

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAO WAN SING ALIAS CO TIOK ALIAS WASING, DEFENDANT-APPELLANT.*G.R. No. L-16379. December 17, 1966*

Ponente: BARRERA, J.

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This is an appeal by appellant Lao Wan Sing (alias Co Tiok, alias Wasing) from the decision of the Court of First Instance of Aklan (Crim. Case No. 964-K), convicting him of the crime of arson, with the aggravating circumstance of "taking advantage of the confusion occasioned by another fire", and sentencing him to suffer the penalty of reclusion perpetua, and to indemnify Jose G. Quimpo, the Kalibo Rural Bank, Isidra Laserna-Mirto, Natividad Laserna-Abanilla, Lourdes Laserna-Motus, and Fortunato Quimpo, in the sums of P16,000.00, P8,677.56, 915,000.00, 96,000.00, 94,900.00, and 96,000.00, respectively, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The records show that Rizal Street is the business section of Kalibo, Aklan Province. It runs from north to south. On the north, it opens into 19 Martirez Street, which sects it perpendicularly. Along the northern side of 19 Martirez Street, is the Kalibo Plaza.

At around 5:40 o'clock in the afternoon of June 17, 1956, a fire broke out at what is known as Juana's Store located on the western side of Rizal Street. The fire spread northward, engulfing the next store, the Novelty Store, and then Masing's Store and, finally, the Municipal Building of Kalibo, which occupied the western corner of 19 Martirez and Rizal Streets. The fire also spread to two doors to the south, until it reached the Ang Tong Suy Store, which was also engulfed, and then stopped.

When this fire at the eastern side of Rizal Street was already dying, and the roof of the Municipal Building of Kalibo had already collapsed, black smoke was seen coming from the direction of the kitchen of the New Plaza Bazar, owned by herein appellant, and located on the eastern side of Rizal Street across the municipal building. Said kitchen of appellant was located on the ground floor of the Abanilla Building, which was also partly occupied by the Kalibo Rural Bank. This second fire spread eastward and southward, and then jumped to the houses on the western side of Rizal Street, razing to the ground several houses, burning, practically, the entire business section of Kalibo.

The case of the prosecution against the appellant allegedly responsible for this second fire is predicated on the testimonies of Jose Narce, Guillermo Vidal, Coronacion Peñaflor, and Mr. Iluminado Motus.

Jose Narce declared that he was a houseboy of Amado Kimpo on June 17, 1956. Upon learning that a fire had broken out at Juana's Store, he went to the Laserna Drugstore owned by Dr. and Mrs. Iluminado Motus, his former employers. He helped in the evacuation of the stock of the drugstore and the personal belongings of Dr. and Mrs. Motus, making three trips to the second story of the building occupied by said drugstore. On his third trip, he saw appellant picking up a lighted kerosene lamp from the sink at the compounding room of the drugstore. Unnoticed, he followed appellant, who entered his store through the door which connected the Laserna Drugstore

and appellant's store, and saw appellant taking off the glass funnel or chimney of the lamp and raising its wick to increase the size of the flame, and afterwards placing the lamp on a shelf where boxes of shoes were stored. Moments later, he saw appellant proceed to his store proper through a corridor. This witness, who had also helped in bringing to safety some of appellant's goods, declared that, intending to go home, he decided to pass through the kitchen door. There, he saw appellant pouring kerosene from the aforementioned lamp and setting fire to the kitchen. Upon seeing this, he ran away. He did not tell anybody about what he had witnessed until the evening of June 19, 1956 (2 days after the fire), when he went to see Dr. and Mrs. Iluminado Motus and informed them that it was appellant who set fire to his kitchen.

Guillermo Vidal testified that while the fire on the western side of Rizal Street was raging, he helped the family of Dr. and Mrs. Gregorio Mirto (another fire victims) evacuate their personal belongings from their house, which was near appellant's store. After most of the Mirtos' personal belongings had been evacuated, they told him to help in the evacuation of the effects of the Laserna Drugstore, which was next door to appellant's store. As he approached the kitchen of appellant to go to the Laserna Drugstore, he saw appellant, in white trousers and shirt, bending over a pile of firewood in his kitchen. Suddenly, flame and smoke rose from the firewood. Due to fear, he turned back and ran to the plaza. He there found the Mirtos attending to their children and belongings, but he did not tell them or anybody else of the incident he saw in appellant's kitchen. Because he got wet by the rain that fell on the night of the fire, he contracted fever which lasted for about 5 days. While recovering from the fever, his father visited him, and it was to him that he told that the fire which destroyed several houses of Kalibo came from the kitchen of appellant and was set by the latter. His father then advised him not to tell anybody about it, to avoid involvement in its consequences. Notwithstanding his father's advice, however, he told Mrs. Mirto about the aforesaid incident at appellant's kitchen, when he saw her one day weeping and lamenting on the loss of her house.

Coronacion Peñaflor stated that on the day of the fire, she was a cook at Chin Guan, a store adjacent to that of appellant. While evacuating some goods from said store to a clump of bananas some 25 meters away, she heard someone from appellant's kitchen, saying "o-o-oh" and recognized the voice to be that of appellant. She then noticed fire and smoke in appellant's kitchen. She immediately ran outside and shouted "Wasing (appellant) again burned his kitchen". Looking to the left, she saw flames leaping from appellant's kitchen door. She then ran to the place where she had left her personal belongings.

Dr. Iluminado Motus related that while they were evacuating their personal belongings from the Laserna Drugstore at the second floor thereof, there was a lighted kerosene lamp on the sink of the compounding room of the drugstore. Said kerosene lamp was there because it was dark at the time. In one of his trips to the drugstore, while evacuating their belongings, he noticed that the kerosene lamp had disappeared from the sink.

Appellant's version of the incident, is as follows: In the afternoon of June 17, 1956, he went to the house of Ang Sam at Rizal Street to play mahjong. While he was there, a small girl told him about the fire. Going outside, he saw Juana's Store across the street burning. He immediately rushed to his store (the New Plaza Bazar) and asked from his helper where his family had gone, and was told that his five children were with their grandmother, while his wife and brother-in-law were in a movie house. He then told his helper to look for them and take them to a safe place. Later, he took two maletas and packed them with personal belongings. When his helper returned, he then gave him the two maletas to be brought to the plaza. He got two more maletas from the mezzanine floor of his store, and gave one of them to his brother-in-law, who had just arrived, and carried the other one himself. Then he closed the door of his store and repaired to the plaza. At the plaza, he saw Braulio Macahilas, who asked him to open his store, so that he could remove therefrom the goods he had bought from appellant the day before. Appellant obliged, and when he came to his store, he saw many people gathering thereat, who told him to open it,

so they could bring out the goods, as the fire was getting bigger. Somebody was able to pry the door open with a piece of iron bar. He then entered his store and tried to lift his cash register, but it was too heavy, so he just got some textiles and brought them to the plaza. When he returned, he saw several persons carrying merchandise out of his store. He then told them to bring the goods to the plaza.

When the municipal building burned, the people were not able to enter his store anymore. On his way to the plaza, he heard someone shout "Fire." It was then that he saw that the Abanilla Building (where his store was located) was on fire. After the fire, he went to see Mrs. Iluminado Motus in order that he could get a place to reopen his business, but the latter told him that according to their information, he had secretly insured his store for P70,000.00, and she insisted that he should give an advance of P25,000.00 to P30,000.00. As he told Mrs. Motus that he could not give her that amount and, reminded her that she even had an outstanding credit from him of P3,400.00, she flared up.

In support of his testimony, appellant presented as witnesses, Braulio Macahilas, Teodorico Rampola, and Guillermo Sanggumay.

Braulio Macahilas declared that at around 5 P.M. on June 17, 1956, he went to the parish priest of Kalibo to request that the town crier announce the death of his wife. Upon being told that a fire had broken out in the town, he left the convent to see the fire, driving his car to McKinley and 19 Martinez Streets, where he parked it. He went to the plaza at a point near the municipal building, where he saw appellant and his wife and children. Remembering that the day before he had purchased some merchandise at appellant's store, he approached the latter and asked that he be allowed to remove the same therefrom. Appellant agreed and they went to the store. As appellant did not have a key to the store, somebody broke open the door lock. He and some fifteen persons then entered the store with appellant. He took his merchandise and helped in the evacuation of appellant's goods, depositing them in the plaza. On the third trip to the store, they found the heat unbearable, so they refrained from entering it and instead returned to the plaza. Moments later, he heard people shouting "Fire!", and noticed that smoke was rising from the Abanilla Building, where Appellant's store was located. He saw big flames leaping from Masing's Store which contained inflammable materials. He then told appellant that he was going home and appellant requested him to help in moving his goods to another place. Appellant entered his store only once and did not go beyond the store proper.

Teodorico Rampola testified that he was a tailor with a shop at Kalibo. Sometime in the afternoon of June 17, 1956, he noticed the fire in Rizal Street and so, he closed his shop and went out to watch the fire. On reaching the vicinity of the municipal building, he saw many people around, especially near the corner of appellant's store (New Plaza Bazar). He joined the people, who were trying to prevail upon appellant to open his store and evacuate the goods therein. It took some time to open the door, as appellant did not have the key and they had to break the padlock. After the store was opened, he, Braulio Macahilas, and some other fifteen persons entered it and evacuated the goods therein to the plaza, making three trips. On the third trip, they found the heat to be unbearable, so they went back to the plaza. Moments later, he noticed that the roof of the municipal building was about to fall, and also that the cross-bars of the electric post and the wooden eaves of appellant's store had caught fire. He then helped appellant gather his goods and, while so doing, he heard people shouting, "Fire, fire!" At this juncture, he saw smoke emanating from behind the Kalibo Rural Bank under the Abanilla Building. He helped Macahilas load appellant's goods into his car. A light shower begun to fall, so he took shelter at the bandstand, staying there until 9 P.M.

Guillermo Sanggumay stated that at the time of the fire in question, he was a PC soldier stationed at Numancia, Aklan. On the afternoon of that day (June 17, 1956), he and some soldiers were ordered by their commander to proceed to Kalibo because there was a fire thereat. Upon arriving in Kalibo, he and his companions helped in the

evacuation of the things in the municipal building. Afterwards, he stayed at the plaza, where he saw appellant talking to a group of men who were convincing appellant and said men (approach the New Plaza Bazar, open its doors, and evacuate the goods therefrom, bringing them to the plaza in two trips. On their third trip, he saw that appellant and the men could no longer enter the store because of the heat coming from the municipal building. Thereafter, he stood near the edge of the plaza and saw appellant asking some people to help him gather his goods. Moments later, he heard people shouting "Fire, fire!" and noticed that thick smoke was rising from the Kalibo Rural Bank, coming from behind. He then hastened to said place with some people and found that there was fire coming from the kitchen behind the bank. They tried to pat out the fire, but failed. He returned to the plaza. He saw appellant from the time the latter and the group of men evacuated the goods of the New Plaza until he heard people shouting "Fire, fire!"

The appeal presents no issues of law, but merely involves the credibility of the various witnesses, both of the prosecution and the defense. Well-established is the rule that where the issue involves credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, for the reason that it is in a better position to decide the question, having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the trial. The exception is where it is shown that it has overlooked facts of substance and value which, if considered, would affect the result of the case (*People v. Alban*, G.R. No. L-15023, prom. March 29, 1961, citing *People v. Berganio*, G.R. No. L-10121, prom. December 29, 1960 and *People v. Binsol*, G. R. No. L-8349, prom. January 22, 1957).

After a careful and thorough examination and review of the whole evidence on record, we find as did the trial court that the incident in question actually and really happened as narrated and described by the prosecution witnesses and that appellant is guilty of the offense with which he had been charged and convicted. On this point, we concur with the following findings of the trial court, which are amply supported by the evidence:

"The Court finds it proven that the fire on the Eastern side of Rizal Street was of incendiary character. Two fires broke out in the late afternoon of June 17, 1956. The first started at Juana's store on the western side of Rizal Street, spread North and South. At the South, it consumed Ang Ton Suy's Store and stopped.

At the North, it reached the municipal building. Just as this fire on the western side of Rizal Street was dying, and danger for its spreading farther had passed, so much so that the Vice-Mayor, Gaudiso Martelino, had reassured the people that there was no longer any need for evacuating their belongings, the fire at Wasing's (appellant's) kitchen on the Eastern side of Rizal Street broke out. This second fire could not have come from the first. In the first place, the wind was blowing Westward in the afternoon in question. This is borne out by the testimony of Vice-Mayor Martelino and by the picture taken by Domingo Ong of the first fire. In the second place, if the fire at the kitchen of the accused came from the other side of Rizal Street, the front of the buildings across the street would have been affected first and not the kitchen of the accused, which was more or less thirty-five meters from the Western edge of Rizal Street and was roofed with galvanized iron.

"It is suggested, however, that the Abanilla fire might have been caused by flares coming from the Masing Store, which could have gotten into the powder and chemicals kept by Abanilla, a manufacturer of fireworks and firecrackers. This theory hardly merits serious consideration. Firstly, only one witness, the defense witness Braulio Macahilas, testified to ever having seen flares or lumps of fire flying to the municipal building and to the Abanilla Building coming from the store of Masing; no other witness testified to this effect. Secondly, the store of Masing was burned before the municipal building caught fire. If that store really contained grease, gasoline, thinner, and other inflammables, these inflammables would have caught fire early and the Abanilla Building would have been burned earlier. The Abanilla fire broke out only when the fire at the store of Masing was already dying and the roof of the municipal building had collapsed. Thirdly, if power, it would have been preceded by a

explosion and" there is no evidence to that effect; even Macahilas himself did not say so. Fourthly, there is reliable evidence that the second fire did not start in the second floor of the Abanilla Building but in the kitchen of Wasing (appellant) under it; which had galvanized roofing; even defense witness Sanggumay bears out the fact that the fire started in the kitchen, while no one has ever testified to having been it start at the Abanilla abode.

"The Court also finds that there is sufficient evidence to show that the fire in Wasing's (appellant's) kitchen was set by him. The testimony of Jose Narce . and Guillermo Vidal, to this effect, merits credence. The mass of evidence, more or less, shows that several people entered the New Plaza Bazar during the first fire and at that time the door connecting the drugstore to the New Flaza Bazar was open. It is not improbable that Narce who had helped in the evacuation of the stock in the Laserna's Drug Store later joined those who moved the goods of Wasing (appellant) from the store and in one of those occasions he had come upon Wasing (appellant) as the latter was setting fire to his kitchen. The testimony of Narce finds corroboration from Doctor Motus. As regards Guillermo Vidal, he was a houseboy of Dr. Gregorio Mirtos whose wife is a sister of Mrs. Motus, the owner of the Laserna's Drug Store. The Mirtos lived very close to the Laserna Building and it was quite probable that the Mirtos had asked Vidal to help in the evacuation of the stock in the drugstore. Coronacion Peñaflor, for her part, was a cook of the adjoining store and she could have been in the latter store and the first flash of fire and smoke in the kitchen of the accused." (Pages 12-14, Decision.)

Explaining why the defense version is untenable, and, consequently, should not be believed, the trial court stated:

"The witnesses for the defense, old acquaintances, of the accused, in the main, testified to establish an alibi for the accused. What strikes the Court at once is their patent anxiety to show that the accused could not have committed the crime because they had him practically at their sight from the time the accused opened the door of the New Plaza Bazar to the time when the second fire was detected, a feat that was almost impossible because hundreds of people milled around the vicinity of the fire, and because a fire in a thickly populated district that threatens to spread has always its attendant confusion.

"Guillermo Sanggumay is a Pfc of the Constabulary who was sent to the place to keep order. He admitted that he was sent there to watch many things and yet, he seemed to have watched only Wasing (appellant) and his companions. He accounted for almost all the movements of Wasing from the moment Macahilas talked to Wasing to open the New Plaza Bazar until people noticed the second fire. He knew almost nothing of what people other than Wasing and his companions did during the fire. There are so many suspicious improbabilities, exaggerations and evasions in his testimony that the Court is convinced he is unworthy of credence.

"The witnesses Rampola and Macahilas made suspicious exaggerations aside from improbabilities. They appeared to have been so interested in Wasing and his merchandise that he was the only fire victim they helped during the fire and he was the only fire victim whose movements they could describe with a fullness that is surprising under the attending circumstances. After helping Wasing and just after the second fire was detected, Macahilas allegedly went home to tend to his wife who died that day. After Rampola had helped Wasing and after the second fire was detected, Rampola allegedly went to the bandstand where he stayed till nine o'clock in the evening without lifting a finger to help the more numerous property owners that were affected by the second fire. Rampola did not help even a brother tailor who was one of the fire victims or the owner of the Magnolia who was his townmate, if we were to believe him. Rampola's claim that he saw fire at the cave of the New Plaza Bazar fronting the street is a palpable lie; nobody corroborated him in this respect, not even Sanggumay or Macahilas or the accused himself. But of the hundreds of people who witnessed the fire no one but Rampola apparently saw this incident that was of easy detection.

"it is hard to believe the story of the accused as to his movements during the fire in question. The accused learned

of the fire early while it was still consuming Juana's Store. He obviously feared that the fire would engulf his store because he got the valuables and clothes of his family, making trips for that purpose. It would have been more in keeping with his state of mind to have also removed his stock earlier without awaiting to be persuaded by Macahilas, considering that he had P47,000.00 worth of goods which were insured for only 920,000.00. That he stayed in the plaza just looking at the fire after he had taken his valuables and clothes while all those living in the immediate vicinity of the fire were hurriedly evacuating their personal belongings is hard to believe, to say the least.

"The allegation that the accused had to stop the evacuation of his merchandise because the heat of the fire at the municipal building had become unbearable is not convincing. The New Plaza Bazar being a corner store had two front doors, one facing Rizal Street and the other facing 19 Martirez Street. Wasing and whoever helped him could have passed through the door fronting 19 Martirez Street where the heat would not have been as strong as at Rizal Street. Again, the New Plaza Bazar had an opening through the kitchen at the back of the building. The goods could have been removed through the kitchen door. Wasing and his helpers could have even passed through the Laserna Drug Store that was connected to the New Plaza Bazar." (Pages 20-22, Decision).

Appellant had a motive to commit the crime in question, namely, pecuniary gain. According to the trial court, and we fully agree:

"The evidence shows That the New Plaza Bazar was insured for P20,000.00; that there was P47,000.00 to P48,000.00 worth of goods in it on the day of the fire; that the accused saved part of his merchandise from the New Plaza Bazar using a flat car and passenger cars; and that there was looting during the fire. It is not improbable that Wasing set fire to his kitchen to recover losses caused by looting and the attendant confusion which were not covered by his insurance policy. It is not rare, indeed, to find people taking advantage of public confusion to further their private ends. Our very Penal Code recognize such inclination so well that it has provided against it in paragraph 7 of Article 14 thereof, considering same as an aggravating circumstance." (Pages 19-20, Decision.)

Appellant claims that Jose Narce's testimony is unreliable, as he owes gratitude to Dr. and Mrs. Motus, his former employers, and having been re-employed by them shortly after the fire, with better pay. He also claims that Guillermo Vidal's testimony is unworthy of belief, because he owes gratitude to Dr. and Mrs. Mirto, his employers, who had spent for his college education. In this connection, suffice it to repeat here the trial court's observation on the issue raised:

"With all the gratitude that Narce and Vidal owe the family of Doctor Mirto and Doctor Motus, it is still not easy to believe that to repay that debt, Narce and Vidal would render false testimony against the accused for a crime as serious as the present. The testimony of these witnesses has earmarks of candor. Guillermo Vidal at one time admitted that when he saw Wasing (appellant) in the kitchen stooping at the firewood, the kitchen was dark but knowing Wasing very well he guessed that the man he saw was Wasing. If Vidal went to the witness stand, ready to perjure against the accused, he would have identified him with a more emphatic assurance. Obviously, Vidal was willing to say no more than what he had observed. Narce, for his part, frankly admitted that he had taken some pairs of shoes for himself and with this, he revealed that he was telling the truth, irrespective of consequences. The Court is impressed by the pervasive candor in the testimony of Narce and Vidal when subjected to intensive cross-examination extending to minute collateral matters." (Pages 15-16, Decision.)

The testimony of Coronacion Peñaflor is, likewise, assailed on the ground that she has a grudge against appellant who had formerly dismissed her in his (appellant's) employ after she stole some money from him. Again, suffice it to restate what the trial court said on the issue:

"Assuming, arguendo, that Coronacion Peñaflor had pilfered money from the accused, she has more reasons to thank than begrudge the accused because the latter never filed any charge against her."

Appellant also makes capital of the fact that said three witnesses did not immediately inform other people of what they knew about the fire. The delay of Vidal in reporting the incident to the Mirtos was due to the loss of "his sense of balance", and the fact that he got sick on the night of the fire. He, however, reported the matter to Mrs. Motus at the first opportunity he had. Peñaflor, on the other hand, explained that while she saw her employer in the plaza after appellant had set fire to his kitchen, she failed to inform him about the incident, because she was then very busy evacuating things. Early, the next morning, however, she decided to confide to her employer about the incident. On the failure of both Narce and Vidal to immediately report the incident (appellant's setting fire to his kitchen) to the Mirtos and Motuses, the trial court observed, and we agree:

"The reactions of human beings under given circumstances, do not follow an inflexible pattern. Not all persons react in the same manner when subjected to the same stress. Some are timid and are more susceptible to fear than others; not few are dazed by the stress or fear and fear of being implicated or molested with inquisitorial investigations, or of being objects of revenge on the part of criminals of their relatives, is not a rare psychological social phenomenon among the educated as well as among the ignorant. The reaction of Vidal and Narce cannot be measured by standards applicable to one sitting coolly on an armchair, because a startling and exciting event was in progress when Vidal and Narce saw the accused set fire to his kitchen and both were under the stress of the excitement. Upon these premises, it is not difficult to believe Narce and Vidal's explanation that they were seized by fear upon seeing the accused get fire to his kitchen, or is it difficult to understand why under such stress Narce and Vidal did not report immediately what they saw." (Pages 17-18, Decision.)

As to the alleged delay in the filing of the information against appellant, we believe that the same is not due to the fault of the offended parties. As pointed out by the trial court, "The delay in the filing of the information was due to the fact that the NBI took time to investigate thoroughly this case and so did the Fiscal's office. The Motuses brought their first eyewitness to the office of the NBI in Iloilo as early as July (1956) the following month of the fire." (Page 19, Decision.)

Appellant asks why Narce had to divert his attention and efforts to the evacuation of the shoes of appellant, when at the time, he was in the midst of helping the Motuses. Reading Narce's testimony in its entirety, instead of lifting portions thereof out of context, it appears that Narce tried to carry whatever goods of appellant he could carry with the bundles of the Motuses. Appellant next asks why Narce would help evacuate appellant's goods, without being asked by the latter. Being a former houseboy of the Motuses and appellant, it is not strange for Narce to help both of them.

Appellant levels his attack on the narration of facts of the prosecution witnesses, claiming that their testimonies are incredible, fabricated, and contradictory. He says that Narce repeated four times exactly the same non-responsive answer, thus indicating it was a memorized story. The line of cross-examination tended to point out that Narce never saw appellant in the kitchen and his non-responsive answers were but the reaction of his simple mind to the insinuations of the cross-examination. It was also pointed out that while Narce testified that after seeing appellant set his kitchen on fire, then went home after passing the store of the Quimpos, he subsequently declared that after witnessing the commission of the crime by appellant, he went to the plaza to bring the bundle he had with him.

The two statements are not really contradictory, because it appears therefrom that appellant passed the plaza before going home. The first question asked the witness is one that naturally calls for the very answer given by the witness. The question was: "From the place of fire, where did you go?" The question asking for the place where

the witness had gone after the fire obviously refers to a place other than the plaza, because the latter was also in the immediate vicinity of the fire. Appellant also claims that Narce testified at one point that on his third trip he carried a bundle with children's shoes and clothing, and at another point he said that he carried shoes which he got from appellant's store. When asked what he brought down on his third and last trip, he replied that he brought with him shoes and dresses in a bundle. He was also asked what he had with him at the precise time when he passed the door leading to the kitchen of appellant, to which he answered that he had with him a "pair of shoes" which he got from appellant's dining room. It appears, therefore, that after going down with the bundle, he laid this aside to take shoes from appellant's dining room, so that at the time he saw appellant, he was not carrying the bundle but a pair of shoes.

Appellant argues that Peñaflor's testimony is unworthy of belief, because it was strange why she would be near appellant's kitchen on or about the time Narce and Vidal were there. The presence of witnesses in the same place at the time of the crime cannot, by itself, be considered suspicious, in the absence of other evidence showing that said presence is more than mere coincidence. Appellant assess, that Peñaflor's statement that "Wasing burned again his kitchen" is incredible, as it implies that it was the second time appellant burned his kitchen. What Peñaflor could have really meant or wanted to convey was that the fire in appellant's kitchen was the second fire that afternoon. Appellant claims that Peñaflor was inconsistent when she declared that it was appellant who burned his kitchen and later on she testified that she merely suspected that appellant was the one who set the fire. There was no evident failure in this case either of expression or translation. What this witness would have meant to say was that while she did not actually see appellant set fire to his kitchen, she was positive that it was appellant who was in that kitchen when the fire broke out, because she heard his voice. If she was given to exaggeration as appellant accused her, it would have been very much easier for her to have colored her testimony and said that she actually saw appellant in the kitchen, instead of merely testifying that she only heard his voice. Appellant urges that the voice heard by Peñaflor could have come from outside the kitchen, than from inside, for the reason that a majority of people cannot tell whether a voice comes from above or below or from the right or left. Appellant's arguments carries a wrong assumption that Peñaflor is one of those who cannot distinguish where a voice comes from. Deducing from Peñaflor's statement before the PC investigator that she heard a "conversation", appellant contends that she heard not only a voice but voices. As the previous statement of said witness before the same investigator mentions only a "voice" the word "conversation" must be construed to mean a "voice".

Appellant claims next that Vidal merely "guessed" that it was appellant who burned the kitchen. In a leading question, the cross-examiner asked Vidal whether he only suspected or guessed that appellant was the one who set the pile of wood on fire. Vidal obviously believed that "guess" rather than "suspect" was the more appropriate word to describe what he saw. As the other testimony of said witness clearly pointed to appellant as the one he saw in the kitchen, it appears that he did not understand the import of the word "guess" which was cleverly fed to him by the cross-examiner. Appellant also points out that in the investigation before the fiscal, Vidal said he went "home", while in court he said he slept in the papag of a welding shop across the plaza. Appellant also points out that while at first Vidal testified that he did not tell what he saw to anyone, yet later he said he told his father and Mrs. Mirto about it. When Vidal said he went "home" he must have meant he retired for the night, and in stating he did not tell anyone about the incident, he wanted to convey that he did not tell anyone other than his father and the Mirtos.

In the circumstances, we find appellant, as did the trial court, guilty of the crime charged with the attending aggravating circumstance aforementioned. Appellant does not appeal from the amount of the indemnity awarded by the trial court to the aforementioned fire victims. There is, therefore, no reason for disturbing the findings of the trial court in this regard.

FOR ALL THE FOREGOING, the judgment of the trial court is hereby affirmed, in all respects, with costs against the the appellant.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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