

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAMIANO AGGIHAO, ACCUSED-APPELLANT.

G.R. No. 104725. March 10, 1994

Ponente: PUNO, J.

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PUNO, J.:

In an Information,[1] dated July 21, 1989, DAMIANO AGGIHAO was charged with ARSON before the Regional Trial Court (Branch 14) of Lagawe, Ifugao,[2] allegedly committed as follows:

"That on or about the 28th day of August, 1988 at Lagawe, Ifugao Province, and within the jurisdiction of the Honorable Court, the accused did then and there wilfully, unlawfully and feloniously, set fire to the inhabited house and dwelling owned by Antonio Eheng thereby causing the complete destruction of the house to the damage and prejudice of the said owner in the amount of Thirty Thousand (P30,000.00) Pesos."

"CONTRARY TO LAW."

Upon his arraignment on December 5, 1989, accused-appellant pleaded not guilty and underwent trial.

These are the facts:

Spouses Betty Eheng and Antonio Eheng were former residents of Lona, Lagawe, Ifugao. They had a typical native house, with an area of, more or less, six meters by ten meters. The walls were made of sawali; the roof of cogon with some G.I. sheets; and the floor of hardwood. At the back of their house was a pigpen. Unfortunately, on August 28, 1988, the house was burned down.

Carolyn Eheng, a ten-year old daughter of Antonio and Betty Eheng, was in the premises of their house in the morning of August 28, 1988. She was playing and eating pomelo when accused Damiano Aggihao arrived. The accused asked her the whereabouts of her parents. Innocently, she told him that her mother went to the "kaingin" while her father was out selling "ice-buko."

Accused then told her: "When your father and mother arrive home, tell them that they will leave this house because I will destroy it." He ordered her to fetch her younger sister who was then inside the house. She obeyed.

Thereafter, accused got hold of a hammer and "gas". He went to the pigpen and smashed its roof. As the pigs scampered away, he set the pigpen on fire using the cogon grass he had gathered.

Accused then hit the roof of their house with a piece of wood until it collapsed. He gathered some of the fallen roof's cogon grass and scattered it on the foot of the house's post. Again, he set the cogon grass on fire. Carolyn could only stare. She saw the post of their house turn ember. Helpless, she proceeded to the house of her aunt Lourdes Rasote in Lagawe proper, some fifty meters away from theirs. She recounted the incident to her aunt Lourdes. It was then about noontime.

Betty Eheng left their "kaingin" in the afternoon of August 28, 1988. On her way home, she noticed smoke emitting from their house. As she went nearer, she saw the burning pigpen and the accused Damiano Aggihao.

The accused was gathering cogon grass which he placed beside the post of their house. From a 4 x 4 bottle on his hand, he poured something on the cogon and put it on fire. Thereafter, he left.

Betty tried to save their properties. Hurriedly, she extinguished the flame on the post of their house. The pigpen, however, had been razed down. She next searched for her children. She found them in the house of her sister-in-law, Lourdes Rasote. They decided to stay temporarily in the house of Lourdes the whole afternoon.

Antonio Eheng had no inkling of the burning of their house. At around five o'clock in the afternoon after a day's work, he headed for home. He was walking near the town hall of Lagawe when policeman Bonifacio Bogbog advised him not to proceed to their house. The policeman told him: "Please don't go home yet because your sister came to the (police) Station and informed us that Aguihao (sic) went there and requested the children to go out and then burned the house and he destroyed the pig pen (sic)."[3] He went to his sister's house where he met his crying children. Their children pleaded: "Daddy, let us not go home to Lona because Aguihao came and let the children go out of the house, and destroyed the pigpen and burned the house." He followed their plea.[4]

Later in the evening, Antonio asked his wife Betty to retrieve the blankets from their house. She obliged and as she was approaching their house, she saw a man moving in its premises. The mysterious man lighted a match, and their house went into flame. The flare, however, illuminated the face of the man whom she recognized as accused Aggihao. Accused retreated when he saw that the house was already on fire. She then rushed back to her sister-in-law's house in Lagawe. Trembling, she narrated what she saw. Antonio was furious. Her sister, however, advised them to keep calm and let government handle the situation. For their own safety, they did not report to the authorities that same evening.

The following morning, or on August 29, 1988, Antonio and Betty Eheng reported the incident to the authorities. Their sworn statements[5] were taken by Patrolman Clemencio Kimayong and Corporal Gregorio Dangayo, Jr. On the other hand, Carolyn gave her sworn statement the following day.

The foregoing facts were the subject of testimonies of Antonio, Betty and Carolyn. Betty and Antonio Eheng further said that accused Damiano Aggihao burned their house because accused was claiming the land occupied by their house. Accused allegedly insisted that he bought it from a certain Agnes Gawi. The spouses, on the other hand, claimed that the land is owned by Antonio's grandmother and that the burned house was built a long time ago by their ancestors. Considering its age, the spouses valued their house at thirty thousand pesos (P30,000.00).

Patrolman Bonifacio Bogbog corroborated the testimony of Antonio Eheng that he advised the latter not to proceed to Lona so as not to further aggravate the situation.

The defense was anchored on alibi.

Accused Damiano Aggihao, Administrative Officer of the Tinoc District Hospital of the Department of Health (DOH), claimed that from August 28, 1988 until September 1, 1988, he was on official business at the DOH-Regional Health Office No. 2 in Tuguegarao, Cagayan. In support of his alibi, he submitted the Visitors' Logbook[6] of said regional health office. The fifth line of pages 48 and 49 thereof showed the following handwritten data:

"DATE NAME x x x TIME IN / OUT "

8/28/88 Damiano Aguihao 2:00 P.M./ 8:00 A.M.

Accused Damiano Aggihao also submitted an unnumbered Special Order,[7] dated August 19, 1988, issued by German A. Mabbayad, OIC-Chief of Hospital, directing him to travel to the RHO No. 2 in Tuguegarao, Cagayan. Accused, further, presented his Itinerary of Travel,[8] dated September 7, 1988, and a Certificate of

Appearance,[9] dated August 31, 1988, signed by Records Officer Basilio Molina.

His story was corroborated by defense witnesses Domingo Bat-tong and Dr. German Mabbayad.

Witness Domingo Bat-tong testified that on August 28, 1988, he was the security guard on duty when Damiano allegedly came to the RHO. Following the standard procedure of the regional office, he claimed that, in his presence, Damiano Aggihao affixed his name on the Visitors' Logbook opposite the date August 28, 1988. Accused indicated in the logbook that he would follow-up official matters. The security guard further averred he saw the accused in the dormitory from August 28 until August 30, 1988. On September 1, 1988, he allegedly saw the accused in the Records Section of the Regional Office.

For his part, Dr. Mabbayad testified that he issued the unnumbered Special Order dated August 19, 1988. He also identified his signature on the Itinerary of Travel which was submitted by accused Aggihao for reimbursement purposes.

After trial, accused Aggihao was found guilty as charged. The relevant portion of the trial court's Decision,[10] dated December 23, 1991, is as follows:

"The pro and con in the case at bar having been passed upon, and finding in the light of the evidence and positive testimony of, and the positive identification of the accused as the perpetrator of the crime by the eye witnesses for the prosecution, the Court holds that the prosecution has proven its case beyond reasonable doubt, and the defense of alibi interposed by the accused implying the impossibility of his presence at the scene of the crime on the day of its alleged commission as he was in Tuguegarao, Cagayan, about 250 kilometers away from Lona, Lagawe, Ifugao, on August 28, 1988 is not supported by competent and convincing evidence.

"x x x.

"Applying the xxx provision of Presidential Decree No. 1613, the imposable penalty is Reclusion Temporal to Reclusion Perpetua, and considering the attendance of special aggravating circumstance in the commission of the crime under Section 4, paragraph 3 thereof, as established by the uncontradicted and unrebutted evidence for the prosecution to the effect that the accused burned the house of the private complainant, Antonio Eheng, motivated by his desire to drive them away from the land where it is erected due to the misunderstanding between the accused and the private complainant over the said land, which is allegedly bought by the accused from Mrs. Agnes Gawi, which property is maintained by the Ehengs, the owner of the dwelling that was burned on the day in question, which circumstance constrained the Court to impose the maximum penalty prescribed by Section 3 of Presidential Decree No. 1613 as mandated by Section 4, paragraph 3 thereof.

"WHEREFORE, premises considered, the Court hereby sentence the accused Damiano Aguihao (sic), to suffer the penalty of imprisonment the duration of which is Reclusion Perpetua, and to indemnify the owner of the house Antonio Eheng in the sum of Thirty Thousand (P30,000.00) Pesos representing civil liability. Cost de officio.

"SO ORDERED."

Aggrieved, accused appealed to this Court. Accused contends that the trial court erred:

"1. In convicting the accused-appellant relying heavily and assessing as fully credible the testimonies of Antonio Eheng, Betty Eheng, and Carolyn Eheng, despite the apparent and evident close relationship of said witnesses which is that of husband, wife, and daughter, respectively, and notwithstanding the fact that their testimonies are loaded with substantial contradictions and inconsistencies;

"2. In failing to appreciate and consider in favor of accused-appellant the well established and documented defense of alibi interposed by appellant.

“3. In imposing the penalty of Reclusion Perpetua despite the absence of clear proof of the attendance of a special aggravating circumstance in the commission of the crime charged.”

The appeal hinges on the credibility of the prosecution witnesses vis-a-vis the defense witnesses. Corollary thereto, accused assails the trial court decision for rejecting his alibi which was duly supported by documentary evidence. He claims that Dr. German Mabbayad and Domingo Bot-tong were unbiased witnesses.

We affirm the judgment of conviction.

The accused has been positively identified by two (2) witnesses as the arsonist. Ten (10) year old Carolyn saw him as he placed cogon on the post of their house and set it on fire.[11] Carolyn also saw him when he burned the pigpen of their house. Similarly, Betty Eheng saw the accused set to flame what remained of their house in the evening of August 28, 1988 when she returned there to retrieve their blankets. Even assuming, for the sake of argument, that Betty Eheng did not actually see the accused on this occasion, still, the accused cannot escape liability for when he set the house on fire in the afternoon or noon of August 28, 1988, he already consummated the crime of arson.

The defense contends that the testimonies of Carolyn Eheng and Betty Eheng, vary as to the time when the pigpen was allegedly burned by the accused. Accused points out that Carolyn declared that the burning took place in the morning while Betty claimed it happened in the afternoon. Thus, the defense suggests that the arson story was fabricated by the Eheng family to get rid of accused Aggihao as the latter was claiming ownership over their land. The alleged inconsistency deserves scant consideration and would not affect the judgment of conviction.

It is far fetched for Carolyn to fabricate the story against accused Aggihao as her testimony is replete with minutiae of the burning incident. It is difficult for her to concoct these details considering her tender age and her lack of knowledge of the misunderstanding between her parents and Aggihao. She testified as follows:

FISCAL:

Q: Please tell the court what happened in the morning of August 28, 1988?

CAROLYN:

A: When we were playing and at the same time eating pomelo, Damiano Aggihao arrived.

Q: After he arrived, what did he do?

A: He came near me and asked where did my mama and daddy go.

Q: And what did you tell him?

A: I told him that my father went to sell ice buko while my mama went to the kaingin.

Q: After he gave you that answer what else did he tell you?

A: He told me, "when your father and mother arrive home, you tell them that they will leave this house because I will destroy it."

Q: After telling that to you, what else did he do?

A: He told me that I will go to fetch that child in our house.

Q: After telling you that, what did you do?

A: I went to fetch the child.

Q: After bringing out the child from your house, what else happened?

A: He took hold of a hammer and gas and went to the pig pen (sic) and cut into pieces the roof and went to get some cogon then after that he drove away the pigs and started to light the sty.

Q: After setting fire that pigpen, what happened next?

A: He hit the roof of the house with a piece of wood which made the roof fall.

Q: After hitting the roof with a piece of wood, the roof fell?

A: Yes.

Q: Whose house is that which Damiano Aggihao hit?

A: That is our house.

Q: And after hitting the roof of your house with a piece of wood, what did you do?

xxx

A: He gathered the cogon that fell from the roof and brought to where the post of the house is and set fire on the cogon while we proceeded to the Lagawe proper.

Q: What happened to the post of your house when accused set fire on that cogon where the posts of your house were standing?

A: There was ember on the post.

Q: And after noticing ember on the post which accused set on fire, what else did you do?

A: We were looking at it and afterwards, we started to go towards Lagawe proper.

Q: Upon reaching Lagawe proper, I informed my aunt what happened to the house.

COURT:

Q: What did your aunt do if she did anything?

A: She advised us to stay there in their house.

(TSN, December 17, 1990, pp. 29-31).

Carolyn repeated her story to her aunt at around noontime of August 28, 1988. The trial court believed her. We too, believe her. For her part, Betty testified she left the kaingin in the afternoon. Thus, she was unable to see who actually burned the pigpen.[12] The testimony of Betty did not therefore, contradict the testimony of her daughter.

The defense further insinuates that the Ehengs had a hand on the arson. It cited two reasons: they did not immediately report the incident to the authorities, and the Eheng family planned to pass that night at the house of Lourdes in Lagawe proper. Had they not done so, accused concludes, the arson could have been prevented. We find these arguments untenable.

The Ehengs are not well off. Their house was a modest one. Be that as it may, we find it unbelievable that the Ehengs would burn their own house for the flimsy reasons surmised by accused. On the contrary, the records show that it was the accused who nurtured a grudge against the Ehengs. He claimed ownership over the land occupied by the Eheng family. We share the observation made by the Solicitor General that "it is highly unnatural and illogical for the Eheng family to have put their own house on fire since proof of their actual occupancy would

be obliterated (and) thereby weaken their claim on their land."

We find no reason to depart from the settled rule that "this Court accords great respect to the credibility of witnesses as weighed by the trial courts for they are 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." [13] Nor should the relationship of the witnesses for the prosecution diminish their credibility. Time and again, we have ruled that family relationship does not by itself render a witness' testimony inadmissible or devoid of probative value. [14]

The documentary evidence presented by accused Damiano Aggihao to prove his defense of alibi will not exculpate him. It is not fool-proof. The visitors logbook submitted by witness Domingo Bat-tong shows that at around two o'clock in the afternoon of August 28, 1988, accused was at the Regional Health Office No. 2 of Cagayan, Tuguegarao, "to follow-up official matters." It cannot be disputed that August 28, 1988 was a Sunday. We take judicial notice that government offices do not transact official business on Sundays. Thus, we seriously doubt the truthfulness of the allegation of the accused that he was in Tuguegarao, Cagayan, on the date the arson was committed.

Moreover, the visitors' logbook reveals that it did not reflect the accurate list of visitors of the regional office, as shown by the fact that there were no visitors registered between the dates June 21, 1988, and August 28, 1988. By the nature of its function as people oriented, the Department of Health's regional office is a busy one. During the hearing, the security guard Bat-tong who testified he saw the accused in the regional office, from August 28, 1988 until September 1, 1988, failed to explain the absence of entry of visitors for the period mentioned in the said logbook.

The demeanor of Bat-tong as a witness did not reflect sincerity. We note the sharp observation of the trial court, viz:

"xxx on cross-examination the witness Battung was evasive trying to be smart xxx

"xxx

"The answers of the witness xxx reveals (sic) the falsity of his testimony, for it is highly incredible that he does not know whether or not their Office had another Log Book for visitors other than Exhibit "3", aggravated by his statement that he cannot recall if there were visitors during the whole month of July, 1988 which is unbelievable considering that he admitted he was on duty during the whole month of July, 1988, and it is the procedure as testified to by him to let the visitors register in the Log Book. It is noteworthy to be stated here, that it took the witness for quite sometime to answer as he got nervous and blushing until he finally broke down and stated "he cannot recall." The Court, observing keenly the deportment of the witness on the witness stand, is of the considered view that he was being bothered by his conscience xxx." (emphasis ours)

(Decision, December 23, 1991, pp. 25-26).

Accused cannot also capitalize on the special travel order issued in his favor. This Order is mere proof that he was authorized to travel to Tuguegarao. It does not prove that accused, in fact, went to Tuguegarao as directed by the Chief of Hospital, Dr. German Mabbayad. In his testimony, the good doctor himself went no further than to identify the due execution and authenticity of the Special Order he issued. He admitted he did not ascertain if the accused indeed went to Tuguegarao.

The Itinerary of Travel presented by the accused is not also beyond question. It is self-serving. Dr. Mabbayad testified that it was prepared by the accused himself.

In the light of the circumstances in field, we hold that the guilt of accused Damiano Aggihao had been established

beyond reasonable doubt.

We now come to the third issue on the propriety of the imposition of the penalty of reclusion perpetua.

Accused was charged and penalized under Section 3 (2), in relation to Section 4, of Presidential Decree No. 1613, which provide:

"SEC. 3. Other Cases of Arson. - The penalty of Reclusion Temporal to Reclusion Perpetua shall be imposed if the property burned is any of the following:

"xxx.

"2. Any inhabited house or dwelling;

Sec. 4. Special Aggravating Circumstances in Arson.- The penalty in case of arson shall be imposed in its maximum period:

"xxx

"3. If the offender is motivated by spite or hatred towards the owner or occupant of the property burned;

Accused urges that the special aggravating circumstance of spite or hatred was erroneously considered by the trial court as it was not alleged in the information. Hence, he insists that the penalty should not be imposed in the maximum period. This is incorrect.

In *People vs. Arbolante*,^[15] we held: "The elements of the crime of arson under section 3 of P.D. No. 1613 xxx simply include: (1) that there is intentional burning; and (2) that what is intentionally burned is an inhabited house or dwelling."

The prosecution established the fact of intentional burning of an inhabited house. The special aggravating circumstance of spite, albeit not alleged in the information, may be proved during the trial, in the same manner that "a generic aggravating circumstance under Article 14 of the Revised Penal Code may be proved during trial over the objection of the defense and may be appreciated in imposing the penalty."^[16] The reason for applying the same rule is obvious: the special aggravating circumstance under PD 1613, just like the generic aggravating circumstance, does not change the character of the offense charged. It only guides the court in imposing the proper penalty. The case of *People vs. Gadiano*^[17] relied upon by accused Aggihao, refers to the qualifying circumstances of evident premeditation and treachery. As they were not alleged in the information, they can not be considered against the accused. If at all, the same can be treated only as generic aggravating circumstances. The rationale for this rule is that a qualifying circumstance changes the nature of the offense. In the case at bench, the presence of the special aggravating circumstance did not change the nature of the offense charged.

We also note that during the trial, accused did not object when the spouses Eheng testified on the motive behind the burning of their house. During the cross-examination of Antonio and Betty Eheng, the defense counsel even propounded questions pointing to Agnes Gawi as the alleged owner of the land in dispute. Consequently, the trial court did not err when it appreciated against the accused the special aggravating circumstance that he was motivated by spite or hatred towards the Eheng family when he burned their inhabited house. The maximum penalty of reclusion perpetua was, therefore, correctly imposed.

WHEREFORE, premises considered, the judgment of conviction appealed from is AFFIRMED in toto. Accused DAMIANO AGGIHAO is sentenced to suffer the penalty of reclusion perpetua pursuant to Section 3 (2), in relation to Section 4, of Presidential Decree No. 1613. He is also directed to pay the spouses Betty and Antonio Eheng, the sum of thirty thousand pesos, (P30,000.00) representing the value of the house as alleged in the

information. With costs against appellant.

"SO ORDERED."

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

- [1] Original Records, p. 1.
- [2] Case docketed as Criminal Case No. 706.
- [3] TSN, March 5, 1991, p. 4
- [4] Ibid, pp. 6-7.
- [5] See Exhibit "1" (Sworn Statement of Betty Eheng) and Exhibit "A" (Sworn Statement of Antonio Eheng).
- [6] See Exhibits "3-1" and "3-1-A."
- [7] Marked as Exhibit "4."
- [8] Marked as Exhibit "5."
- [9] Marked as Exhibit "6."
- [10] Penned by Presiding Judge Segundo B. Catral.
- [11] TSN, December 17, 1990, pp. 29-30.
- [12] Ibid, p. 14.
- [13] People vs. Magallanes, G.R. No. 89036, January 29, 1993, 218 SCRA 109, 113.
- [14] People vs. Hasiron, G.R. 100797, October 15, 1992, 214 SCRA 586, 594.
- [15] G.R. 96713, October 17, 1991, 203 SCRA 85, 97.
- [16] AQUINO, The Revised Penal Code, 1987 edition, Vol. 1, p. 301.
- [17] G.R. L-31818, July 30, 1982, 115 SCRA 559.

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