

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CANUTO BUTARDO AND VALENTIN BUTARDO, DEFENDANTS AND APPELLANTS.

G.R. No. 3831. August 06, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

The accused, claiming ownership of a lot in Paoay, Ilocos Norte, adversely to their uncle, Antonio Butardo, whose children Juana and Laureano were living there, came to the house on the property on the 9th of February, 1906, at 8 o'clock, and demanded possession thereof, affixing to the door a notice to vacate. Possession being refused by the occupants, they went away, but an hour later returned, and while Juana and Laureano were within the house, they set fire to the roof, on the eastern side, near the window. While the house was burning, two neighbors, Juan Exebeo and Apolonio Hurtado, who were attempting to put out the fire, were compelled to desist by the threats of the accused. The house and the chattels therein were destroyed but the occupants escaped.

Applying article 549 of the code, the judge of the Court of First Instance imposed a sentence of sixteen years and one day of cadena temporal.

The defense consisted of an alibi, testified to by some relatives of the accused, the difficulty of establishing it being increased by an attempt to show also that the fire took place on the 9th of March instead of the 9th of February, with the result that an alibi was sworn to covering both of these dates. On the facts in evidence there is no doubt of the guilt of the accused, but their counsel makes a strong plea in their behalf on the ground that the punishment imposed is disproportionate to the offense, which was the destruction of a nipa house of trifling value. It has been further urged that the act was not one showing a depraved and reckless disregard of human life, such as is contemplated in the statute against arson, but was simply one of private revenge and a natural means taken by these ignorant men of asserting what they considered their civil rights.

It does not appear from the evidence that the accused set fire to the house in the presence of the inhabitants or with their knowledge, or had any reason to suppose that the persons therein were on their guard or were expecting such an occurrence. On the contrary, if any inference on this subject from the proofs is allowable, it is that, having left the house and returned to it again after nightfall, their design was to start the fire secretly and as a surprise. It does not lessen the enormity of their offense, that the people whom they thus exposed to danger were their own relatives, nor serve as a palliation that they harbored illfeeling against them. The argument of counsel misconceives the object of the law, the severity of which is measured, not by the value of the property that may be destroyed, but rather by the human lives exposed to destruction by the crime of arson in an inhabited house. The limit of strict construction of article 549 of the Penal Code was reached in *United States vs. Zabala* (6 Phil. Rep., 431), where this court refused to apply it to the act of a man who had set fire to his own house while his son was therein in his company.

The judgment of the Court of First Instance is affirmed, with one-half of the costs of this instance against each of

the appellants. So ordered.

Arellano, C. J., Torres, Mapa, and Willard J., concur.

CONCURRING

CARSON, J.,

I concur with the opinion of the majority, but I deem it not improper to reduce to writing my belief that while the accused are undoubtedly technically guilty of the offense of which they are convicted, nevertheless, the penalty, which under the law must be imposed in this case, is excessive in the extreme. The authors of the Spanish Code, in imposing penalties of exceptional severity in certain cases of arson, clearly had in mind:

First. The extreme danger to which human lives may be exposed by the malicious burning of dwelling houses and the like;

Second. The danger to property resulting from widespread conflagrations;

Third. The fact that it is extremely difficult to adopt precautions against the commission of the crime, and to discover the perpetrators after its commission.

Formerly, where these elements marked the commission of the crime, the single penalty prescribed by law was that of death, but this severity was finally relaxed, and while exceptionally severe penalties are still imposed in such cases, the authors of the Penal Code appear to have endeavored to graduate these penalties in accordance with the degree of danger to life and property, resulting from the commission of the crime.

To this end the severest penalties are prescribed for the malicious burning of edifices in which large numbers of persons are assembled. Less harsh, but still very severe penalties are imposed on those setting fire to dwelling houses and other buildings more or less permanently occupied. Less severe penalties on those guilty of firing unoccupied dwellings, the penalty being more or less severe as the house appeared to be situated so as to make a widespread conflagration more or less probable. And finally, sufficient, but not notably harsh penalties are prescribed in cases where the property of others is set on fire under conditions which do not suggest especial danger to human life or the likelihood of considerable destruction of property.

The accused are undoubtedly guilty of setting fire to an occupied dwelling house, and are therefore guilty of the crime of arson, as technically defined in article 549 of the Penal Code. Yet I think that the record clearly discloses that all of the above set out elements, which induced the legislators to impose the exceptionally severe penalty prescribed in that article, are wanting in this case.

First. I find no indication of that reckless disregard for human life, indicative of a wicked and perverse heart which is so justly chastised by the Spanish legislator with extraordinary penalties. The action of the accused appears to have been the result of a quarrel among relatives, as to the ownership of a small shack, worth perhaps 100, if we accept the extreme estimate of the complaining witness. The accused had oftentimes, verbally and in writing, demanded possession of the shack which they claimed as their own. There seems to be no question that they are the owners of the ground on which it is located, but their cousins, a man and a woman of some 33 and 36 years, respectively, claiming ownership of the shack, declined to vacate. The accused finally went to the house and enraged by the stubborn persistence of the occupants, set fire to it. I think the testimony of the occupants, clearly indicates that, when the accused put the torch to the roof of the shack, they were watching the whole proceeding and disputing the right of the accused to dislodge them. Certain it is that the accused openly continued

by the house after it was set on fire, and resisted the efforts of two of the neighbors, who came up to help to put out the fire, and forbade these persons to give any assistance in extinguishing the flames. The brother and sister who were within, when the accused set fire to the house, and watching them while they did so, were never in the slightest danger of their lives, and I am convinced that the accused never had any reason to believe that there was any danger to human life as a result of their unlawful act, and that in fact there was not.

Second. Nor do I find any indication in this case of that reckless disregard of the property rights of others, which the Spanish Code justly penalizes with extreme rigor. The penalty prescribed where one maliciously sets fire to an unoccupied building is much more severe where the crime is committed in a town or city or in the neighborhood of other buildings, than it is where the house stands separate and apart. In this case, the little shack burned by the accused, was claimed by them to be their own property, and was so far removed from the nearest neighbors' house, as practically to eliminate all danger in that direction.

Third. The conduct of the accused, who set fire to the shack under the very eyes of its occupants, and then continued by the fire when the neighbors assembled, resisting their efforts to extinguish the flames, wholly removes the commission of this particular offense from that class of cases (of which arson is in general a striking example), wherein the penalty prescribed is made exceptionally severe, because of the difficulties encountered in the discovery of the perpetrators as a result of the secret and surreptitious manner in which they are committed.

I have thought it worth while to make these observations because this appears to be a case where executive clemency might well be invoked, not to pardon the accused and wholly relieve them of punishment for the crime which they undoubtedly committed, but to reduce the penalty in such degree as may be in consonance with the degree of criminality actually involved in their offense.

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