

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ISIDRO LOMUNTAD AND JERONIMO MOSEÑOS, DEFENDANTS AND APPELLANTS.

G.R. No. 45693. June 04, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

The question presented by this appeal is whether the judgment imposing the penalty of reclusion perpetua and the payment of an indemnity of P200 to Marcelino Lomuntad, rendered against the appellants, who were convicted of arson committed on an inhabited house, is in accordance with law and the evidence.

The facts established at the trial may be briefly stated as follows: Very early in the morning of March 8, 1937, the house of Marcelino Lomuntad, located in the barrio of Yabo, in the municipality of Oras, Province of Samar, was set on fire, while the inmates, the children of Marcelino, the eldest of whom, Enrique, was 17 years old, were asleep. On waking and becoming aware of the fire, Enrique saw and recognized, through the clear moonlight and the flames which began to lick the roof and part of the stairs of the house, the appellants, who were making haste to leave the vicinity, passing over a board which served as a bridge across a nearby brook. He shouted at them, at Jeronimo Moseños in particular, to ask them why they had set the house on fire. Shortly before the fire, Segundo Picaña had also seen the appellants pass by the place where he was catching fish and walk towards the house. After the fire broke out, he saw them again on their return, but this time they were running and they did not heed him when he asked them what they had done.

A month before the fire, appellant Jeronimo Moseños, who already harbored a grudge against Marcelino Lomuntad because the latter had refused to let him till a certain land which appellant claimed, said in the presence of Sinforosa Montera that he would harm Marcelino as soon as the occasion presents itself, or burn the latter's house or shoot him with his shotgun.

Appellant Isidro Lomuntad had not been on good terms with Marcelino Lomuntad from the time the latter, a few months before the fire, caught Isidro's carabaos and brought them to the municipal building because they damaged his camote plantation. Since then Isidro would not have anything to do with Marcelino and would not even talk to him.

The defense of the appellants consisted in an alibi. Jeronimo Moseños alleged that on the night in question he was sleeping in his house, while Isidro Lomuntad, in turn, said that he was on that same occasion in the house of Marcelino Lombendencio. Outside of their testimony, however, they have not adduced any evidence to prove their contention. Their defense, therefore, has no merit in view specially of the facts clearly established by the prosecution to the effect that they had been seen and recognized by two of the government's witnesses, one of whom, Segundo Picaña, was a mutual friend of both. (U. S. vs. Oxiles, 29 Phil., 587; U. S. vs. Garcia, 26 Phil., 289; U. S. vs. Lasada and Lasada, 21 Phil., 287.) While nobody saw the appellants light the match which set the house on fire, the facts and circumstances proved, which make a complete chain strongly pointing to their guilt,

are such as will lead anyone to the conclusion that it was the appellants who perpetrated the crime. However, it does not appear conclusively, but only through conjectures and deductions which, while more or less founded, nevertheless do not exclude the contrary possibility, that the appellants knew that the inhabitants of the house were there at the time of the commission of the crime. This requisite is so important that if its existence has not been proved as conclusively as the arson itself, there can be no legal ground to convict an accused under article 321, paragraph 1, of the Revised Penal Code, as the lower court did. Consequently, the most that can be imposed upon the appellants, in the absence of said requisite, is the penalty prescribed in paragraph 2 of the said article of the Revised Penal Code, which must be meted out in its maximum period because of the presence of the aggravating circumstance of nighttime without any mitigating circumstance in offset. In other words, and applying the Indeterminate Sentence Law (Act No. 4103 as amended by Act No. 4225), the said penalty should be from ten years, eight months and one day of prision mayor to eighteen years, two months and twenty-one days of reclusion temporal.

Wherefore, modified in the sense above indicated, the judgment appealed from is affirmed in all other respects, with costs against the appellants. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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