

[G. R. No. L-6273. December 27, 1957]

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSE HIDALGO Y RESURRECCION AND MAURA GOTENGCO Y SOLIMAN, DEFENDANTS AND APPELLANTS.

D E C I S I O N

ENDENCIA, J.:

Charged with and found guilty of arson on an inhabited building, with the aggravating circumstances of premeditation and nighttime, without any mitigating circumstance to offset the same, the accused spouses were sentenced by the Court of First Instance of Manila to suffer *reclusion perpetua*, with the accessory penalties of the law, to pay jointly and severally indemnity in the sum of as follows: P3,400 to the Alto Surety & Insurance Co., P3,475 to New Zealand Insurance Co., P1,895 to Malayan Insurance Co., P1,600 to South British Insurance Co., P1,500 to Pacific National Fire Insurance Co., plus one-half of the costs. They appealed from this decision on the ground that the court erred—

1. In allowing the exclusion of Florencio Camilo from the complaint in order to make him a state witness despite the opposition of the herein accuser;
2. In not stating in its decision that the corpus delicti in the case at bar was not proven;
3. In not finding that since the testimony of the sole “witness for the prosecution as regards the guilt of the accused James Uy, alias James Kay and Aw Ming, alias Taba, was not credible, it should likewise be incredible as regards the herein appellants;
4. In not finding that the testimony of Florencio Camilo comes from an impure source and hence it should not prevail over the testimony of herein appellants; and
5. In not acquitting the herein appellants.”

Upon careful examination of the record of the case, we find to be completely undisputed and positively shown by the evidence on record the following facts: that in response to an alarm, at about 7: 40 on the evening of October 8, 1950, Capt. Braulio Alonia, Chief of the San Lazaro Fire Station, rushed with his men to the corner of Echague and Rial Avenue, City of Manila. Upon arriving at the place, they found on fire the second floor of the appellant's building located in that corner. His men proceeded to quench the blaze and succeeded in doing so in a few minutes. Soon after the fire had been put out, Capt. Alonia inspected the second floor and found on the Echague wing thereof two broken glass jars, ten unbroken glass jars containing gasoline, lines of toilet paper dipped in the gasoline content of the jar and arranged in such a manner as to connect them to one another, and eleven green tin covers, Exhibits B, B-1 to B-9; C, C-1 to C-10; D and I. Photographs of the fire scene were taken by the photographers of the Police and Fire Department, (Exhibits F, G, H, I, J, U and V), all of which clearly depict the burned area, the broken glass jars and the arrangement on the floor of the unbroken glass jars which contained gasoline as well as the connecting lines of tissue papers. In the course of the investigation of the fire, Capt. Alonia made a sketch from which the data appearing on Exhibit T were taken, and a glance at these photographs and sketch will convince anyone that but for the timely and efficient handling of the fire by the firemen the entire building might have been burned because the ingenuous device of connecting the gasoline-filled glass jars with tissue paper would have rapidly spread the fire all over the Echague wing of the building and had the fire run its natural course traces of its criminal inception and design would have been obliterated or its detection made impossible by the resulting debris.

The building in question consists of two wings, one of which fronts Rizal Avenue and the other Echague Street (Exhibit D). The appellant spouses were keeping a room in the second floor at the corner of Rizal Avenue and Echague Street. The Echague wing was occupied by the Republic Vocational School, owned by Dr. Felix Acevedo, and the Rizal Avenue wing was rented out to various tenants. The stairs leading to the second floor were located on Rizal Avenue and at the top of said stairs there used to be a door, but this was removed on orders of appellants sometime before the fire. Entering the second floor from said stairs, the appellants would turn right to reach their room and at the left side of the door thereof a corridor ran thru the middle of the Echague wing. Along both sides of said corridor were several rooms containing desks, tables, books, typewriters, a steel cabinet and a sewing machine, and at the end of this corridor was a room with windows opening on Estero Cegado and Echague Streets. The fire started in the above-described corridor, about 5 or 6 meters from the door of the said room of the appellants (Exhibits D,

M and N).

The first floor and undivided one-half of the second floor of the building were owned by the appellant spouses who insured the entire building with four insurance companies under their different policies for a total sum of P75,000 as follows:

People's Surety & Ins. Co.—

July 3, 1950 to July 8, 1951	P15,000.00 (Exh. W-1)
September 15 1950 to September 15, 1951	10,000.00 (Exh. W-2)
September 8, 1950 to September 8, 1951	10,000.00 (Exh. W-3)
August 25, 1950 to August 25, 1951	20,000.00 (Exh. W-4)
August 25, 1950 to August 25, 1951	10,000.00 (Exh. W-5)

Central Surety Company—

November 23, 1949 to November 23, 1950	50,000.00 (Exh. X to X-6)
June 19, 1956 to June 19, 1951	20,000.00 (Exh. Y)

Alto Surety & Ins.. Co.—

September 26, 1960 to September 26, 1951	15,000.00 (Exh. Z to Z-l)
September 25, 1950 to September 25, 1951	5,000.00 (Exh. AA to AA-1)

Manila Underwriters Ins. Co.—

May 16, 1950 to May 15, 1951	20,000.00 (Exh. BB to BB- 2)
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Total.	P175,000.00
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Eight of these policies (Exhs. W-1, W-2, W-3, W-4, TV-5, X, Z and AA) with a total face value of P135,000 were taken out in the name of the appellant spouses either jointly or singly and six of these eight, with a total face value of P70,000 (Exh. W-2, W-3, W-4, W-5, Z, and AA) were taken out about a month prior to October 8, 1950, the date when the fire occurred.

The evidence further shows that the building in question suffered an estimated loss and damage of P5,255, yet the appellants did not file the necessary claim for recovery of said damage under their policies. It likewise appears that the reproduction costs in 1950 of appellants' building was only P89,524.59 (Exhibit CC) and, notwithstanding the fact that the appellants do not own the entire building, for they own only the first floor and one-half

of the second floor, they secured, as stated above, 8 policies with a total face value of P135,000 and 6 of these 8 policies with a total face value of P70,000 were taken out just about a month before the fire.

Due to the investigation conducted by Capt. Alonia immediately after the fire and further investigation done by the Police authorities which strongly indicated that the burning of appellant's building: was intentional, on March 29, 1951 an information was filed against the herein appellants Jose Hidalgo Besurreccion and Maura Gotengco y Soliman and Florencio Camilo, alias Lin Siu, *alias* Lin Hong, alias Sy Hong, and John Doe, which later on was amended to include therein the accused James Uy, alias James Kay and Aw Ming, alias Taba, Before the trial of the case, upon proper motion by the City Fiscal and despite opposition by the herein appellants, Florencio Camilo was excluded from the information to be utilized as a government witness, and thus Florencio Camilo was allowed to testify in the case.

The record discloses that there is no direct evidence linking the herein appellants with the crime at bar except the testimony of Florencio Camilo. Were his testimony to be held as unworthy of credence, the appellants are perfectly entitled to acquittal; otherwise the decision. appealed from should be upheld.

Camilo's testimony, as correctly summarized by the Solicitor General in his brief, is as follows:

"Camilo testified that he and James Kay were friends since before the war, and that he had known Aw Bling for about nine months. (pp. 28-29, t.s.n.). On the evening of October 1, 1950, at a massage clinic on Florcintino Torres Street which these friends- used to frequent, they made an appointment to meet each other the afternoon of the next day at the Bataan Cafe for the purpose of seeing Dr. Hidalgo about the burning of the latter's building (pp. 30, 258-260, t.s.n.). In that cafe, the three met at about. 2; 00 p.m. and thence proceeded to said building, where in a room on the second floor Camilo met the Hidalgo spouses for the first time (pp, 27, 31-32, t.s.n.). Inside said room Camilo saw two big dogs of foreign breed held in leash, several chairs, and a bed (pp. 85-36, t.s.n.). After some haggling over the price for the job of setting- the building on fire, James Kay and Dr. Hidalgo agreed upon P16,000, of which P15,000 was to be paid by check and the balance of P1,000 in cash (pp, 37-39,

t.s.n.). Protesting; lack of cash on the occasion, Dr, Hidalgo told the three to return on October 4 and on that day Maura Gotengco drew two checks against the Philippine Trust Company, both payable to "cash" (pp. 40-43, 54, t.s.n.) One of these P.T.C. No. 837571 (Exhibit L), was for P12,000 and was postdated November 3, 1950; the other P.T.C. No, 837570, was for P3,000, but in the space for the date of issuance only the figure "10" and the year "1950" were written (see Exhibit K). Enough space, however, was left between the printed word "Manila" and the figure "10" for the insertion of the abbreviation of a month so that if for instance the abbreviation "October" were written after word "Manila" and before the figure "10", the check would appear as if it had been issued on October 10, 1950; or a bar could be placed after the figure "10" and any number from 1 to 31 written after it say "4", and it would appear that it was issued on October 4, 1950. At first only the face of these checks was signed by Gotengco, but James asked her to sign them also on the back, which she did, and the said checks, having been thus endorsed, were then handed to James (pp. 44, 55-56, 121, t.s.n.). Fifty and one-hundred peso bills totalling P1,000 were then counted out to James: and after he had pocketed both the checks and the cash (pp. 45, 242, t.s.n.), the conspirators proceeded to discuss when and how the building was to be burned (p. 58, t.s.n.). For the reason that on Sundays the Chinese stores are closed and there are comparatively less people about, October 8, 1950, a Sunday, was chosen (pp. 60—61, t.s.n.). It was also agreed "Upon that the "building would be set on fire at 7:30 in the evening and that gasoline in bottles would be used (pp. 58, 60, 63, t.s.n.). This matter having been settled, Dr. Hidalgo, James Uy, Aw Ming, and Camilo inspected the premises to be set on fire, and a place in the Republic Vocational School where there was a bookcase was selected for starting the blaze (p. 67, t.s.n.).

"While returning from Quiapo church the afternoon of the next day, October 5, 1950, Camilo and his wife, Virginia de la Cruz, met their friend Johnny Uy and walked with him to the massage clinic on Florentine Torres Street where he was working. At the corner of said street and Ronquillo Street, Camilo was seen by James Uy and Aw Ming who were inside a coffee shop. James called Camilo and as it turned out that James and Aw Ming- were quarreling about the possession of the checks, James wanting to retain them and Aw Ming insisting on taking them from James, it was agreed that Camilo would

hold the checks and that about 9:00 o'clock that night both would come to the massage clinic on Florentio waited until midnight but as neither showed up he started to go home. However, at the foot of the stairs leading from the clinic, he was accosted by Det. Lt. Enrique Morales who demanded the production of his alien certificate of registration; and as Camilo was taking this from his wallet, Morales spied the checks and took them from him (pp. 76-78, t.s.n.).

"The following morning, October 6, 1950, Camilo went to James Tailoring-Shop on Echague St. and reported to him the seizure of the checks, (p. 247, t.s.n.). James said he would take up the matter with Morales and then they sought out Dr. Hidalgo and his wife to inform them also of the confiscation of the checks (pp. 80, 82, t.s.n.). Dr. Hidalgo told them not to worry, saying that he would declare to the bank that the checks had been lost, that another checks would be issued, and that they should go ahead with their plans (pp. 82-85, t.s.n.). However, James put off the purchase of the materials to be used for the burning because on that day, October 6, 1950, his son was to be baptized and he even borrowed Camilo's share of the cash (p. 158, t.s.n.).

"On October 7, 1950, Camilo and Jesus went to Lt. Morales to ask for the return of the checks and Morales returned to Camilo the check for P3.000 which Camilo forthwith handed to James (p. 80, t.s.n.). Camilo then accompanied James to a store on Echague St. and there the latter bought twelve (12) glass jars with green tin stoppers which they brought to Aw Ming's house on Mayhaligue Street (pp. 85-86, t.s.n.) After lunch, Camilo rode in a jeep driven by James and in four (4) trips, they bought gasoline from four (4) different stations along Taft Avenue in Pasay City.. After each purchase, they returned to Aw Ming's house on Mayhaligue where James siphoned the gasoline with a rubber tube from the tank into a tin can and Aw Ming helped transfer the gasoline from said can into the twelve (12) glass jars (pp. 88-97, t.s.n.).

"About 7:00 in the evening of October 8, 1950, James and Aw Ming picked up Camilo at the Bataan Cafe and the three drove in a jeep to the house of the Hidalgo spouses on the corner of Rizal Avenue and Echague Street. Inside the jeep were the twelve (12) glass jars filled with gasoline contained in two cartons and some rolls of toilet tissue paper wrapped in Manila paper (pp. 09-100, t.s.n.). James parked the jeep in front of the appellants' building and after calling Dr. Hidalgo, he (James) and Aw Ming carried the gasoline-

filled jars to the second floor while Hidalgo carried the bundle of toilet paper (pp. 102-103, t.s.n.). Soon afterwards, James came down told Camilo to go up the building, and parked the jeep elsewhere. Camilo obeyed and in a few minutes James returned to join his companions upstairs (p. 104, t.s.n.). James and Camilo unscrewed the jar covers and placed the jars about the Echague wing, some under chairs and others near bookcases. The tissue paper was "unrolled and the end of lines thereof inserted in the jars to connect them to each other (pp. 105-108, t.s.n.). One end of a length of tissue paper about 15 meters long was inserted in one of the jars and on the other end thereof James stuck a candle about one inch long and: lighted it. Hidalgo then led out his two dogs, and Camilo, Aw Ming and James followed him (pp. 112-113, 116, t.s.n.). Hidalgo placed the dogs in his yellow Cadillac convertible and parked it in front of the then Bataan Theater at the foot of Sta. Cruz Bridge (now McArthur Bridge). Aw Ming left, but Camilo and James, who was to relight the candle if the building did not burn, stayed watching the building on the south sidewalk of Echague Street. In about ten minutes, Camilo heard an explosion and the building started to bum (pp. 113-115, t.s.n.)."

The foregoing testimony is assailed on the ground that it is incredible and contrary to the ordinary course of event's; that being the testimony of an accomplice, it comes from a polluted source and therefore it should be received with caution; that it was not given credence by the lower court with respect to appellants' co-accused James Uy and Aw Ming who were acquitted and, therefore, it should not also be given weight with regard to the herein appellants, for if Camilo's testimony as regards the guilt of James Uy and Aw Ming was not credible, it should likewise be unworthy of credence as regards the appellants' alleged complicity in the crime at bar.

We find, however, that the lower court gave credence to the testimony of Florencio Camilo with respect to the participation of the herein appellants in the burning of their building, because it is corroborated by the fact that Maura Gotengeo issued the checks testified to by the witness, to wit: P3,000 (Exhibit K) and P12,000 (Exhibit L) and by the other fact, that the spouses had heavily insured the building in question for P175,000 prior to the fire when the insurable value thereof was only about P78,000 or P79,000. And upon careful scrutiny of the evidence on record, we find these facts to be unrefuted for the spouses did really insure the building in question for the amount mentioned above, and that Maura Gotengeo, on October 4, did really draw the aforesaid checks.

As to the over insurance of the building, it appears that the herein appellants never denied having secured eight policies, on the building, with a total face value of P135,000 and that 6 of these policies, for a total value of P70,000, were taken out just about a month before the fire. When the lower court, therefore, found the herein appellants guilty of the crime of arson charged against them, it acted with sufficient evidence supporting its finding.

Appellants vigorously contend that the issuance of the checks by Maura Gotengco should not be taken against them, for said checks were issued by Maura to help one Victor Vickman who was allegedly a Philippine Army undercoverman trying to locate a hidden cache of firearms and ammunition worth P1,660,000. Appellants' claim that this Vickman told them that a certain Bill Dean, representing the so-called sellers group, asked him to put up a "goodwill money" in the sum of P15,000; that unless said sum of money could be produced by Vickman, the latter would not be allowed to inspect the firearms; that Vickman tried to get said amount from his superiors but in vain, and when Vickman happened to talk to them (appellants), Maura issued a check to help said Vickman. Carefully considered, appellant's explanation as to how the checks in question were issued clearly appears unbelievable, firstly, because if Vickman really needed P15,000 to discover the cache of firearms and ammunitions above-mentioned and he approached the army authorities to secure said amount, it is difficult to believe that said amount, in cash or in check, would not be given by his superiors to a subordinate like Vickman and thereby imperil the success of an under taking which demanded utmost secrecy; secondly, it is highly unbelievable that for the purpose of discovering the cache of firearms and ammunitions which required utmost secrecy, Vickman would ask help from the herein appellants whose intimacy with him has not been proved.

Appellants strongly urge that since Camilo's testimony as regards the guilt of the accused James Kay and Aw Ming was not given credence, it should likewise be held unworthy of credence as regards the appellants. It is however a settled rule that the courts may believe one part of the testimony of a witness and disbelieve another part. Courts are not required to accept or reject the whole of the testimony of a particular witness. In the case at bar, the lower court found that Camilo's testimony concerning the accused James Uy and Aw Ming was not corroborated and, except said testimony, there was nothing in the evidence presented by the prosecution which would connect them with the perpetration of the crime charged against them, this being the main reason for their acquittal. In other words, James Uy and Aw Ming were acquitted on the insufficiency of evidence and not on a finding that Camilo's testimony was not worthy of credence.

Appellants also claim that it is hard to believe Camilo's testimony to the effect that, after Hidalgo had committed himself to pay P16,000 to his coconspirators to set fire on his building, he would still help his accomplices in the preparation of the incendiary paraphernalia, and even more incredible that after the seizure by Detective Lt. Morales of the checks issued to his accomplices in payment for their help, he would still insist in carrying out the plan to burn said building. But, as the Solicitor General pointed out—

“All these alleged incredibilities are susceptible of rational ‘explanation. Appellants were not buying gasoline in 12 glass jars, rolls of tissue paper, and an inch-long candle, but the know-how for the attainment of their objective, viz., the burning of the building so that they might collect on their P135,000 policies. For such a stake, P16,000 certainly cannot be considered an excessive price to pay. And after all, what appellants actually parted with was only P1,000 before the fire, and it is not most unreasonable to suppose that the agreement between James Kay and the appellants was to make encashment of the checks contingent on a successful burning and recovery on the insurance policies, since the twelve-thousand-peso check, Exhibit L, was postdated more than a month from the actual date of its issuance, and the three-thousand-peso check, Exhibit K, was not completely dated, and Maura did not have any deposit to back them up. There is nothing strange in the fact that Hidalgo helped his accomplices arrange the tissue paper and jars. It was necessary that he be in the building when the trio arrived to prevent their being stopped or questioned by the other tenants of the second floor, and being there, it was all too natural for him to give a hand. As to the confiscation of the checks, the appellants could not have been deterred thereby from going ahead with the planned burning, because they could not have then known that Camilo would turn state witness. It cannot be gainsaid that without Camilo's testimony it would have been impossible to connect the appellants with the crime notwithstanding that the checks were in the hands of the police authorities. This explains also why the appellants did not mind using checks.”

Consequently, we hold the view that Camilo's testimony deserves credence, for it is not only corroborated by the issuance of Maura Gotengco of the aforementioned checks (Exhibits K and L), but also by the facts correctly indicated by the Solicitor General in his brief, to wit:

(1) The admitted fact that the appellants did declare on October 1, 1950, to a bank, the Philippine Trust Company, the loss of certain checks whose serial numbers included those of Exhibits K. and L. (Sec Exhibit 11.) It cannot just be pure coincidence that the Hidalgo spouses were, according to Camilo, informed of the confiscation of the checks by Morales on October 6, 1950, and that Dr. Hidalgo then told him and James Kay that he would declare to the bank that the checks had been lost.

“(2) The uncontradicted number and manner of arrangement of the glass jars which were found in the premises of the Republic Vocational School immediately after the fire.

“(3) The uncontradicted fact that the contents of said jars were indeed gasoline as found by the MPD Chemist Ungson upon analysis thereof.

“(4) The uncontradicted presence and arrangement of tissue paper in relation to the glass jars in exactly the same manner described by Camilo.

“(5) The admitted occupancy by Hidalgo spouses of a room on the second floor of the building where the fire occurred, and the presence therein of dogs of foreign breed, some chairs, and a bed.

“(6) The undenied ownership by Dr. Hidalgo of a yellow Cadillac convertible.

“(7) The admitted tenancy of the Rizal Avenue wing by various tenants.

“(8) The admitted occupancy by Republic Vocational School of the Echague wing of the building and the presence therein at the time of the fire of tables and bookcases among the articles Camilo said he saw there.”

Another contention of the appellants is that the court erred in not requiring the prosecution to present proof in support of its motion for the discharge of Florencio Camilo before allowing him to be a witness for the state.

This contention is obviously untenable. Section 9, Rule 15 of the Rules of Court, does not require presentation of proof before a motion for exclusion of an accused to be witness for the state is granted. The law only requires that hearing thereof be had and, in the case at bar, there has been such hearing, for as we held in the case of *U. S. vs. Abanzado et al.*, 87 Phil., 659.

“It was not the intention of the legislator, by the enactment of Act No. 2709, to deprive the prosecution and the state of the right to make use of *participes*

eruminis as witnesses, but merely to regulate the exercise of that right by establishing the conditions under which, it may properly be exercised.

“The Act leaves the manner of the enforcement of these conditions in the sound judicial discretion of the courts. If the court errs in the exercise of this discretion and discharges a guilty person who should not have been set at liberty, the error, as a general rule, cannot be cured any more than any other error can be cured which results in an acquittal of a guilty defendant in a criminal action (U. S. vs. De Guzman, 30 Phil. 416). But the commission of such error does not have the effect of discharging from criminal liability the accused persons who were not discharged that they might be used as witnesses.”

Lastly, appellants urge that in the case at bar, no *corpus delicti* was proven. This contention merits no consideration whatsoever, for in the present case there was a building burned and its burning was the result of the wrongful and criminal act of some persons, among them, the witness Camilo and the herein appellants. In prosecutions for arson, proof of the crime charged is complete where the evidence establishes (1) the *corpus delicti*, that is, a fire because of criminal agency; and (2) the indemnity of the defendant as the one responsible for the fire (Curtis, The Law of Arson p. 526, section 486).

Wherefore, finding no errors in the decision appealed from, the same is hereby affirmed, without costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Labrador, Bautista Angelo, Reyes, J. B. L., and Felix, JJ., concur.