

[G.R. No. 105. October 16, 1901]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ANTONIO ALEGADO, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

From the record of this case it appears that on the night of May 21, 1900, the body of Catalino Biado's father was lying in the latter's house, situated on the outskirts of the town of Paoay, and that on the occasion of his death some seven or more persons had gathered together in the house. Among them was the defendant, Antonio Alegado. A bolo belonging to the latter disappeared, and, on failing to find it after a search for that purpose, he said in a threatening manner that he would burn the house unless that bolo was found. The bolo was not found, and Alegado with a piece of burning bamboo set fire to the house, which was burned to the ground, as well as a granary nearby, together with the rice stored therein. The occupants of the house discovered the fire soon after it broke out, but were unable to extinguish it. The total damage caused by the fire was estimated by experts to amount to 105 pesos and 75 cents.

An information having been presented by the prosecuting attorney and this proceeding instituted, Antonio Alegado pleaded not guilty of the crime with which he was charged. Two witnesses called by the accused to prove his *alibi* stated that they had gone to the scene of the occurrence in order to assist in extinguishing the fire; and that, although the woman, Basilisa Baraoid, stated to them that Juan Catubay was the incendiary, nevertheless the accused himself told them that it was he who set fire to the said house because he had not found his bolo which was lost therein.

The facts related, which are completely proved in the cause by expert testimony and that of witnesses who were present, constitute the crime of arson, provided for and penalized in article 549 of the Penal Code, for the reason that it appears fully proved in the case that the

fire was intentionally started with the malicious intent to destroy the dwelling house of Catalino Biado at a time when it was occupied by seven persons and a corpse.

It can not be disputed that the defendant has violated the article cited and incurred its very grave responsibility, inasmuch as, although he pleaded not guilty of the crime of which he was accused, the incriminating circumstances and other weighty merits which the case discloses produce the full conviction of his delinquency. The defendant is incriminated not only by witnesses who were present but likewise by the very witnesses whom he had called to prove his innocence. Nor can it be proper to consider that he was ignorant of whether or not there was anyone present in the interior of the house destroyed, for the reason that he was present in that house a few moments before and even threatened those in the house that he would set fire to the same if he did not find the bolo which he was seeking. Therefore he well knew that the house contained persons and even a corpse.

For the sole purpose of reducing the penalty to the minimum grade article 11 of the Penal Code will be applied in this case. The judgment reviewed is affirmed. It is understood, nevertheless, that the defendant is sentenced to the penalty of twelve years and one day of *cadena temporal*, together with the accessory penalties and the payment of the costs in this instance. The order declaring the defendant insolvent, made in the incidental proceeding of attachment, and ordering that after dissolving the attachment the rice field of the value of 4 pesos which was attached be restored to the accused, is affirmed and approved. In consideration of the fact that in the strict application of said article 549 of the Penal Code to the present case, the penalty therein prescribed is evidently excessive, taking into account the degree of malice and the damage caused by the crime, it is believed proper and just to apply the rule of article 2, paragraph 2, of the same Code by calling the attention of the Civil Governor to the case. It is so ordered.

Arellano, C. J., Cooper, Willard, Mapa, and Ladd, JJ., concur.
