

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AVELINO GAZMEN AND ELEUTERIO GAZMEN (ACQUITTED), ACCUSED.
AVELINO GAZMEN, ACCUSED-APPELLANT.**

G.R. No. 110034. August 16, 1995

Ponente: MELO, J.

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MELO, J.:

Avelino and Eleuterio Gazmen were charged with the crime of Arson, under Section 3, No. 2, in relation to Section 4, No. 3 and 4 of Presidential Decree No. 1613, in an Information reading as follows:

That on or about November 5, 1989, in the Municipality of Baggao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Avelino Gazmen y Maggay and Eleuterio C. Gazmen, conspiring together and helping each other, with malice aforethought, with intent to destroy and to cause damage and motivated by hatred and resentment which they entertained against Rosemarie T. Galamay, did then and there wilfully, unlawfully and feloniously set fire on the house of the said Rosemarie T. Galamay knowing that the said house was occupied by the said Rosemarie T. Galamay and her family at that time, thereby setting the said house into flames and partially razing it to ashes, to the damage and prejudice of the said owner, Rosemarie T. Galamay in the amount of TWENTY THOUSAND (P20,000.00) PESOS, Philippine Currency.

CONTRARY TO LAW.

(p. 3, Rollo.)

After trial, the lower court convicted Avelino Gazmen but acquitted Eleuterio Gazmen in a decision dated February 23, 1993, the dispositive portion of which reads as follows:

WHEREFORE, finding the accused Avelino Gazmen guilty beyond all reasonable doubt of the crime of arson penalized under Section 3, P.D. No. 1613, is hereby sentenced to reclusion perpetua; to pay Rosemarie Galamay P140.00 as actual damages, and to pay the costs of the suit. Eleuterio Gazmen is hereby acquitted for insufficiency of evidence.

(pp. 19-20, Rollo.)

Avelino Gazmen has now interposed the instant appeal upon his perception, expressed in the most general of statements in his lone assigned error, that the court below erred in finding him guilty beyond reasonable doubt of the crime charged.

The facts of the case, as correctly summarized by the Office of the Solicitor General and as borne out by the evidence, are as follows:

At about 3 o'clock in the afternoon of November 5, 1989, Rosemarie Galamay, a resident of Barsat, Baggao, Cagayan, was at home resting in the company of her husband Arnold Galamay and their two children. Sensing

that there was trouble going on outside, she peeped through the window and saw Juanito Macasaddu arguing with appellant. The protagonists were around five (5) meters away from each other, with their fathers, Manuel Macasaddu and Eleuterio Gazmen, standing near them. (pp. 2-3, tsn., June 10, 1991)

The altercation became more heated such that Juanito and appellant traded sling shots but in the process, it was Eleuterio who got hit on the forehead.

Appellant then ran home closely followed by his father while the Macasaddus just stayed behind. Appellant returned to the scene, holding a handgun, while his father carried a stone and a pipe. Father and son gave chase to the Macasaddus who sought refuge inside the house of Rosemarie. (pp. 3-4, Ibid.)

Not wanting to be involved, Rosemarie asked the Macasaddus to get out of her house but Juanito told her that they would get out as soon as the Gazmens stopped chasing them. The Gazmens, meanwhile, stood guard outside. Later, appellant opened the window and upon seeing Juanito, he shot the latter, hitting him at the left arm. This prompted Rosemarie to get out and call for the assistance of the barangay captain. But she was stopped by the Gazmens. Appellant poked a gun at her and shouted, "you are also one of them." Rosemarie replied, "No pare, that is why I am proceeding to the house of the barangay captain so that he will be the one to get those people outside from my house." (pp. 4-5, Ibid.)

Appellant then left and returned with a plastic container filled with gasoline. He poured the contents thereof on the rooftop of Rosemarie's house and lit it up. However, the fire was immediately put out. (p. 15, tsn., Ibid.) Appellant went around the house and again set on fire the eaves of the roof. Thereafter, he threw the container on top of the roof, with its gasoline contents spilling all over. (pp. 10-11, tsn., Ibid.)

The people around could not stop appellant from burning the house since the latter menacingly pointed his gun at those who wanted to help the Galamays. Eleuterio made no effort to stop his son from burning the house, but even egged him on by shouting "you burn them." (p. 12, tsn., Ibid.) Rosemarie frantically asked the Macasaddus to get out of the house which was already burning. Juanito and Manuel jumped out of the window and they were chased by the Gazmens. (p. 6, tsn., Ibid.)

Rosemarie shouted for help and some of her neighbors responded by putting out the fire. They climbed the roof and removed the top roof to prevent the fire from spreading. (p. 11, tsn., Ibid.)

(pp. 2-5, Appellee's Brief.)

Accused-appellant makes an issue of the fact that the judge who penned the decision was not the judge who heard and tried the case and concludes therefrom that the findings of the former are erroneous. Accused-appellant's argument does not merit a lengthy discussion. It is well-settled that the decision of a judge who did not try the case is not by that reason alone erroneous.

It is true that the judge who ultimately decided the case had not heard the controversy at all, the trial having been conducted by then Judge Emilio L. Polig, who was indefinitely suspended by this Court. Nonetheless, the transcripts of stenographic notes taken during the trial were complete and were presumably examined and studied by Judge Baguilat before he rendered his decision. It is not unusual for a judge who did not try a case to decide it on the basis of the record. The fact that he did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the transcript of their testimonies does not for that reason alone render the judgment erroneous.

(People vs. Jaymalin, 214 SCRA 685, 692 [1992])

Although it is true that the judge who heard the witnesses testify is in a better position to observe the witnesses on

the stand and determine by their demeanor whether they are telling the truth or mouthing falsehood, it does not necessarily follow that a judge who was not present during the trial cannot render a valid decision since he can rely on the transcript of stenographic notes taken during the trial as basis of his decision.

Accused-appellant's contention that the trial judge did not have the opportunity to observe the conduct and demeanor of the witnesses since he was not the same judge who conducted the hearing is also untenable. While it is true that the trial judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision since the latter can also rely on the transcribed stenographic notes taken during the trial as the basis of his decision.

(People vs. De Paz, 212 SCRA 56, 63 [1992])

At any rate, the test to determine the value of the testimony of a witness is whether or not such is in conformity with knowledge and consistent with the experience of mankind (People vs. Morre, 217 SCRA 219 [1993]). Further, the credibility of witnesses can also be assessed on the basis of the substance of their testimony and the surrounding circumstances (People vs. Gonzales, 210 SCRA 44 [1992]). A critical evaluation of the testimony of the prosecution witnesses reveals that their testimony accords with the aforementioned tests, and carries with it the ring of truth and perforce, must be given full weight and credit.

The attempt of accused-appellant to impugn the testimony of the prosecution witnesses is feeble and inconsequential. Accused-appellant points out that the declaration of Danilo Bautista to the effect that Eleuterio Gazmen was armed with a gun is inconsistent with the testimony of Rosemarie Galamay that Eleuterio was armed only with a pipe and a stone. Further, accused-appellant likewise directs our attention to the testimony of Danilo Bautista that the Gazmens did not fire a single shot which contradicts the testimony of Rosemarie Galamay that accused-appellant fired his gun and hit the left arm of one Juanito Macasaddu. The alleged inconsistencies are not material to the offense charged and of which accused-appellant was found guilty.

Danilo Bautista testified that he witnessed the events while he was standing in front of the house of one Eddie Velancio which, according to him "is not very near the house of Rosemarie Galamay" (p. 15, tsn., May 16, 1991). At such a distance, it was not improbable for him to receive a false impression of the weapon carried by Eleuterio, especially so in the agitation of an impending tragedy or probable bloodshed. It is to be expected that the testimony of witnesses regarding the same incident may be inconsistent in some aspects because different persons may have different impressions or recollection of the same incident.

We have also said, no less frequently, that inconsistencies among witnesses testifying on the same incident may be expected because different persons may have different impressions or recollections of the same incident. One may remember a detail more clearly than another. Witnesses may have seen that same detail from different angles or viewpoints. That same detail may be minimized by one but considered important by another. Nevertheless, these disparities do not necessarily taint the witnesses' credibility as long as their separate versions are substantially similar or agree on the material points.

(People vs. Fabros, 214 SCRA 694, 697-698 [1992])

The most honest witnesses may make mistakes sometimes but such innocent lapses do not necessarily impair their credibility; the testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein (People vs. Dabon, 216 SCRA 656 [1992]). More so, as in the case at bench where the inconsistencies in the testimony of the witnesses concern minor details, having nothing to do with the integrity of the witness (People vs. Ocampo, 218 SCRA 609 [1993]), and may be disregarded if they do

not impair the essential veracity of his testimony (People vs. Colcol, Jr., 219 SCRA 107). The main substance of the testimony of Danilo Bautista that he saw accused-appellant set fire to the house of Rosemarie Galamay remains untouched and unaffected by the alleged inconsistency in his testimony and, therefore, must be accepted.

A reading of the testimony of Danilo and Rosemarie readily discloses that the further contention of accused-appellant that the testimony of Rosemarie that accused-appellant fired at Juanito Macasaddu, hitting his left arm is inconsistent with the testimony of Danilo that accused-appellant did not fire a single shot, is totally bereft of evidentiary support. It is obvious that their testimony refer to different time frames of the incident. The testimony of Danilo pertains to the time when the accused were chasing the Macasaddus.

Danilo Bautista

Q -

Were they pointing their firearms at the time they were chasing the two?

A -

Yes, sir.

Q -

They did not fire any single shot at the two Juanito and Manuel?

A -

No, sir. (p. 16, tsn.,)

On the other hand, the testimony of Rosemarie relates to the time when the Macasaddus were taking refuge in the house of Rosemarie.

Rosemarie Galamay

Q -

While the Macasaddus were inside your house, what else transpired, if any?

A -

Avelino opened our window and he shot Juanito Macasaddu, sir.

Q -

And what part of the body of Juanito Macasaddu what shot?

A -

Left arm, sir (p. 4, tsn., June 10, 1991).

Accused-appellant's defense that the Galamays fabricated the charges against him and his father in order that the criminal charges he filed against Arnold Galamay (the husband of Rosemarie) for arson be settled, is manifestly flimsy. The following observation of the trial court rightly disposes of said defense.

The assertion of Avelino Gazmen and Eleuterio Gazmen that they were implicated by the Galamays was because they (Galamays) would want the criminal case filed against them settled, is to the mind of the court far-fetched. It is so because the Gazmens were the first one who were charged by the Galamays of Arson. The burning of the house of the Galamays happened at 3 o'clock in the afternoon of November 5, 1989, while the burning of the

house of Avelino happened in the evening at around 9 o'clock. When the Galamays executed their statements on November 6, 1989, before the Baggao INP, the culprits who burned the house of Avelino Gazmen were not yet known. It was only on November 20, 1989, that Avelino Gazmen and Eleuterio Gazmen gave their statements to the Baggao INP.

(p. 17, Rollo.)

There is no reason to withhold full faith and credit to the testimony of the prosecution witnesses. Accused-appellant having failed to prove any improper motive on the part of these witnesses for testifying against him, their testimony shall be entitled to full faith and credit (*People vs. Tolentino*, 218 SCRA 337 [1993]). Considering that Rosemarie was the offended party, as it was her house set afire by accused-appellant, her natural interest in securing the conviction of the guilty would deter her from implicating persons other than the culprit otherwise the latter would thereby escape punishment and gain immunity (*People vs. Villalobos*, 209 SCRA 304).

We need not tarry long on the defense of alibi put up by accused-appellant that he accompanied his father to a hospital for treatment at the time of the commission of the crime. Alibi cannot prevail over the positive identification of the accused by the prosecution witnesses (*People vs. Suits*, 220 SCRA 419). Accused-appellant was positively identified by Rosemarie Galamay and Danilo Bautista as the culprit who set fire to the house Rosemarie. Moreover, Eleuterio Gazmen, accused-appellant's father, categorically declared on the witness stand that he was accompanied by one Canor Reboredo when he was treated at the hospital.

Q.

Who was your companion when you went to have your injury treated?

A.

Canor Reboredo, one of the councilmen in that Barangay and Sgt. Tingkay.

(p. 5, tsn., March 31, 1992)

Finally, accused-appellant presses forth the argument that, since his co-accused, his father Eleuterio, was acquitted for insufficiency of evidence, he should likewise be acquitted. Accused-appellant's argument is unsound. The evidence against him is overwhelming. Two prosecution witnesses, Rosemarie Galamay and Danilo Bautista, positively and categorically testified that accused-appellant poured gasoline on the roof of the house of Rosemarie, and thereafter ignited it. On the other hand there is no evidence that Eleuterio participated in the act of burning the house of the Galamays.

The trial court not having committed any of the errors imputed to it, the appealed decision should be upheld.

WHEREFORE, the decision appealed from is hereby **AFFIRMED**, with costs against accused-appellant.

SO ORDERED.

Feliciano, Acting Chief Justice, Romero, and Vitug, JJ., concur.

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