

44 Phil. 170

[G. R. No. 18732. December 08, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
SINFOROSO MACALMA, DEFENDANT AND APPELLANT.**

D E C I S I O N

OSTRAND, J.:

The defendant is accused of the crime of arson, the information alleging that said accused, in the morning of March 10, 1921, in the municipality of Cabangan, province of Zambales, "voluntarily, illegally, and criminally set fire to the dwelling house of Rosa Dani, inhabited by her, said dwelling house, together with the furniture and some palay deposited therein, being thus reduced to ashes, the total value of the property burned being P98 and Rosa Dani being the owner of said property."

The trial court found the defendant guilty under article 549 of the Penal Code and sentenced him to suffer seventeen years and one day of *cadena temporal*, to indemnify Rosa Dani in the sum of P98 and to pay the costs. From this sentence he appeals to this court.

The evidence is conclusive as to the guilt of the accused; his own confession (Exhibit A), strongly corroborated by the circumstances of the case, leaves no room for doubt. But we think the trial court erred in sentencing him under article 549 of the Penal Code, which reads:

"A penalty ranging from *cadena temporal* to *cadena perpetua* shall be imposed upon any person who shall set fire to any building, farmhouse, warehouse, hut, shelter, or vessel in port, knowing it to be occupied at the time by one or more persons."

As will be seen, knowledge on the part of the accused that the building is occupied is an essential element of the form arson denned in the article quoted and as an essential element

it must, of course, be alleged in the information. The information in the present case contains no such allegation. The defendant can therefore only be convicted under paragraph 1 of article 551 of the Penal Code which prescribes the penalty of *presidio mayor* for the burning of an inhabited building, the offender not knowing whether or not such building is occupied at the time of the commission of the crime, and the amount of the damage not being in excess of 6,250 *pesetas*.

The judgment appealed from is therefore modified and, taking into consideration the aggravating circumstance of nocturnity, the defendant is hereby sentenced to suffer *presidio mayor* for the term of ten years and one day, with the accessory penalties prescribed by article 61 of the Penal Code, to indemnify the offended party in the sum of P98 and to pay the costs. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.