

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ROMANA SILVESTRE AND MARTIN ATIENZA, DEFENDANTS AND APPELLANTS.

G. R. No. 35748. December 14, 1931

Ponente: VILLA-REAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-35748/>

VILLA-REAL, J.:

Martin Atienza and Romana Silvestre appeal to this court from the judgment of the Court of First Instance of Bulacan convicting them upon the information of the crime of arson as follows: The former as principal by direct participation, sentenced to fourteen years, eight months, and one day of cadena temporal, in accordance with paragraph 2 of article 550, Penal Code; and the latter as accomplice, sentenced to six years and one day of presidio mayor; and both are further sentenced to the accessories of the law, and to pay each of the persons whose houses were destroyed by the fire, jointly and severally, the amount set forth in the information, with costs.

Counsel appointed by the court to defend the accused-appellants de oficio, after delivering his argument, prayed for the affirmance of the judgment with reference to the appellant Martin Atienza, and makes the following assignments of error with reference to Romana Silvestre, to wit:

- The lower court erred in convicting Romana Silvestre as accomplice of the crime charged in the information.
- Finally, the court erred in not acquitting said defendant from the information upon the ground of insufficient evidence, or at the least, of reasonable doubt."

The following facts were proved at the hearing beyond a reasonable doubt:

Romana Silvestre, wife of Domingo Joaquin by her second marriage, cohabited with her codefendant Martin Atienza from the month of March, 1930, in the barrio of Masocol, municipality of Paombong, Province of Bulacan. On May 16, 1930, the complaining husband, Domingo Joaquin, filed with the justice of the peace for that municipality, a sworn complaint for adultery, supported by affidavits of Gerardo Cabigao and Castor de la Cruz (Exhibit B). On the same date, May 16, 1930, the said accused were arrested on a warrant issued by said justice of the peace. On the 20th of that month, they were released on bail, each giving a personal bond of P6,000. Pending the preliminary investigation of the case, the two defendants begged the municipal president of Paombong, Francisco Suerte Felipe, to speak to the complainant, Domingo Joaquin, urging him to withdraw the complaint, the two accused binding them selves to discontinue cohabitation, and promising not to live again in the barrio of Masocol; Martin Atienza voluntarily signed the promise (Exhibit A). The municipal president transmitted the defendants' petition to the complaining husband, lending it his support. Domingo Joaquin acceded to it, and on May 20, 1930, filed a motion for the dismissal of his complaint. In consideration of this petition, the justice of the peace of Paombong dismissed the adultery case commenced against the accused, and cancelled the bonds given by them, with the costs against the complainant.

The accused then left the barrio of Masocol and went to live in that of Santo Nino, in the same municipality of Paombong.

About November 20, 1930, the accused Romana Silvestre met her son by her former marriage, Nicolas de la Cruz, in the barrio of Santo Nino, and under pretext of asking him for some nipa leaves, followed him home to the village of Masocol, and remained there. The accused, Martin Atienza, who had continued to cohabit with said Romana Silvestre, followed her and lived in the home of Nicolas de la Cruz. On the night of November 25, 1930, while Nicolas de la Cruz and his wife, Antonia de la Cruz, were gathered together with the appellants herein after supper, Martin Atienza told said couple to take their furniture out of the house because he was going to set fire to it. Upon being asked by Nicolas and Antonia why he wanted to set fire to the house, he answered that that was the only way he could be revenged upon the people of Masocol who, he said, had instigated the charge of adultery against him and his codefendant, Romana Silvestre. As Martin Atienza was at that time armed with a pistol, no one dared say anything to him, not even Romana Silvestre, who was about a meter away from her codefendant. Alarmed at what Martin Atienza had said, the couple left the house at once to communicate with the barrio lieutenant, Buenaventura Ania, as to what they had just heard Martin Atienza say; but they had hardly gone a hundred arms' length when they heard cries of "Fire! Fire!" Turning back they saw their home in flames, and ran back to it; but seeing that the fire had assumed considerable proportions, Antonia took refuge in the schoolhouse with her 1 year old babe in her arms, while Nicolas went to the home of his parents-in-law, took up the furniture he had deposited there, and carried it to the schoolhouse. The fire destroyed about forty-eight houses. Tomas Santiago coming from the barrio artesian well, and Tomas Gonzalez, teacher at the barrio school of Masocol, and Felipe Clemente, an old man 61 years of age, coming from their homes, to the house on fire, saw Martin Atienza going away from the house where the fire started, and Romana Silvestre leaving it.

As stated in the beginning, counsel appointed by this court to defend the accused-appellants de oficio, prays for the affirmance of the judgment appealed from with reference to defendant Martin Atienza. The facts related heretofore, proved beyond a reasonable doubt at the hearing, justify this petition of the de oficio counsel, and establish beyond a reasonable doubt said defendant's guilt of arson as charged, as principal by direct participation.

With respect to the accused-appellant Romana Silvestre, the only evidence of record against her are: That, being married, she lived adulterously with her codefendant Martin Atienza, a married man; that both were denounced for adultery by Domingo Joaquin, Romana Silvestre's second husband; that in view of the petition of the accused, who promised to discontinue their life together, and to leave the barrio of Masocol, and through the good offices of the municipal president of Paombong, the complaining husband asked for the dismissal of the complaint; that in pursuance of their promise, both of the accused went to live in the barrio of Santo Nino, in the same municipality; that under pretext of asking for some nipa leaves from her son by her former marriage, Nicolas de la Cruz, who had gone to the barrio of Santo Nino, Romana Silvestre followed him to his house in the barrio of Masocol on November 23, 1930, and remained there; that her codefendant, Martin Atienza followed her, and stayed with his co-accused in the same house; that on the night of November 25, 1930, at about 8 o'clock, while all were gathered together at home after supper, Martin Atienza expressed his intention of burning the house as the only means of taking his revenge on the Masocol residents, who had instigated Domingo Joaquin to file the complaint for adultery against them, which compelled them to leave the barrio of Masocol; that Romana Silvestre listened to her co-defendant's threat without raising a protest, and did not give the alarm when the latter set fire to the house. Upon the strength of these facts, the court below found her guilty of arson as accomplice.

Article 14 of the Penal Code, considered in connection with article 13, defines an accomplice to be one who does not take a direct part in the commission of the act, who does not force or induce other to commit it, nor cooperates in the commission of the act by another act without which it would not have been accomplished, yet cooperates in the execution of the act by previous or simultaneous actions.

Now then, which previous or simultaneous acts complicate Romana Silvestre in the crime of arson committed by

her co-defendant Martin Atienza? Is it her silence when he told the spouses, Nicolas de la Cruz and Antonia de la Cruz, to take away their furniture because he was going to set fire to their house as the only means of revenging himself on the barrio residents, her passive presence when Martin Atienza set fire to the house, where there is no evidence of conspiracy or cooperation, and her failure to give the alarm when the house was already on fire?

The complicity which is penalized requires a certain degree of cooperation, whether moral, through advice, encouragement, or agreement, or material, through external acts. In the case of the accused-appellant Romana Silvestre, there is no evidence of moral or material cooperation, and none of an agreement to commit the crime in question. Her mere presence and silence while they are simultaneous acts, do not constitute cooperation, for it does not appear that they encouraged or nerved Martin Atienza to commit the crime of arson; and as for her failure to give the alarm, that being a subsequent act it does not make her liable as an accomplice.

The trial court found the accused-appellant Martin Atienza guilty of arson, defined and penalized in article 550, paragraph 2, of the Penal Code, which reads as follows:

"Art. 550. The penalty of cadena temporal shall be imposed upon:

"2. Any person who shall set fire to any inhabited house or any building in which people are accustomed to meet together, without knowing whether or not such building or house was occupied at the time, or any freight train in motion, if the damage caused in such cases shall exceed six thousand two hundred and fifty pesetas"

While the defendant indeed knew that besides himself and his co-defendant, Romana Silvestre, there was nobody in De la Cruz's house at the moment of setting fire to it, he cannot be convicted merely of arson less serious than what the trial court sentenced him for, inasmuch as that house was the means of destroying the others, and he did not know whether these were occupied at the time or not. If the greater seriousness of setting fire to an inhabited house, when the incendiary does not know whether there are people in it at the time, depends upon the danger to which the inmates are exposed, not less serious is the arson committed by setting fire to inhabited houses by means of another inhabited house which the firebrand knew to be empty at the moment of committing the act, if he did not know whether there were people or not in the others, in as much as the same danger exists.

With the evidence produced at the trial, the accused-appellant Martin Atienza might have been convicted of the crime of arson in the most serious degree provided for in article 549 of the Penal Code, if the information had alleged that at the time of setting fire to the house, the defendant knew that the other houses were occupied, taking into account that barrio residents are accustomed to retire at the tolling of the bell for the souls in purgatory, i. e., at 8 o'clock at night.

For all the foregoing considerations, we are of the opinion and so hold, that: (1) Mere passive presence at the scene of another's crime, mere silence and failure to give the alarm, without evidence of agreement or conspiracy, do not constitute the cooperation required by article 14 of the Penal Code for complicity in the commission of the crime witnessed passively, or with regard to which one has kept silent; and (2) he who desiring to burn the houses in a barrio, without knowing whether there are people in them or not, sets fire to one known to be vacant at the time, which results in destroying the rest, commits the crime of arson, defined and penalized in article 550, paragraph 2, Penal Code.

By virtue wherefore, the judgment appealed from is modified as follows: It is affirmed with reference to the accused-appellant Martin Atienza, and reversed with reference to the accused-appellant Romana Silvestre, who is hereby acquitted with one-half of the costs de oficio. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Imperial, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.