

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. RAFAEL GAVILE, DEFENDANT AND APPELLANT.

G. R. No. 40576. July 28, 1934

Ponente: HULL, J.

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HULL, J.:

Appellant was convicted in the Court of First Instance of Occidental Negros of the crime of arson. The principal ground of the appeal is that as the crime took place at midnight, the offended party could not recognize the accused as the perpetrator of the crime. As against the argument of counsel for the defense that such identification was impossible, we have the positive declaration of the offended party, who insisted that the accused, personally well known to him, was the guilty party. Even if the night was dark, there was some light, the criminal had a lighted torch, and the offended party chased the perpetrator from the scene of the crime to the house of the accused.

At that time the accused said to the offended party words to the effect that "if you come up I will kill you".

The argument of counsel is contrary to ordinary human experience. It is easy to recognize one's intimate neighbors. Argument alone cannot prevail over the direct testimony of record.

The Acting Solicitor-General urges that the offense committed is that of arson, penalized under article 321, paragraph 1, of the Revised Penal Code. The material portions of paragraph 1 read: "* * * if the offender shall set fire to any building, * * * knowing it to be occupied at the time by one or more persons."

There has been some discussion as to the nature of the knowledge this section requires. The state cannot produce a photograph of what is in the mind of the accused and yet knowledge is an essential element of the crime and a mere suspicion would obviously be insufficient. Similar provisions were in the old Penal Code and in the Spanish Penal Code. Viada in his commentaries upon this article says (translation):

"In order that the offense of arson which consists in setting fire to buildings in accordance with the provisions of this article may be punished, the legislator prescribes as an essential requisite that the author of the act be aware of the presence therein of one or more persons. Inasmuch as said buildings serve as dwellings and therefore the presence therein of one or more persons is a matter of course, and the same is true with respect to vessels in port which are never abandoned, we are of the opinion that the presumption in such case is that the perpetrator of the arson was fully aware of the presence of one or more persons therein and it should be so held unless otherwise established." (Vol. 3, page 603.)

In American Criminal Law the mental fact of knowledge on the part of the accused may be inferred from the proven facts and circumstances of the case the same as the existence of any physical fact.

In this case appellant and the offended party are near neighbors. They had been intimate friends. The appellant knew the habits and customs of the family of the offended party. He knew it was a large family that constantly slept in that building. When he went there that night and saw the house closed, as it is the custom for inhabitants

of the barrios to close their homes when retiring for the night, he certainly had no doubt or uncertainty, based upon many facts addressed to his intelligence and his senses, that the dwelling at that time was occupied by one or more persons.

There is no dispute over the fact that the building was unlawfully set on fire.

The defense is an alibi of a weak and unconvincing character.

We concur, therefore, with the views of the Acting Solicitor-General that the crime comes within article 321, paragraph 1, and that the aggravating circumstance of nocturnity was present. The prescribed penalty that must therefore be imposed is reclusion perpetua in its maximum period.

The sentence as thus modified is affirmed. Costs against appellant. So ordered.

Avancena, C. J., Abad Santos, Vickers, and Diaz, JJ., concur.

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