

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LAO WAN SING ALIAS CO TIOK ALIAS WASING, DEFENDANT AND
APPELLANT. RESOLUTION ON THE SECOND MOTION FOR
RECONSIDERATION ...**

G.R. No. L-16379. August 18, 1972

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

Appellant Lao Wan Sing, alias Co Tiok, alias Wasing, was charged in the Court of First Instance of Aklan of the crime of arson (Criminal Case No. 964). After trial, a judgment was rendered, finding him guilty of the crime of which he was charged, with aggravating circumstances mentioned in paragraph 7 of Article 14 of the Revised Penal Code,[1] and sentencing him to reclusion perpetua, with the accessory penalties provided by the law, to indemnify various persons who suffered losses in the fire, with subsidiary imprisonment in case of insolvency, and to pay the costs. On appeal to this Court, after the parties had filed their respective briefs; and the appellant, his memorandum in lieu of oral argument; and the case submitted for decision, appellant, through counsel, filed on May 5, 1965 a motion for new trial on the ground of newly discovered evidence. The motion was supported by the affidavits of two prosecution witnesses, Guillermo I. Vidal and Jose Narce. The affidavit of Guillermo I. Vidal was executed on February 18, 1965, and that of Jose Narce on April 8, 1965. By resolution of this Court of May 17, 1965 action on the motion for new trial was deferred "until the case is taken on the merits."

This Court, through Mr. Justice Jesus G. Barrera, rendered its decision on December 17, 1966, affirming in all respects the decision of the trial court.

A motion for reconsideration of the decision or new trial was filed on January 30, 1967 by Atty. Vicente J. Francisco, former counsel of appellant. By resolution of February 10, 1967, the Solicitor General was required to comment on the motion for reconsideration or new trial. The comment was filed on April 21, 1967, praying that the motion for reconsideration or new trial be denied. Incidentally the Solicitor General prayed that counsel for the appellant be declared in contempt of court for using in his motion for reconsideration or new trial language disrespectful to this Court. By resolution of May 24, 1967, this Court denied the motion for reconsideration or new trial. On June 6, 1967 a petition for leave to file a second motion for reconsideration or new trial was filed by Atty. V.E. del Rosario, a new counsel for the appellant, and by resolution of June 15, 1967, this Court granted the petition. By another resolution, dated June 16, 1967, the action on the contempt incident involving Atty. Vicente J. Francisco was deferred until after the filing of the motion for reconsideration by the new counsel.

In the second motion for reconsideration or new trial, filed on June 27, 1967, the new counsel stressed on the retraction of the two prosecution witnesses, Jose Narce and Guillermo Vidal, and the improbabilities in the testimonies of the prosecution witnesses; tried to show that the facts and circumstances surrounding the second fire that occurred was caused by the first fire and not by the appellant; and that the evidence for the defense had established the innocence of the appellant.

The decision of the trial court was based on the testimonies of prosecution witnesses, Jose Narce, Guillermo Vidal, Coronacion Peñaflor and Dr. Iluminado Motus.

The gist of Jose Narce's testimony, incriminating the appellant, was that while he was helping in evacuating the stock of the Laserna Drug Store which was contiguous to the New Plaza Bazar which was allegedly burned Intentionally by herein appellant, he saw the appellant picking up a lighted kerosene lamp from the compounding room of the drugstore; that he followed the appellant to his store wherein the appellant, taking off the glass funnel of the lamp, raised the wick to increase the size of the flame, placed the lamp on a shelf where boxes of shoes were stored; that after he had brought several shoes from the store to the plaza, as he approached the kitchen of appellant, he saw the latter pouring kerosene from the lamp and setting fire to the kitchen.

Guillermo Vidal's testimony was to the effect that as he approached the kitchen of appellant on his way to the Laserna Drug Store to help in evacuating the things therefrom, he saw the appellant who wore white trousers and shirt bending over a pile of firewood in his kitchen and that all of a sudden flame and smoke rose from the firewood.

Coronacion Peñaflor testified that while she was evacuating things from the Chin Cuan store, adjacent to that of the appellant, she heard a voice from the kitchen of the appellant, saying "o-o-o-h," which she recognized to be that of the appellant; that she then noticed fire and smoke in the kitchen of the appellant; and that she immediately ran outside and shouted "Wasing again burned his kitchen."

Dr. Iluminado P. Motus, owner of the Laserna Drug Store that was burned, the other witness, testified that there was a lighted kerosene lamp on the sink of the compounding room of the Laserna Drug Store, which lamp he noticed to have disappeared in one of his trips to the drug store while evacuating their personal belongings.

Assuming that the recantation made by witnesses Vidal and Narce of their testimonies were true, there is little, or almost nothing, left on which to base a finding of proof beyond reasonable doubt of the guilt of appellant.

Jose Narce, in his affidavit of recantation, repudiated not only all the incriminating testimonies made by him during the trial, saying that they were not true, but also stated that "the truth of the matter is that I did not see the accused-appellant Lao Wan Sing in the premises of the Motus Drug Store at any time before or during the fire, and much less see him carry a lighted kerosene lamp to his store as if to evince his intention to set fire to the building, nor I have seen him in his kitchen setting fire to a pile of firewood and papers; that all the damaging part of what I have testified at the trial, I did so upon instruction of the Motuses, we the prosecution witnesses having been coached together several times by those who suffered losses in that conflagration."

Guillermo Vidal, in his affidavit of recantation, stated that his testimony to the effect that he saw appellant Lao Wan Sing as the one inside the kitchen setting fire to a pile of firewood and papers was a mere guess; and that when he testified that the appellant was the one whom he saw, it was upon the urgings of the Motuses whom he could not refuse on account of the many favors they had showered on him.

We have made a very careful study of the evidence, and We have arrived at a conclusion that if the recantations of witnesses Vidal and Narce are true, there is no more credible and positive identification of appellant as the one who set fire to the kitchen of his store, if it was really set on fire. We find that the testimony of Coronacion Peñaflor cannot be taken as a positive identification of the appellant, because she never stated that she saw appellant in the kitchen, but that she only heard a voice which she recognized to be that of the appellant. We have studied and analyzed the testimony of this witness, and We find that she had incurred in many contradictions, and made many statements that are inherently improbable, such that her testimony alone cannot be relied upon in making a finding of guilt against the appellant. It is Our considered view that if We eliminate the testimonies of

Narce and Vidal, there is no evidence to prove the guilt of the appellant beyond reasonable doubt. We, therefore, consider it necessary to ascertain the truthfulness of the recantations made by witnesses Narce and Vidal of their testimonies given at the trial.

Although a recanting testimony is oftentimes regarded as unreliable, especially so where the recantation relied upon involves a confession of perjury, and motions for new trial based on subsequent retraction by a witness are not favorably considered, yet when aside from the testimonies of the retracting witnesses there is no evidence to support the judgment of conviction, a new trial may be granted (*People vs. Bocar*, 97 Phil. 398). We must consider, furthermore, that in a criminal case the State is "not less interested than the individual accused of a crime in his acquittal if he is innocent." (*U. S. vs. Raymundo*, 14 Phil. 416, 419). In passing, therefore, upon the instant prayer for new trial, the rules governing the matter should be construed and applied liberally, especially so when the presentation and admission of the retractions of the prosecution witnesses might show that the State's evidence against appellant is weak and unsatisfactory, when the retractions might tip the scales in favor of the appellant, and when the retractions might produce at least a reasonable doubt as to the guilt of the appellant.

The retractions of witnesses Narce and Vidal constitute an evidence that was discovered by the appellant after the lower court had tried and decided the case, and while this case was pending appeal before this Court. The statements made by these two witnesses after the trial in the court below was evidence which the appellant could not have secured during the trial, such that, they can be considered as a newly discovered evidence that may properly be presented in a new trial. More so, because those statements appear to be a material evidence that may change the judgment that had been rendered.

"* * * The practice of this court has been to grant new trials in such cases only in very exceptional instances, as for example, in cases wherein it is made to appear that there was no evidence sustaining the judgment of conviction other than the testimony of a witness who is shown to have made contradictory statements as to material facts, and where it appears further that under all the circumstances of the case proof that the witness had varied or modified his testimony out of court and after the trial would lead the trial judge to a different conclusion." (*U. S. vs. Dacir, et al*, 26 Phil. 504-508)

WHEREFORE, in the interest of justice, this Court resolved to grant the new trial as prayed for in the second motion for reconsideration or new trial. With the advertence that this resolution should not be construed as reflecting any opinion on the value and force of the new evidence that may be presented, the decision of the trial court in Criminal Case No. 964-K of the Court of First Instance of Aklan, dated July 31, 1959, the decision of this Court in G.R. No. L-16379, dated December 17, 1966, and the resolution of this Court, dated May 24, 1967, denying the first motion for reconsideration or new trial, are set aside, and this case is remanded to the court of origin for a new trial.

Regarding the prayer of the Solicitor General that appellant's former counsel, Atty. Vicente J. Francisco, be punished for contempt of court for having called the "ponente" of the decision of this Court in this case a "parrot" (pp. 2, 4, 12, 14, 15, 16 and 17, 29 of the printed Motion for Reconsideration or New trial), implying thereby that the "ponente" merely repeated the appellee's brief without understanding it, which evidently is an embarrassing and disparaging epithet, and his further statements that "it is unthinkable that a decision such as this could have come from this Honorable Court" (p. 27) and that "the members of this Honorable Court having now been made aware of how the decision in this appeal came into being, will find their conscience ill at ease about maintaining their concurrence therein" (p. 29), and considering that the same Attorney Vicente J. Francisco had already been warned by this Court in the case of *Salcedo vs. Hernandez* (61 Phil. 724, 729) that "It is right and plausible that an attorney, in defending the cause and rights of his client should do so with all the fervor and energy of which he is capable, but it is not, and never will he so, for him to exercise said right by resorting to intimidation or proceeding

without the propriety and respect which the dignity of the courts require," and was ordered therein to pay a fine of P200 for contempt, the Court resolved to require Attorney Vicente J. Francisco to show cause, within thirty days from notice hereof, why he should not be punished for contempt of court because of the aforementioned epithets and statements which he made in the Motion for Reconsideration or New Trial that he filed on January 30, 1967.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Castro, Teehankee, Antonio, and Esguerra, JJ., concur.

Makasiar, J., reserves his vote.

Fernando and Barredo, JJ., took no part.

[1] "That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune." (par. 7)

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