

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANTONINO HERNANDEZ, DEFENDANT AND APPELLANT.

G.R. No. 31770, December 05, 1929

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

In the judgment appealed from the appellant was convicted of arson and sentenced to eight years and one day presidio mayor, with the accessories of law, and the costs.

On February 3, 1929, Miguel Dayrit, the offended party, was living with his children in his house situated in the barrio, of Duque, municipality of Mabalacat, Province of Pampanga. At a little past midnight on that date, and after Miguel Dayrit had retired, he noticed that the thatched roof of his house was on fire. He got up to fetch some water with which to extinguish the fire, when, looking out of the window, he saw the appellant beside the house, carrying a stick (Exhibit A). Miguel Dayrit shouted for help, and started to put out the fire, which he succeeded in doing, after a small part of the roof had burned. In answer to his cries for help, Artemio Tanglao repaired to the place and saw the defendant running away. Daniel Mallari also came, and on his way to the house met the defendant.

The appellant knew that Miguel Dayrit and his children lived and were in the house that night.

The testimony of the offended party, corroborated by that of Artemio Tanglao and Daniel Mallari, establishes beyond all doubt the fact that it was the appellant who set fire to the house. The stick which Miguel Dayrit saw in the appellant's possession on that night was found leaning against the house with the end burnt and a rag soaked with petroleum dangling from it. Daniel Mallari recognized it as the stick which the appellant used in getting guava fruits.

It should be noted, moreover, that prior to the crime, the appellant and the offended party, Miguel Dayrit, had some disagreements because the offended party suspected that the appellant was stealing his paddy piled up behind his house. The offended party communicated his suspicions to the barrio lieutenant, who, together with the complainant, went to the appellant's house, but the latter armed with a bolo, barred their way, saying that he would cut them to pieces, and that he recognized no authority. This characteristic violence on the part of the appellant was also shown when, in pursuance of this information, he was arrested; for he refused to give himself up.

The trial court held that the crime committed was only frustrated arson. We agree with the Attorney-General that the crime was consummated. The appellant did in fact, set fire to the roof of the house, and said house was in fact partially burned. With this, the crime of arson was consummated, notwithstanding the fact that the fire was afterwards extinguished, for, once the fire has been started, the consummation of the crime of arson does not depend upon the extent of the damage caused. This court has so held in the cases of *United States vs. Go Foo Suy* and *Go Jancho* (25 Phil., 187) and *United States vs. Po Chengco* (23 Phil., 487).

The crime of arson having been consummated, as it appears from the facts thoroughly proved, article 549 of the Penal Code is applicable herein, with the corresponding penalty of cadena temporal to life imprisonment. And as the aggravating circumstance of nighttime must be taken into consideration, as having been doubtless sought by the appellant in order to insure the commission of the crime, the penalty must be imposed in its maximum degree.

In view of these considerations, the judgment appealed from is modified, and in accordance with article 549 of the Penal Code the appellant is found guilty of the crime of arson, committed in a dwelling, knowing that within it were the offended party and his children; and, considering one aggravating circumstance in the commission of the crime, the defendant is sentenced to life imprisonment, with the accessories, and the costs.

The appellant is an old man, about 85 years of age, and in view of this, and of the fact that the damage caused was very slight, the Attorney-General recommends that, in pursuance of the second paragraph of article 2 of the Penal Code, these facts be explained to the Executive, for the exercise of his clemency to such an extent as he may deem proper. The suggestion is accepted, and it is hereby ordered that the clerk forward a copy of this decision, once it becomes final, to the Governor-General for consideration. So ordered.

Johnson, Street, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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