

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGUSTIN EVANGELISTA, DEFENDANT AND APPELLANT.***G.R. No. 14314. March 28, 1919*

Ponente: AVANCEÑA, J.

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The defendant-appellant was found by the Court of First Instance of Pampanga guilty of the crime of arson provided for in article 550 of the Penal Code and sentenced to twelve years and one day of cadena temporal with its accessories, and to indemnify the offended party, Saturnina Angeles, in the sum of 6,497.50 pesetas, and to pay the costs.

The accused was a tenant by shares of the offended party, Saturnina Angeles. One day he asked permission of the latter to move his house to the other side of the road and his request having been denied he became disgusted with the offended party. When the harvest season came, the accused would not gather the rice planted by him on the land of the offended party who was thus obliged to harvest the rice at her own expense, piling up the grain collected in the neighborhood of her house. On a certain night the offended party surprised the accused in the act of removing some of the rice piled up and for this reason discharged him. As the accused owed the offended party a certain sum of money and refused to pay this debt, the complainant told him that she would apply the rice that she had gathered to the payment of the said debt, and the accused threatened her, saying that something would happen to her.

The house of the offended party was situated in the barrio of Culubasa of the town of Mexico, Pampanga. At a certain distance from it on the north was a barn belonging to the offended party, and just next it toward the same direction was the heap of rice belonging to the accused which the offended party had gathered. South of the complainant's house there was a dry ditch, on the other side of which the house of one named Pascual is located; after that house are some bamboo plants and next to the latter is the house of the accused. The house of Mariano de la Cruz is situated on the west. Under such conditions the house of the offended party was in an inhabited place.

On January 15, 1918, the offended party was in Manila, having left her house unoccupied and placed it under the care of a boy who did not live there but visited it now and then to see the chickens and pigs. On the morning of that day, the house and the barn together with all the objects contained therein, valued at P2,000 according to the offended party, were burned. Emeterio Hizon, a witness for the prosecution, testified that on that morning, at a distance of 6 brazas [about 36 feet], he saw the accused jump out of the house of the offended party, and a few moments afterwards noticed that the house was on fire. Silvino Pinpin said that on the same morning he saw the accused in his (latter's) own house, and that a few moments afterwards he saw a man jump out of the house of the offended party and later enter a sugar-cane field. Dalmacio Quiambol stated that he saw the accused come out almost running from a sugar-cane plantation at a distance of some 50 meters from the house of the offended party, and shortly thereafter saw that the house of the offended party was burning.

All these facts, established by the evidence adduced by the prosecution and combined with one another, show beyond all doubt that the accused was the one who burned the house of the offended party. As defense, the accused set up an alibi and his witnesses stated that during the moments before the fire took place the accused was in the house of an uncle of his who died the day before. But the lower court, after fully considering the evidence presented by both parties, states in his decision that the witnesses for the prosecution have testified in such a manner that the court believed they were telling the truth. After examining all the evidence presented in this case, we find no reason for altering this conclusion of the trial court.

We believe however that article 550 which the trial court applied is not the legal provision applicable. This article punishes one who sets fire to an inhabited house not knowing whether or not there is a person inside. One of the elements to be considered in punishing this crime with certain severity is the special perversity which is supposed to attach to the guilty. In an inhabited house, it should be presumed, or at least it should be believed possible, that there is a person inside. Therefore, he who sets fire to an inhabited house, not knowing whether or not there is a person inside, does so consciously at the risk that his act may cause damage not only to the property but also to the persons who may be found inside. Whether in fact there is or not a person inside the house burned, the crime would suppose at least a disposition on the part of the author thereof to extend the damage to the persons, and this gives rise to the severity of the penalty provided in this article. But, when he who sets fire to an inhabited house knows positively that there is no person inside, his criminal intent should be understood as limited to the damage to the property and article 550 should not be applied, because in such case there would be lacking that element which the law took into account in fixing in this article the penalty for this offense. In the case at bar, there was no person in the house and the accused evidently knew it, because he was inside when he sets fire to the said house. The case is therefore that of arson committed upon an inhabited house in a populated district, the accused knowing that there was no person inside. There being no express provision covering this case, article 557 of the Penal Code should be applied. We are in accord with the contention of the defense and the opinion of the Attorney-General that the damages caused to the offended party by the fire amounted only to 1,269.50 pesetas, which fact places the offense within the purview of paragraph 4 of said article 557.

Therefore, modifying the judgment appealed from and following the precept of paragraph 4 of article 557, we hereby hold that the defendant is guilty of the crime of arson as punished in this article and sentence him to four years and nine months of presidio correctional, with the corresponding accessory penalties, and to indemnify the offended party in the sum of 1,269.50 pesetas or to suffer subsidiary imprisonment in case of insolvency, and to pay the costs. So ordered.

Arellano, C.J., Torres, Araullo, Street, and Malcolm, JJ., concur.

Judgment modified, penalty reduced.

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