

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR DOLENDO Y FEDILES ALIAS “ETOY,” ACCUSED-APPELLANT.

Ponente: CRUZ, R.A., J.

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CRUZ, R.A., J.:

THE CASE

This is an ordinary appeal under Rule 122 of the Rules of Court which seeks to reverse and set aside the September 23, 2011 Decision[1] of the Regional Trial Court of Masbate City, Branch 48 (RTC), in Criminal Case No. 8307, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, accused NESTOR DOLENDO y FEDILES is found guilty beyond reasonable doubt of the crime of ARSON with Homicide defined and penalized under Article 320 of the Revised Penal Code of the Philippines as amended by Republic Act No. 7659. He is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to pay the heirs of the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency.

xxx xxx xxx

SO ORDERED.[2]

The accused also appeal from the November 25, 2011 Order[3] of the RTC which denied his Motion for New Trial and affirmed his conviction.

THE ANTECEDENTS

In an Information[4] dated January 15, 1997, Nestor Dolendo y Fediles alias “Etoy” (Dolendo) was charged with the crime of arson with homicide, committed as follows:

That on or about September 18, 1996, in the afternoon thereof, at sitio Kapatagan, Barangay Capsay, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously set on fire a house owned by Leonardo Perocho, Sr., knowing it to be occupied at that time by one or more persons and as a result thereof LEONARDO PEROCHO, JR., [6 yrs. old boy] suffered massive burns and injuries which directly caused his death thereafter.

CONTRARY TO LAW.[5]

A warrant for Dolendo's arrest was subsequently issued on September 24, 1996. The accused remained at large for several years before he was finally arrested sometime in February 2001. He was eventually arraigned on September 25, 2001[6] with the assistance of counsel and entered a plea of NOT GUILTY. Thereafter, a trial on the merits was held.

During trial, the prosecution presented three witnesses namely (1) Deolina Perocho, owner of the house which

was burned down and mother of the deceased six-year old boy, (2) Dr. Marilou Hernandez, Municipal Health Officer of Aroroy, Masbate, and (3) Jessie Perocho, a resident of the house which was burned down and brother of the deceased six-year old boy.

Private Complainant Deolina Perocho (Deolina) testified[7] that on September 18, 1996, at about 4:00 o'clock in the afternoon, she was at home at Sitio Kapatagan, Barangay Capsay, Municipality of Aroroy, Province of Masbate with her four children namely Ivy (one year old), Isalyn (three years old), Janice (five years old) and Leonardo Jr. (six years old). Then, she heard the accused shouting "Leonardo, I am already here." At that time, she and three of her children were eating in the kitchen. Because the kitchen had no walls, she could see the accused at their yard, approaching the house with a gun in his hand. With her three children in tow, she ran to the main house, went upstairs and called for help. However, the screams for help proved futile because their house was separated by a considerable distance from their neighbors. When Deolina saw the accused gather dried coconut leaves and set their porch on fire, she and her three children jumped from the rear window of the house. Because of the ensuing panic, Leonardo Jr., who was sleeping at that time, was left behind. Deolina and her children hid in a grassy area, and could only watch in fear, as the accused burned down their house. When the accused left the premises, they ran back to the house and saw the lifeless body of Leonardo Jr.

Another prosecution witness, Jessie Perocho (Jessie), also testified[8] that he saw how the accused torched the Perocho house. Jessie, another child of Deolina who was not inside the house at the time it was burned because he was harvesting cassava nearby, declared that he saw Dolendo set their house on fire by lighting a torch made of a bundle of coconut leaves. Like his mother, Jessie was overcome with fear and could not do anything to stop Dolendo.

Dr. Marilou Hernandez (Dr. Hernandez) was called to testify in relation to the medical report signed by one Dr. Conchita Ulanday (Dr. Ulanday). Dr. Hernandez informed the RTC that Dr. Ulanday was her predecessor at the Rural Health Planning Center of Aroroy, Masbate. She stated that she was familiar with the signature of Dr. Ulanday and identified the post-mortem examination submitted in court as having come from the Rural Health Planning Center. She added that a copy of the said document could not be located in the files of the Rural Health Planning Center. However, she maintained that, based on her own reading and examination of the report, the signature that appears thereon was truly Dr. Ulanday's. Dr. Hernandez also agreed with the findings of Dr. Ulanday. Dr. Hernandez confirmed that Leonardo Jr. died due to burning, as contained in the medical report.[9]

The defense presented its lone witness, Accused Dolendo. He denied the accusations and proffered an alibi.[10]

Dolendo claimed that he had been working as a helper of a carpenter in Pulong Buhangin, Sta. Maria, Bulacan since 1996 and returned to Capsay, Aroroy only in the year 2001. He said that he had been working at a housing project in Bulacan for contractors, Jun and Bong Sta. Ana. While in Bulacan, he stayed with the relatives of his brother-in-law, the Del Rosarios.[11]

The accused denied any knowledge and participation in the burning of the Perocho house, which led to the death of Leonardo Jr. He added that he only came to know of the incident when he returned to Capsay on September 17, 2001 and was arrested at his mother's house four (4) days after his arrival.[12]

Accused Dolendo characterized his relationship with the Perochos as "okay," but admitted that they had a misunderstanding which stemmed from panning activities. He could not recall the exact date when the misunderstanding transpired, but insisted that it was prior to September 18, 1996.[13]

When cross-examined, Dolendo admitted knowing the Perochos. He said that he and the Perochos were not neighbors, but he had daily encounters with Leonardo Sr. and Deolina. He also said that he and Leonardo Sr. had

occasional drinking sprees. Even as he admitted knowing the Perochos and having had encounters with them, he maintained that Deolina and Jessie, two of the prosecution witnesses, could not be familiar with him or his face for them to positively identify him from afar.[14]

After the testimony of Accused Dolendo, the defense formally rested its case. The prosecution did not present any rebuttal witness. The parties were given thirty (30) days to file their respective memoranda.[15] However, it appears from the records that the parties opted not to submit their respective memoranda. The case was, thereafter, submitted for resolution.

On September 23, 2011, the RTC rendered the appealed Decision[16] finding Nestor Dolendo y Fediles guilty beyond reasonable doubt of the crime of arson with homicide.

The RTC's judgment of conviction was anchored on the positive identification of the prosecution witnesses that Dolendo was the perpetrator of the crime. The RTC characterized the identification made by Deolina and Jessie as both categorical and consistent. The RTC said,

The established circumstances unerringly show that Nestor was the perpetrator of the crime. His identification as the assailant by Deolina and Jessie was definitely positive and beyond reasonable doubt. xxx

The collective recollections of both Deolina and Jessie about seeing Nestor immediately before and after burning the house of [the] Perocho[s] were categorical enough, and warranted no other logical inference than that the accused was the perpetrator.[17]

The RTC was not persuaded by the alibi of the accused saying that he failed to satisfy the twin requirements in order for alibi to be plausible. Specifically, the RTC found that:

xxx Accused failed to show by any iota of evidence that it was highly impossible for him to be present at the crime scene at the time of its commission. xxx [Nestor alone said] that he was in Bulacan. No one reinforce[d] [or confirmed] his whereabouts during the time of [the] incident. No certificate of employment was secured to show that he [was working in Bulacan] as alleged by him. His mother who was the employer of the Perochos at that time was not presented as witness xxx.[18]

After his conviction was handed down, Accused Dolendo filed a Motion for New Trial[19] citing newly-discovered evidence that could supposedly prove his innocence. In particular, Dolendo called the RTC's attention to the affidavits of recantation executed by prosecution witnesses Deolina and Jessie. The RTC did not give credence to the affidavits of recantation, and so denied the Motion for New Trial, effectively affirming its conviction of the accused.[20]

Accused Dolendo filed a Notice of Appeal dated December 1, 2011, which was given due course by the RTC in an Order dated December 2, 2011.

THE ASSIGNED ERROR

Accused Nestor Dolendo y Fediles alias "Etoy" (Dolendo), Our appellant, filed this appeal on a lone assignment of error, viz:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF ARSON WITH HOMICIDE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[21]

In support of its assigned error, Accused-Appellant Dolendo argues that the prosecution witnesses, Deolina and Jessie, narrated conflicting stories in their sworn statements and their testimonies in open court. The accused-appellant insists that the material inconsistencies in their declarations cast doubt on the veracity of their

accounts, which warrants the accused-appellant's acquittal.[22]

The accused-appellant likewise submits that he should be exonerated because the affidavits of recantation of prosecution witnesses Deolina and Jessie clearly indicate that they trumped up the case against him. He adds that without the testimonies of Deolina and Jessie, there remains no evidence sustaining the judgment of conviction.[23]

Lastly, Accused-Appellant Dolendo invites us to apply the exception to the general rule that findings of fact of the trial court, including the credibility of witnesses are not disturbed on appeal. Dolendo believes that his case calls for an exception because the judge who penned the Decision never heard the testimonies of Deolina and Jessie. Therefore, the judge who wrote the Decision could not have passed upon the credibility of said witnesses and the probative value of their statements, because he was not the one who heard their testimonies.[24]

OUR RULING

We dismiss the appeal. We affirm the Decision of the RTC with a slight modification in the designation of the offense.

Nestor Dolendo y Fediles should have been charged and convicted for the crime of simple arson. There is no complex crime of arson with homicide.[25] The rule is that in cases where both burning and death occurred, if the main objective was the burning of the building or edifice, but death resulted by reason or on the occasion of arson, the crime is simply arson, and the resulting homicide is absorbed.[26] In such a case, as this one, arson is itself the end and death is simply the consequence.[27]

Moreover, the RTC erroneously described the offense in this case as falling under Article 320 of the Revised Penal Code (RPC). Article 320 of the RPC, as amended by Republic Act No. 7659 defines destructive arson, which contemplates the malicious burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories and other military, government or commercial establishments by any person or group of persons.[28] The crime committed by Dolendo is more accurately simple arson, defined in Presidential Decree No. 1613 as the malicious burning of public and private structures, regardless of size, not included in Article 320, as amended by RA 7659, and classified as other cases of arson. These include houses, dwellings, government buildings, farms, mills, plantations, railways, bus stations, airports, wharves and other industrial establishments.[29]

Having said that, We now turn to the more substantial question, i.e., whether or not the prosecution has proven, beyond reasonable doubt, the guilt of the accused-appellant for the crime of arson.

We answer in the affirmative.

In the prosecution 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 identity of the defendant as the one responsible for the crime.[30] That a fire consumed the house of the Perochos is no longer a bone of contention in this case. It was established by the charred body of Leonardo Jr. and the testimonies of the prosecution witnesses. As to the identity of the arsonist, Deolina and Jessie positively and categorically identified Accused-Appellant Dolendo as the person who torched their house.

However, the accused-appellant brings to fore the supposed conflicting stories between the sworn statements and the testimonies in open court of prosecution witnesses Deolina and Jessie. This posture fails to persuade Us because the alleged inconsistencies are not so material to put into question the narration made by the witnesses and their positive identification of Dolendo as the one who set their house on fire. If there is an eyewitness to the crime of arson, s/he can give in detail the acts of the accused. When this is done the only substantial issue is the

credibility of the witness.[31] In this case, there is not just one, but two eyewitnesses who narrated in detail how the accused-appellant burned down the Perocho house. As correctly pointed out by the People, through the Office of the Solicitor General (OSG), Deolina and Jessie gave unflinching testimonies on the events that transpired on that fateful afternoon.[32]

Deolina clearly testified that she saw Dolendo set their house on fire. Deolina's direct examination, in part, reads:

PROS. LEGASPI
(continuing)

Q Kindly tell the court what the incident was about.

A At 4:00 o'clock in the afternoon of September 18, 1996, this Nestor Dolendo was shouting at my husband.

xxx xxx xxx

Q And did you personally see this Nestor Dolendo shouting?

A Yes, sir.

xxx xxx xxx

Q You saw him with a gun?

A Yes, sir.

xxx xxx xxx

Q And after you kept shouting for help but none came, what happened next?

A

We jumped passing over the window at the back window of the house together with my three children and Leonardo, Jr. was left.

Q Why did you jump at the back window of your house?

A Because he already set fire to our terrace.

xxx xxx xxx

Q By the way, how did you come to know that Nestor Dolendo had set fire on your porch?

A I saw him getting dried coconut leaves.

Q And what did he do with that porch?

A He set fire to our porch as well as the roofing made of coco leaves.[33]

Jessie, another eyewitness, corroborated Deolina's statements:

PROS. MESA
(continuing)

Q Mr. Witness, on September 18, 1996, at around 4:00 o'clock in the afternoon thereof, can you recall where you were?

A Yes, sir.

Q Where were you at that time, Mr. Witness?

A I was in the farm near our house.

Q Whose house?

A My mother's house.

xxx xxx xxx

Q While there, Mr. Witness, did you notice any unusual incident?

A Yes, sir.

Q What was that incident?

A He burned our house.

Q Who burned the house?

A It's he (Witness pointed to the man in orange T-shirt).

COURT
(to the witness)

Q How did you know that the accused was the one who blazed the house?

A I saw him.

Q How did he blaze the house?

A He lighted a torch made of a bundle of coconut leaves and burned the house.

xxx xxx xxx

PROS. MESA
(continuing)

Q Aside from the bundle of coconut leaves and the match, what else did you see from Nestor Dolendo?

A He was armed.

Q And what was the arm [sic] that Nestor Dolendo was carrying at that time?

A A .38 caliber.[34]

We agree with the People that the above testimonies on material details are straightforward and consistent with each other. Deolina and Jessie personally saw the accused-appellant, who was brandishing a gun, gather coconut leaves and set their house on fire. Their combined declarations establish beyond reasonable doubt the identity of the accused-appellant as the perpetrator of the crime.[35]

The inconsistencies that the accused-appellant is harping on do not detract from the fact that the Perocho house was intentionally burned by Dolendo who was positively identified by witnesses Deolina and Jessie. When juxtaposed against these positive declarations, the accused-appellant's attempt to discredit them crumbles.

It has been consistently held that while there may be inconsistencies in the testimonies of witnesses on minor details or collateral matters, they do not impair the credibility of the witnesses or diminish the value of their testimony where there is consistency in relating the principal occurrence and positive identification of the perpetrators.[36] A similar rule applies when appreciating the variance between the eyewitnesses' testimonies in open court and their affidavits. Slight differences between the witnesses' sworn statements outside of court and their declarations during trial do not affect the witnesses' credibility.[37] It is oft repeated that affidavits are usually abbreviated and inaccurate. Oftentimes, an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court.[38]

The inconsistencies alluded to by Dolendo, such as the number of children who were with Deolina at the kitchen when she saw the accused-appellant or the exact words of the accused-appellant before he burned down the house, are inconsequential as they do not touch upon the commission of the crime itself.[39] These slight contradictions, in fact, even serve to strengthen the credibility of the witnesses, as these may be considered as badges of truth rather than indicia of bad faith; they tend to prove that their testimonies have not been rehearsed. Nor are such inconsistencies, and even improbabilities, unusual, for no person has perfect faculties of senses or recall.[40]

The prosecution has sufficiently established, beyond reasonable doubt, the accused-appellant's guilt. Nevertheless, the accused-appellant prays that We reverse his conviction because of the affidavits of recantation executed by Deolina and Jessie. We can not.

The affidavits of recantation of Deolina and Jessie were submitted to the RTC in support of the accused-appellant's Motion for New Trial. The RTC denied the Motion for New Trial after finding that the affidavits of recantation were unreliable and deserved scant consideration.[41] We agree with the RTC.

It has been held, time and again, that recantations are viewed with suspicion and reservation. The Court looks with disfavor upon retractions of testimonies previously given in court. It is settled that an affidavit of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention. The rationale for the rule is obvious: affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration.[42] Recanted testimony is exceedingly unreliable.[43] There is always the probability that it will later be repudiated.[44] Only when there exist special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld.[45]

After a careful scrutiny of the records, We do not see any reason to disturb the ruling of the RTC. The RTC correctly disregarded the affidavits of recantation executed by Deolina and Jessie because there were no special circumstances that justified their full consideration. As aptly observed by the RTC:

- The affidavits of recantation dated October 10, 2011 or 15 years after the incident border on incredulity. For it is not highly improbable or impossible that such retraction[s] w[ere] made for a consideration usually

monetary. Moreover, [they] did not cover all points raised and facts established during the trial.

- Complaining witness[es] ha[ve] gone through the rigors of the investigation and participated in the trial whenever [they] were summoned by the fiscal or the judge.

- Neither did the recantation[s] refute testimonial or documentary evidence xxx. In short, the said affidavits did not explain the other evidence considered by the court in rendering the judgment of conviction, which evidence unequivocally show accused to be guilty beyond reasonable doubt of the crime charged against [him].[46]

Verily, the RTC did not commit reversible error when it concluded that after the judgment of conviction has already been rendered, it was too late in the day for the prosecution witnesses to recant their testimonies.[47] Indeed, the retractions, at most, are an afterthought which should not be given probative value.[48]

Finally, Dolendo contends that the judge who wrote the decision convicting him could not have passed upon the credibility of the prosecution witnesses and the probative value of their statements, because he was not the one who heard their testimonies. We are far from persuaded.

Then as now, it has been the consistent ruling that the circumstance alone that the judge who wrote the decision had not heard the testimonies of the prosecution witnesses would not taint his/her decision. After all, s/he had the full record before him/her, including the transcript of stenographic notes which s/he could study. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial, unless there is a clear showing of a grave abuse of discretion in the factual findings reached by him/her.[49]

We have examined the RTC Decision vis-à-vis the records of this case, and conclude that the judgment was firmly grounded on the evidence presented during the trial. The trial judge was thorough in his evaluation of the evidence and in his assessment of the credibility of the witnesses. There is, therefore, no plausible ground to set aside his factual findings.

WHEREFORE, premises considered, the appeal is hereby DISMISSED and the September 23, 2011 Decision and the November 25, 2011 Order of the Regional Trial Court of Masbate City, Branch 48, in Criminal Case No. 8307, are AFFIRMED WITH MODIFICATION, in that Nestor Dolendo y Fediles is found guilty beyond reasonable doubt of the crime of simple arson.

SO ORDERED.

Salazar-Fernando, R.A., Chairperson, and Gonzales-Sison, M., JJ., concur.

[1] Records, 176-188.

[2] Ibid. at 187-188.

[3] Records, 201-206.

[4] Records, 1.

[5] Id.

[6] RTC Order dated September 25, 2001, Records, 29.

[7] TSN dated August 13, 2003, 8-14 and TSN dated June 28, 2004, 18-21 cited in Appellee's Brief.

[8] TSN dated July 5, 2006, 4-6 cited in Appellee's Brief.

- [9] TSN dated February 27, 2006, 4-6 cited in Appellee's Brief.
- [10] Supra note 1 at 180.
- [11] TSN dated September 16, 2009, 2-3 cited in Brief for the Accused-Appellant.
- [12] Ibid. at 4-5 cited in Brief for the Accused-Appellant.
- [13] Ibid. at 5-6 cited in Brief for the Accused-Appellant.
- [14] Ibid. at 7-9 cited in Brief for the Accused-Appellant.
- [15] RTC Order dated July 6, 2011, Records, 175.
- [16] Supra note 1.
- [17] Supra note 1 at 184.
- [18] Supra note 1 at 186-187.
- [19] Records, 189-195.
- [20] Supra note 3.
- [21] Brief for the Accused-Appellant, Rollo, 39.
- [22] Ibid. at 46.
- [23] Ibid. at 59, 61.
- [24] Ibid. at 61, 62-63.
- [25] People vs Malngan, G.R. No. 170470, September 26, 2006, 534 Phil. 404.
- [26] Id.
- [27] Id.
- [28] Id., citing People vs Soriano, G.R. No. 142565, July 29, 2003, 407 SCRA 367, 373.
- [29] Id.
- [30] People vs Murcia, G.R. No. 182460, March 9, 2010.
- [31] People vs Soriano, G.R. No. 142565, July 29, 2003, 407 SCRA 367, 373, citing Curtis, A Treaty on the Law of Arson (1st ed., 1986), Sec. 287, p. 307; See also People vs De Leon, et al., G.R. No. 180762, March 4, 2009, 599 Phil. 759.
- [32] Appellee's Brief, Rollo, 124.
- [33] TSN dated August 13, 2003, 10-13.
- [34] TSN dated July 5, 2006, 4-11.
- [35] Appellee's Brief, Rollo, 131.
- [36] People vs Bernabe, G.R. No. 185726, October 16, 2009; See also People vs Macapanas, G.R. No. 1878049, May 4, 2010.
- [37] Kummer vs People, G.R. No. 174461, September 11, 2013.

[38] Id.

[39] Id.

[40] Id., citing *People vs Perreras*, 414 Phil. 480, 488 (2001).

[41] Supra note 3 at 205.

[42] *Regidor, Jr. vs People*, G.R. Nos. 166086-92, February 13, 2009, 579 SCRA 244, 268, citing *Balderama vs People*, G.R. Nos. 147578-85 and G.R. Nos. 147598-605, January 28, 2008, 542 SCRA 423, 432-433; See also *Firaza vs People*, 547 Phil. 573 (2007); *Villanueva vs People*, 386 Phil. 912 (2000); *Molina vs People*, G.R. Nos. 70168-69, 24 July 1996, 259 SCRA 138.

[43] Id.

[44] Id.

[45] Id.

[46] Supra note 3 at 205.

[47] RTC Order dated November 25, 2011 citing *People vs Loste*, 210 SCRA 614.

[48] Id., citing *Flores vs People*, 211 SCRA 622.

[49] *People vs Garchitorena et al.*, G.R. No. 175605, August 28, 2009, 614 Phil. 66 citing *People vs Fulinara*, G.R. No. 88326, August 3, 1995, 247 SCRA 38; See also *People vs Sadiangabay*, G.R. No. 87214, March 30, 1993, 220 SCRA 551.

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