

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPLLEE, VS. LAO WAN SING ALIAS CO TIOK ALIAS WASING, DEFENDANT-APPELLANT.

G.R. No. L-49044. October 12, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The records disclose the following antecedents:

In an Information, dated July 10, 1957, Lao Wan Sing alias Go Tiok alias Wasing was charged with the crime of Arson in Criminal Case No. 964 of the then Court of First Instance of Aklan, Branch II, reading as follows:

"That on or about the 17th day of June, 1956, in the evening, in the poblacion of Kalibo, Province of Aklan, Philippines, and within the jurisdiction of this Honorable Court, the above- named accused did then and there wilfully, unlawfully and feloniously set fire to a certain building owned by Lourdes L. Motus, knowing it to be occupied at the time by many persons, thereby exposing human lives to great danger and caus-ing complete destruction of said building and other buildings and pro-perties to the damage and prejudice of their owners and other persons who have interests on said buildings and properties in the amount set opposite their names, to wit:

Lourdes L. Motus

P 58,625.00

Antonio Abanilla

25,760.00

Ester Laserna-Jurilla

14,000.00

Jose G. Quimpo

40,000.00

Amada Q. Concepcion

7,000.00

Fortunato Quimpo

31,000.00

Modesta M. Baltazar

24,000.00

Priscilla Quimpo?Magno

20,000.00

Federico T. Luces and

Trinidad M. Laserna

10,000.00

Antonio Yu

11,301.00

Francisco L. Sin

39,581.73

Chua Eng

23,769.27

Remedios Regalado

20,137.59

Kalibo Rural Bank, Inc.

3,667.56

Gregorio Q. Mirto

53,200.00

Manuel Alba

17,380.00

Maria L. Abiera

2,392.90

Dafrosa Martelino

1,760.00

P403,475.05

That the crime was committed with the following attendant aggravating circumstances:

1. That the crime was committed during nighttime; and
2. That the crime was committed on the occasion of conflagration."

On July 31, 1959, judgment was rendered by then Judge Ramon L. Avancena finding appellant guilty of the crime charged and sentencing him to suffer reclusion perpetua and to indemnify the various persons who suffered losses in the fire. From the said original Decision, Lao Wan Sing appealed to this Court in G. R. No. L-16379.

On May 5, 1965, during the pendency of the appeal, appellant, through Atty. Ceferino de los Santos, filed the

first Motion for New Trial[1] on the ground of recantation by two prosecution witnesses, particularly, Guillermo VIDAL and Jose NARCE, who executed their Affidavits of retraction on February 18, 1965 and April 8, 1965, respectively (Exhibits "1" and "6"). Action on said Motion was deferred "until the case is taken up on the merits".[2]

On December 17, 1966, this Court, through Mr. Justice Jesus G. Barrera, rendered judgment in the appealed case[3], affirming in all respects the Decision of the Trial Court.

On January 30, 1967, appellant, through Atty. Vicente J. Francisco, filed a printed Motion for Reconsideration or New Trial[4], which was denied by this Court on May 24, 1967.[5]

On June 6, 1967, appellant's Petition for Leave to file Second Motion for Reconsideration or New Trial, presented by Atty. Vicente E. del Rosario, having been granted, appellant filed said Second Motion on June 27, 1967.

In a Resolution, dated August 18, 1972, this Court, speaking through Mr. Justice Calixto Zaldivar, granted new trial and set aside the Decision of the lower Court dated July 31, 1959, as well as this Court's Decision of December 17, 1966 and its Resolution denying reconsideration dated May 24, 1967. In that Resolution this Court "considered it necessary to ascertain the truthfulness of the recantation made by witnesses Narce and Vidal of their testimonies given at the trial" stating that "if the recantation of witnesses Vidal and Narce are true, there is no more credibility and positive identification of appellant x x x with the advertence that this resolution should not be construed as reflecting any opinion on the value and force of new evidence that may be presented x x x".[6] Pursuant to said Resolution, the records were remanded to the lower Court for new trial.

The lower Court, then presided by Judge Dominador L. Quiroz, limited its authority pursuant to this Court's Resolution:

"x x x only to determine the truthfulness of the recantation made by Guillermo Vidal and Jose Narce and render judgment in accordance therewith, such that this Court cannot disturb the findings of other facts not related thereto which had been found by this Court in the decision dated July 31, 1959 that was affirmed by the Supreme Court, and neither has this Court to make a finding on those facts."

This was reiterated by defense counsel, Atty. Ceferino de los Santos, in a Manifestation before the commencement of the new trial when he said "x x x the Supreme Court has limited the scope of authority on the trial of this Court to determine solely upon the veracity, truthfulness and sincerity of the recantation of evidence, so that it is indispensable on the part of the accused to produce the two recantation witnesses."[7]

At the new trial, presided by Judge Dominador L. Quiroz and ultimately by Judge Amelia K. del Rosario, the following testified for the defense: NARCE, VIDAL, Ambrosio Medel "brother-in-law and witness to signature and thumbmark and who interpreted the affidavit in the language known to the affiant (Narce)", and Atty. Vicente S. Ocol, Clerk of Court of the Court of First Instance of Quezon City before whom NARCE swore to his Affidavit. Three other witnesses were presented to prove failure to serve the subpoena on NARCE originally, although ultimately the latter was found and testified. The rebuttal witnesses for the prosecution were Dr. Gregorio Mirto, Coronacion Peñaflor, Lourdes Motus and Dr. Iluminado Motus. The prosecution attempted to have NBI Agents Nos. 37 and 45, who had conducted the investigation in this case, subpoenaed but was informed that the former had died while the latter had already retired and was an invalid.[8]

On June 18, 1977, after new trial, the lower Court, then presided by Judge Amelia K. del Rosario, rendered judgment convicting appellant anew. The dispositive portion of the Decision reads:

"WHEREFORE, the guilt of the accused having been established beyond reasonable doubt, judgment is hereby rendered finding the accused, Lao Wan Sing alias Go Tiok alias Wasing, guilty of the crime of arson

punishable under par. 1, Art. 321 of the Revised Penal Code, and considering the aggravating circumstance of having committed the crime on the occasion of a conflagration as provided for by Art. 14, par. 7 of the said Code, sentences the said accused to suffer imprisonment of reclusion perpetua, to indemnify Jose G. Quimpo in the sum of P16,000.00, Kalibo Rural Bank in the sum of P3,677.56, Isidra Laserna Mirto in the sum of P15,000.00, Natividad Laserna Abanilla in the sum of P6,000.00, Lourdes Laserna Motus in the sum of P2,661.24, Modesto Laserna Baltazar in the sum of P4,900.00 and Fortunato Quimpo in the sum of P6,000.00, to suffer the accessory penalties provided for by law, and to pay the costs.

SO ORDERED."

From the aforesaid judgment, appellant interposed this appeal. After the filing of Briefs including a Supplemental Brief by appellant, this Court considered the case submitted for decision on July 23, 1979.[9]

On September 28, 1979, appellant, through Atty. Ceferino de los Santos, filed another Motion for New Trial[10] (the 4th, if we include the Motion for Reconsideration or Motion for New Trial dated January 30, 1967) on the ground of "new and material evidence recently discovered" consisting of an Affidavit of Atty. Apolonia Francisco, one of the private prosecutors during the original trial, who stated therein that she had coached prosecution witnesses, Jose Narce and Guillermo I. Vidal, in accordance with an outline given to her by the spouses, Dr. & Mrs. Iluminado Motus.[11] The Affidavit was sworn to before Asst. Fiscal Esmeraldo R. Acorda of Quezon City. The Solicitor General filed an opposition to the new trial prayed for. This Court deferred action until the decision on the merits.

In this appeal, appellant alleges:

I

The Lower Court erred in not finding that there are facts and circumstances showing that Vidal and Narce, the prosecution witnesses, had testified falsely in the first trial as shown by their fabricated testimony as suggested by those having great influence over them and also for valuable consideration.

II

The Lower Court erred in applying the doctrine laid down in the case of *People versus Saliling*, No. L-27974, February 27, 1976, 69 SCRA 427, in the case at bar to determine the credibility of, and the weight of evidence testified to, by the recanting witnesses in the new trial.

III

The Lower Court erred in not finding the testimonies of Narce and Vidal in the new trial more credible than those of Dr. Gregorio Mirto and Dr. Iluminado Motus, let alone that of Coronacion Penaflor who had been already declared unreliable and not rehabilitated (sic) in the Resolution of this Court dated August 18, 1972, and not eliminating their testimonies in the first trial.

IV

The Lower Court erred in giving credit or weight to the evidence presented by the prosecution during the new trial, the instant case having been prosecuted under the direction and control of the private prosecutor instead of the Fiscal.

V

The Lower Court erred in finding the appellant guilty of the crime charged beyond reasonable doubt."

The factual findings made by this Court in its Decision of December 17, 1966 follow:

"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 intersects 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 the 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".

It should also be mentioned that opposite the municipal building across Rizal Street stood the Laserna Building, which belonged to the Laserna sisters.[12] One of the sisters, Lourdes, who is married to Iluminado Motus, an optometrist, resided in a portion of the upper storey of that building and operated a drug store on the ground floor.[13] The other Laserna sister is married to Dr. Gregorio Mirto and they own the Mirto Building. Between the Laserna Building and the Mirto Building stands the Abanilla Building. These three structures are immediately adjacent to one another and had interconnecting doors and access to and from the Laserna Drug Store, the dining room and kitchen of appellant.

The store owned by appellant known as the New Plaza Bazaar is located in the Laserna Building on the eastern corner of Rizal and 19 Martirez Street and is adjacent to the Laserna Drug Store.[14] The rear of the New Plaza Bazaar is connected to its dining room and thence to the kitchen. There are doors and corridors leading from the Laserna Drug Store to said dining room and kitchen. Appellant's kitchen is actually located in the rear of the Abanilla Building from where there is also access to appellant's kitchen. Presumably, the "kitchen" is a restaurant as it adjoins other "kitchens" towards the south belonging to other individuals.

The case for the prosecution during the original trial centered on the testimonies of Jose NARCE, Guillermo VIDAL, Coronacion Peñaflor and Dr. Iluminado Motus.

In respect of Coronacion Peñaflor's testimony, referring in particular to appellant's identification, this Court's finding in the Resolution of August 18, 1972, was:

"x x x We find that the testimony of Coronacion Peñaflor cannot be taken as 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 appellant." [15]

That testimony was to this effect:

"Coronacion Peñaflor stated that on the day of the fire, she was a cook at Chin Guan store adjacent to that of appellant. While evacuating some goods from said store to a clump of bananas some 25 meters away, she

heard some one 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.[16]

The gist of the testimony of NARCE, then 22 years old, single, a houseboy, who reached only Grade I, during the original trial was that he knows only how to write his name; that at the time of the fire, he was a houseboy of Blanding and Amading Kimpo; that when he heard the bells ringing, he went out to the street and saw the fire at Juana's store. Having been a houseboy of the Motuses for three years, he proceeded to the drugstore of his former employers to help evacuate the medicines and other things. He recognized appellant who was dressed in white shirt and pants also going back and forth evacuating his things. On his third trip from the second floor, NARCE saw appellant pick up the lighted kerosene lamp from a table near the stairs and thereafter bring the lamp to the dining room adjoining. The witness followed appellant to the dining room and while he was about two armslengths from him (appellant), the latter removed the glass funnel of the lamp, increased the flame and placed said lamp on one of the shelves where there were boxes of shoes. When the accused left, NARCE transferred the lamp to a table and took some shoes and merchandise to the plaza. When he returned, he passed by the kitchen door intending to hide some shoes for himself when he saw appellant holding a can of petroleum with one side raised and afterwards lighting a match and placing it on a pile of wood. Black smoke then rose and red flames followed. Fearful of what he saw, NARCE ran away and went to the bodega of one Garcia where he used to sleep. Two days later or on the following Tuesday, NARCE told Dr. and Mrs. Iluminado Motus at the house of Mrs. Motus' mother about appellant's having set fire to his kitchen.[17]

In NARCE's Affidavit of Retraction executed on April 8, 1965, sworn to before Vicente S. Ocol, Clerk of Court of Quezon City, he stated that the "facts" he had testified to were not true and that he had testified under pressure from the Motuses who promised to give him work, and that "in conscience, I have to right the wrong I have done and do justice to the innocent".[18]

During the new trial, NARCE, then 35 years old, testified that after he heard the bells warning of the fire, he went to the plaza and stood at the bandstand and saw the fire at Juana's store; that flames were flying all around; that fire was seen from the kitchen of Abanilla; that when he went down from the bandstand he met Dr. and Mrs. Motus whom he helped gather medicines. NARCE emphasized that he did not go to the drugstore. He also declared that during the original trial he testified upon the prodding of the Motuses and upon promise of a job and that he would be given P200.00 if they win the case; that he, VIDAL, and Coronacion Peñaflor were coached by Atty. Apolonia Francisco at the Motus residence; and that when he executed the Affidavit of retraction he was working on and off in Pasay City and lived with one Ambrocio Medel.[19]

As to how he happened to execute said Affidavit, he testified that he met the accused accidentally in Quiapo who told him "as if you kill me when you testify in the trial in Kalibo, I did not do anything in connection with that fire" and that if NARCE sympathized with him, the former should help because he would be staying for 30 years in jail and might die there. Appellant further told him that VIDAL had already executed an affidavit, and because of that NARCE felt "bolstered". NARCE did not have a permanent job at that time.[20] NARCE's Affidavit was thereafter prepared at the house of Atty. de los Santos in Quezon City[21] and he swore to the same before the Clerk of Court of the Court of First Instance of Quezon City. The contents of the Affidavit were translated to NARCE by Ambrosio Medel, a driver, and with whom he was living.[22] Medel was also jobless at the time.

Coming now to VIDAL. This Court in its Decision in L-16379 synthesized his testimony during the original trial when he was then 20 years old, married, a laborer, thus:

"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 victim) evacuate their personal belongings from their house, which was near the appellant's store. After most of the Mirto's 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.[23]

In his Affidavit of retraction executed on February 18, 1965, and sworn to before Gregorio L. Lira, Clerk of Court, Court of First Instance of Iloilo, he stated that his testimony during the original trial that he saw appellant as the one inside the kitchen setting fire to a pile of firewood and papers in his kitchen, was a mere guess and that he testified the way he did upon the urgings of the Motuses and the Mirtos, who were among the victims in the Kalibo fire, and whom he could not refuse due to the many favors they had showered on him; and that in the conflicting emotions between gratitude and peace of mind he "had to ease and clear my conscience and to do justice to the innocent".[24]

At the new trial, VIDAL, then 36 years old, married, already a public school teacher in elementary education, declared that the second fire started from the Abanilla kitchen which he had seen from the window of the second storey of the Mirto residence. He declared that he did not go to the drugstore of the Motuses nor was he instructed by Dr. Mirto to help the Motuses although he helped in saving Mirto properties. He allegedly pinpointed appellant upon the urgings of his benefactors, the Motuses, who gave him a job after enduring hardship in his former employment after his stint with the Mirtos.[25]

On how he happened to execute his Affidavit, he stated that while he was on vacation in Batan, Aklan, as he was then residing in Ampatuan, Cotabato, he met the accused accidentally in Kalibo, Aklan. The accused told him that "because you have testified in the trial and now I will be sentenced for 30 years imprisonment and probably I will die there". As his conscience was disturbed he told the accused that he would retract. He then went to Iloilo City where he met the accused at the Happy Landing Hotel on February 17 where he showed the draft of the statement that he had prepared to Atty. Ceferino de los Santos. The latter made a slight correction and thereafter they proceeded to the Court of First Instance at Iloilo City where the Affidavit was typewritten and he subscribed to the same before the Clerk of Court of said Court.[26]

As heretofore stated, the function of the lower Court during the new trial, with which defense counsel was in conformity, was to determine the veracity of the recantation of evidence by NARCE and VIDAL. We affirm the lower Court's finding in this regard when it said:

"After painstakingly going over the voluminous record, the testimonies of Vidal and Narce both during the original trial and during the new trial on the participation of the accused, the circumstances under which they were given, especially the circumstances behind the execution of the affidavits of retraction, the Court has come to the conclusion that the testimonies of Guillermo Vidal and Jose Narce during the original trial are true, while those given during the new trial are afterthoughts to save the accused, thus complying with the purpose of the new trial, that is to ascertain the truthfulness of the recantation of these witnesses."[27]

As between NARCE's two versions, one given at the original trial and the other at the new trial, that given at the

original trial deserves more credence. As noted by the lower Court:

"The Court had gone over his lengthy testimony during the original trial. He was able to testify on de-tail about the lay-out of the premises of the drugstore of Mrs. Motus and of the premises occupied by the ac-cused and the actuations of the ac-cused. An illiterate man like him, if merely coached to tell a lie, could not possibly testify on those details and acquit himself during the very detailed and meticulous cross-examination.

"The fact that the witness, on cross-examination mentioned four times on having seen the accused get the lighted lamp near the stairs in the drugstore of Mrs. Motus when the matter was not directly the subject of inquiry cannot be taken by the court as having answered as an auto-maton. He was asked on how many times he went up and down the stairs and if the witness answered in addition that the third time he went down he saw the accused, it was to clarify the point that it was on that particular going down that he saw the accused."[28]

NARCE's allegation during the new trial that he merely stood at the bandstand of the plaza when the fire was raging cannot be believed. Even appellant admitted that he saw NARCE at the scene of the fire running and dropping a pair of Besa shoes in the process[29], thereby negating NARCE's contention that he did not go to the drugstore of the Motuses at all.

As to NARCE's execution of his Affidavit of retraction, we quote with approval the lower Court's assessment thereof:

"Narce testified that the ac-cused, upon meeting him in Quiapo, said: 'You are here, Jose. I have been looking for you for a long time'. This speaks of efforts of the accused to locate the witnesses to get their retraction as an ultimate remedy for an acquittal.

"Narce had no permanent job when he met the accused in Manila. He went there in 1958 to look for work. In fact he told the accused that he was trying his luck in Manila where he might find a job.

"The financial situation of Jose Narce at the time he met the accused makes the Court suspect that he was an easy prey to an offer of remuneration in consideration for executing an affidavit of retraction."[30]

As rebuttal witnesses during the new trial, both Dr. Motus and Mrs. Lourdes Motus emphatically denied that NARCE had tes-tified originally upon their proddings and upon promise of a job at the Park View Hotel. As they respectively testified, at the time, that hotel had not yet been constructed. And if he was employed thereafter it was more likely to help him with a job and because they needed helpers. The Motuses learned of what appellant had done when NARCE himself disclosed it to them a few days after the fire. The Motuses merely told him to relate what he had seen.[31]

VIDAL's original testimony is likewise more credible. As the Trial Court had aptly pointed out:

"Again, like Jose Narce, the testimony of Guillermo Vidal during the original trial was vivid and detailed and the witness was able to withstand the very lengthy and meticulous cross-examination which only one who is telling the truth can withstand."[32]

At the new trial, VIDAL declared the he testified for the prosecution because he was indebted both to the Motuses and to the Mirtos, who had sent him to school[33], and that he left the Mirtos because of their insistence that he should testify. This was rebutted by Dr. Gregorio Mirto, however, who stated that VIDAL left their place and transferred to the Magnolia Kiosk upon their own suggestion because they could no longer cope with expenses due to their losses in the fire.[34]

As this Court has held, retraction of witnesses at a new trial made after a judgment of conviction as in this case is to be taken warily and to be rejected where rebutted by other witnesses.[35]

Besides, even assuming that NARCE and VIDAL owed the Motuses and the Mirtos a debt of gratitude, it does not necessarily follow that to repay them, they would testify falsely against appellant and charge him with a crime as serious as Arson.

VIDAL's pretense that he prepared the draft of his own Affidavit of retraction is negated by the fact that during the new trial, he even requested the help of an interpreter so he could speak in "Hiligaynon" because his diction and expression in English was poor. And yet the Affidavit was in good English. As the Trial Court had observed:

"It is likewise not believable that the witness who admits he is short of English and diction would take the trouble of drafting Exhibit 1 knowing that he was to meet Atty. de los Santos, the counsel of the accused, who could more easily draft the statement as to accurately contain what he wanted to be contained.

"The Court has reason to suspect that the witness so testified to impress the Court of his sincerity and of the originality of Exhibit 1." [36]

VIDAL also denied having received any money from appellant in Iloilo City so he could meet with Atty. Ceferino de los Santos thereat. The fact remains, however, that he had to stay overnight at the Happy Landing Hotel in order to be able to meet with said counsel and thereafter had to go back to Cotabato. As the Trial Court opined, "it could not believe that the accused could have allowed the witness who was to do him a favor to undertake the expenses in Iloilo."

The defense also stresses that the delay of NARCE and VIDAL in immediately informing other people that appellant had set fire to his own kitchen proves that their testimony is unworthy of belief. The delay has been satisfactorily explained, however. Both were seized by fear when they saw what appellant had done. VIDAL was also afraid of physical harm on his person. Besides, the evidence shows that NARCE had disclosed to the Motuses two days after the fire what he had witnessed, while VIDAL had also done so to his father first and then to Dr. Mirto.

That Dr. Motus did not reveal the information furnished him by NARCE and VIDAL to the PC and the Municipal Council, of which he was a member, was also explained by him in that he feared reprisals against the witnesses besides the fact that they might succumb to pressure, specially considering that investigation was conducted at the bandstand at the public plaza. The Motuses, instead, preferred to solicit the aid of the NBI at Iloilo. In fact, they brought Jose Narce to the NBI in Iloilo as early as July, 1956, or the month following the fire. NARCE's affidavit was taken by the NBI and signed before NBI agents. It is to be noted also that the Motuses and the Mirtos adhered to their testimonies during the original trial and did not lose interest in the case despite the lapse of 23 years from the date of the occurrence of the fire and the dates of their subsequent testimonies at the new trial, not to speak of their requests for early resolution in this case.[37] They would have had no motive to impute the serious crime of Arson to appellant unless they had been informed by NARCE and VIDAL, respectively. The NBI and the Fiscal conducted their own respective investigations, which also accounts for the delay in the filing of the criminal charge.

In their testimonies during the new trial, NARCE and VIDAL also declared that the second fire started at the Abanilla building implying that it did not start from appellant's kitchen. That kitchen, however, is just on the first floor of the Abanilla building. Coronacion Peñaflor also testified at the original trial and confirmed at the new trial that she saw a sudden burst of fire followed by heavy dark smoke inside the kitchen of the New Plaza Bazar. True, this Court discounted her testimony in the Resolution dated August 18, 1972, *supra*; however, what was rejected was her identification of appellant and not the rest of her testimony.

The defense also intimates that the Abanilla fire could have been caused by flames flying from the Masing store across the street which could have reached the powder and chemicals kept by Abanilla who was a manufacturer of

fireworks and firecrackers. The evidence does not disclose, however, any explosion which would surely have occurred if that were the case.

The defense contention that the active prosecution of the case was done by the private prosecutor and, therefore, the evidence presented cannot be given weight or credit is not deserving of any serious consideration. While the private prosecutor actively conducted the trial, an Assistant Fiscal was always present and the proceedings were under his direction and control.

In the Supplemental Memorandum filed on December 6, 1982, appellant, through another counsel, Atty. Gil Venerando R. Racho, additionally contends that respondent trial Court erred in failing to make in its Decision findings of fact other than findings on truthfulness of the recantation considering that the former judgment was set aside and, therefore, the theory is advanced that the Decision under review should be declared null and void.[38] As already explained, it was this Court that had limited the scope of authority of the lower Court at the new trial to ascertaining the truthfulness of the recantation made. This was confirmed by Atty. Ceferino de los Santos in his manifestation before the lower Court prior to the new trial, and reiterated by Atty. Felix V. Macalalag, who appeared as colla-borating counsel, that "the Supreme Court sent back the records to this Court to determine better whether the recantation should be given faith".[39] Appellant's brief also admits that "the only issue raised before the Court of origin of the new trial is whether the recantation made by Vidal and Narce of their testimonies given at the trial are true".[40]

Further, there is absolutely no basis to the allegation of the defense in its Supplemental Memorandum that appellant has been denied due process of law by the Court a quo because of "absence of evidence on record to support its findings". Basically, the issue is one of credibility as between the con-tradictory testimonies of NARCE and VIDAL during the original trial and at the new trial, and our own conclusions support those of the lower Court.

Appellant's additional argument is that the lower Court erred in applying the doctrine in *People vs. Saliling*, 69 SCRA 427 (1976), reading:

"x x x It would be a dangerous rule for courts to reject testimonies solemnly taken before courts of jus-tice simply because the witnesses who had given them later on change their mind for one reason or another, for such a rule would make solemn trials a mockery and place the inves-tigation of truth at the mercy of unscrupulous witnesses. Affidavits of retraction can be easily secured from poor and ignorant witnesses u-sually for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it may later be repudiated. So courts are wary or reluc-tant to allow a new trial based on retracted testimony."

Even assuming it to be inapplicable, actually, the ruling in said case was not the only basis of the Trial Court for re-jecting the recanted testimonies. That Court made a careful comparison between the original and retracted testimonies, the circumstances under which they were given, as well as the mo-tives behind the changes in testimony. Thereby, the Court a quo correctly applied the criteria laid down in *People vs. Ubina, et al.*, 97 Phil. 526, as follows:

"x x x The rule should be that a testimony solemnly given in court should not be lightly set aside and that before this can be done, both the previous testimony and the subse-quent one be carefully compared, the circumstances under which each given carefully scrutinized, the reasons or motives for the change carefully scrutinized -- in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies re-presents the truth."[41]

Lastly, the Motion for New Trial[42] based on the Affi-davit of Atty. Apolonia Francisco must be denied. As

pointed out by the lower Court, if Atty. Francisco conferred with the witnesses before they were presented, that was but natural. In fact, the Motuses admitted that Atty. Francisco met with NARCE, VIDAL, and Coronacion Peñaflor, but merely to elicit from them what they knew and not to coach them nor to coerce them to testify against appellant. The Motuses and Dr. Mirto all denied having coached NARCE and VIDAL, respectively, as the latter two alleged during the new trial. In the words of Dr. Motus, they did not coach NARCE because "he knows better what he had seen and on what he will testify".[43] Coronacion Peñaflor likewise denied having been coached by either the Motuses, the Mirtos or Atty. Francisco. She admitted that Atty. Francisco had convened NARCE, VIDAL and herself and asked them whether they had knowledge of the case, and when they replied in the affirmative, she just told them to tell the truth when they testify in Court.[44] And on cross examination, she declared that she had also given a sworn statement to the NBI, the PC, and the Municipal Council[45], thereby negating the defense contention that she was merely "coached" on how to testify during the original trial.

As to the non-presentation by the prosecution of Atty. Francisco as a rebuttal witness, it manifested that it was due to her senility as she was then around 80 years of age.[46] Although the defense stoutly denies such condition, it is to be noted that neither did it present her as its own witness to affirm the contents of her Affidavit.

All told, other than their own self-serving claim, we have found no evidence to support the assertions of NARCE and VIDAL that during the original trial they had falsely testified against appellant out of extraneous considerations such as gratitude, or because they were coached to testify in a particular way. Our findings are that their testimonies during the original trial represent the truth.

WHEREFORE, the judgment appealed from is hereby affirmed in toto. The Motion for New Trial filed by the defense on September 28, 1979 is hereby denied.

Costs against accused-appellant, Lao Wan Sin @ Co Tiok, @ Wasing.

SO ORDERED.

Plana, and Relova, JJ., concur.

Abad Santos, and Escolin, JJ., were designated to sit in the First Division vice Associate Justices Claudio Teehankee, Chairman, and Hugo E. Gutierrez, Jr. who are on official leave, pursuant to Special Order No. 251, dated September 23, 1983.

[1] pp. 108-120, Rollo, L-16379.

[2] p. 121, *ibid*.

[3] G.R. No. L-16379, 18 SCRA 1076 (1966).

[4] p.148, Rollo, L-16379.

[5] p. 177, *ibid*.

[6] Resolution, p. 208, Rollo of G.R. No. L-16379.

[7] T.s.n., October 24, 1973, pp. 5-6.

[8] T.s.n., April 25, 1975, pp. 566-567.

[9] p. 90, Rollo.

[10] p. 91, *ibid*.

- [11] p. 98, *ibid.*
- [12] T.s.n., July 9, 1958, p. 93; July 10, 1958, pp. 23-24.
- [13] T.s.n., *id.*, pp. 27-28.
- [14] T.s.n., July 9, 1958, pp. 93 and 101.
- [15] p. 207, Rollo of G. R. No. L-16379.
- [16] Decision, G.R. No. L-16379, 18 SCRA 1079-1080.
- [17] T.s.n., December 18, 1958, pp. 221-239, Vol. I; December 19, 1958, pp. 545-623; December 20, 1958, pp. 277-322, Vol. II.
- [18] Exhibit "6-A", p. 1725-1726, Original Record, Vol. III.
- [19] T.s.n., October 1, 1974, pp. 320-364.
- [20] T.s.n., October 3, 1974, p. 102.
- [21] T.s.n., *ibid.*, p. 108.
- [22] T.s.n., *ibid.*, p. 113.
- [23] Decision, G.R. No. L-16379, 18 SCRA 1079.
- [24] p. 120, Rollo, G.R. L-16379.
- [25] T.s.n., January 21, 1974, pp. 403-455.
- [26] T.s.n., January 23, 1974, pp. 472-485.
- [27] Decision, pp. 29-30, Rollo, pp. 36-37.
- [28] Decision, pp. 14-15, Rollo, pp. 21-22.
- [29] T.s.n., February 26, 1959, p. 632, Vol. I.
- [30] pp. 145-146, Appellant's Brief.
- [31] T.s.n., April 25, 1975, pp. 569-621.
- [32] Decision, p. 26, Rollo, p. 33.
- [33] T.s.n., January 21, 1974, pp. 421-422, T.s.n., January 23, 1973, p. 468.
- [34] T.s.n., April 23, 1975, pp. 186-187.
- [35] *People vs. Castelo, et al.*, 11 SCRA 193 (1964).
- [36] p. 153, Appellant's Brief.
- [37] pp. 140; 144, Rollo and in L-16379, p. 197.
- [38] Temporary Rollo, G.R. No. L-49044.
- [39] T.s.n., October 24, 1973, pp. 5-17.
- [40] pp. 4-5, Appellant's Brief.

[41] People vs. Ubiña, et al., 97 Phil. 526 (1955).

[42] p. 91, Rollo.

[43] T.s.n., April 25, 1975, p. 597.

[44] T.s.n., April 25, 1975, pp. 531-535.

[45] T.s.n., *ibid.*, p. 536.

[46] p. 117, Appellant's Brief.

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