revenge because Engracio de la Cruz had thrice refused to accommodate Agustin Castor, one of the defendants, in the matter of the requests this latter had made to him a week before, or they might have intended to commit a robbery, but they did not go there for the purpose of setting the house on fire. According to the facts proven at the trial, it was Agustin Castor who planned the burning of the house upon learning from his companions that the inmates refused to open the door, and, endeavoring to put his plan into execution, ordered the former to set the house on fire if the people who were inside holding the door shut would not surrender. The defendants, therefore, did not choose the nighttime for the burning of Concepcion Castellana's house, nor may it even be affirmed that they took advantage of the nighttime to facilitate the commission of the crime or to escape punishment, for it must be taken into account that when they approached the house they were carrying four torches and must have known that the light from these would enable their being recognized, as in fact they were, by the inmates of the house.

The circumstance which aggravates criminal liability, and that consists in the commission of the crime in the nighttime, shall be taken into consideration according to the nature and incidents of the crime. (Penal Code, art. 10, No. 15.) In the case at bar the circumstance of nocturnity was purely accidental, and cannot in any manner justify the imposition upon the defendant-appellants of the penalty in its maximum degree. There being no

extenuating circumstance in their favor, they should, in my opinion, be sentenced to the penalty in its medium degree, to wit, 16 years and one day of cadena temporal.

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