

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALAMADA MACABANDO, APPELLANT.

G.R. No. 188708. July 31, 2013

Ponente: BRION, J.

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BRION, J.:

This is an appeal filed by appellant Alamada Macabando assailing the February 24, 2009 decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00208-MIN. The CA decision affirmed in toto the August 26, 2002 judgment[2] of the Regional Trial Court (RTC), Branch 25, Cagayan de Oro City, finding the appellant guilty beyond reasonable doubt of destructive arson, and sentencing him to suffer the penalty of reclusion perpetua.

THE CASE

The prosecution's evidence showed that at around 4:00 p.m. on December 21, 2001, the appellant broke bottles on the road while holding a G.I. pipe, and shouted that he wanted to get even ("manabla ko").[3] Afterwards, he uttered that he would burn his house.[4]

At 6:35 p.m. of the same day, Cornelio Feliciano heard his neighbors shout that there was a fire. When Cornelio went out of his house to verify, he saw smoke coming from the appellant's house. He got a pail of water, and poured its contents into the fire.[5] Eric Quilantang, a neighbor whose house was just 10 meters from that of the appellant, ran to the barangay headquarters to get a fire extinguisher. When Eric approached the burning house, the appellant, who was carrying a traveling bag and a gun, told him not to interfere; the appellant then fired three (3) shots in the air.[6] The appellant also told the people around that whoever would put out the fire would be killed.[7]

Upon hearing the gunshots, Cornelio hurriedly went home to save his nephews and nieces.[8] Eric also returned to his house to save his belongings.[9]

Fire Officer (FO) II Victor Naive and FOI Reynaldo Maliao conducted a spot investigation of the incident, and concluded, among others, that the fire started in the appellant's house; and that it had been intentional.[10] Barangay Chairman Modesto Ligas stated that the fire gutted many houses in his barangay, and that he assisted the City Social Welfare and Development Department personnel in assessing the damage.[11]

The defense, on the other hand, presented a different version of the events.

The appellant declared on the witness stand that he lived in the two-storey house in Barangay 35, Limketkai Drive, which was owned by his sister, Madji Muslima Edemal.[12] He admitted that he felt angry at around 2:00 p.m. on December 21, 2001 because one of his radio cassettes for sale had been stolen.[13] The appellant claimed that he went to sleep after looking for his missing radio cassette, and that the fire had already started when he woke up. He denied making a threat to burn his house, and maintained that he did not own a gun. He added that the gunshots heard by his neighbors came from the explosion of firecrackers that he intended to use during the

New Year celebration.[14]

Lomantong Panandigan, the appellant's cousin, stated, among others, that he did not see the appellant carry a revolver or fire a shot on December 21, 2001.[15] Dimas Kasubidan, the appellant's brother-in-law, stated that he and the appellant lived in the same house, and that the latter was asleep in his room at the ground floor before the fire broke out.[16]

The prosecution charged the appellant with the crime of destructive arson under Article 320 of the Revised Penal Code (RPC), as amended, before the RTC.[17] The appellant pleaded not guilty to the charge on arraignment.[18] In its judgment dated August 26, 2002, the RTC found the appellant guilty beyond reasonable doubt of the crime charged, and sentenced him to suffer the penalty of reclusion perpetua.

On appeal, the CA affirmed the RTC judgment in toto. It gave weight to the RTC's factual findings since these findings were based on un rebutted testimonial and documentary evidence. The CA held that the totality of the presented circumstantial evidence led to the conclusion that the appellant was guilty of the crime charged.

THE COURT'S RULING

We deny the appeal, but modify the crime committed by the appellant and the penalty imposed on him.

Sufficiency of Prosecution Evidence

We point out at the outset that no one saw the appellant set fire to his house in Barangay 35, Limketkai Drive, Cagayan de Oro City. The trial and appellate courts thus resorted to circumstantial evidence since there was no direct evidence to prove the appellant's culpability to the crime charged.

It is settled that in the absence of direct evidence, circumstantial evidence may be sufficient to sustain a conviction provided that: "(a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who has committed the crime. Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused." [19]

In the present case, the following circumstances constitute an unbroken chain that leads to an unavoidable conclusion that the appellant, to the exclusion of others, set fire to his house: first, the appellant, while holding an iron lead pipe, acted violently and broke bottles near his house at around 4:00 p.m. of December 21, 2001; second, while he was still in a fit of rage, the appellant stated that he would get even, and then threatened to burn his own house; third, Judith Quilantang saw a fire in the appellant's room approximately two hours after the appellant returned to his house; fourth, the appellant prevented Cornelio, Eric, and several other people from putting out the fire in his house; fifth, the appellant fired shots in the air, and then threatened to kill anyone who would try to put out the fire in his house; sixth, the appellant carried a traveling bag during the fire; and finally, the investigation conducted by the fire marshals of the Bureau of Fire Protection revealed that the fire started in the appellant's house, and that it had been intentional.

The combination of these circumstances, indeed, leads to no other conclusion than that the appellant set fire to his house. We find it unnatural and highly unusual for the appellant to prevent his neighbors from putting out the fire in his house, and threaten to kill them if they did, if he had nothing to do with the crime. The first impulse of an individual whose house is on fire is to save his loved ones and/or belongings; it is contrary to human nature, reason and natural order of things for a person to thwart and prevent any effort to put out the fire in his burning property. By carrying (and firing) a gun during the fire, the appellant showed his determination to repel any efforts to quell the fire. Important to note, too, is the fact that the appellant carried a traveling bag during the fire

which, to our mind, showed deliberate planning and preparedness on his part to flee the raging fire; it likewise contradicted his statement that he was asleep inside his house when the fire broke out, and that the fire was already big when he woke up. Clearly, the appellant's indifferent attitude to his burning house and his hostility towards the people who tried to put out the fire, coupled with his preparedness to flee his burning house, belied his claim of innocence. Notably, the appellant failed to impute any improper motive against the prosecution witnesses to falsely testify against him; in fact, he admitted that he had no misunderstanding with them prior to the incident.

The Crime Committed

The CA convicted the appellant of destructive arson under Article 320 of the RPC, as amended, which reads:

Article 320. Destructive Arson. - The penalty of reclusion perpetua to death shall be imposed upon any person who shall burn:

- One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, committed on several or different occasions.
- Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to, official governmental function or business, private transaction, commerce, trade, workshop, meetings and conferences, or merely incidental to a definite purpose such as but not limited to hotels, motels, transient dwellings, public conveyances or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and regardless also of whether the building is actually inhabited or not.
- Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.
- Any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service of public utilities.
- Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

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The penalty of reclusion perpetua to death shall also be imposed upon any person who shall burn:

- Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordinance, storehouse, archives or general museum of the Government.
- In an inhabited place, any storehouse or factory of inflammable or explosive materials.

In sum, "Article 320 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." [20]

Presidential Decree (P.D.) No. 1613, [21] on the other hand, currently governs simple arson. Section 3 of this law provides:

Section 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:

- Any building used as offices of the government or any of its agencies;

- Any inhabited house or dwelling;
- Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel;
- Any plantation, farm, pastureland, growing crop, grain field, orchard, bamboo grove or forest;
- Any rice mill, sugar mill, cane mill or mill central; and
- Any railway or bus station, airport, wharf or warehouse. [*italics and emphasis ours*]

P.D. No. 1613 contemplates the malicious burning of public and private structures, regardless of size, not included in Article 320 of the RPC, as amended by Republic Act No. 7659.[22] This law punishes simple arson with a lesser penalty because the acts that constitute it have a lesser degree of perversity and viciousness. Simple arson contemplates crimes with less significant social, economic, political, and national security implications than destructive arson.[23]

The elements of simple arson under Section 3(2) of P.D. No. 1613 are: (a) there is intentional burning; and (b) what is intentionally burned is an inhabited house or dwelling. Both these elements have been proven in the present case. The Information alleged that the appellant set fire to his own house, and that the fire spread to other inhabited houses. These allegations were established during trial through the testimonies of the prosecution witnesses which the trial and appellate courts found credible and convincing, and through the report of the Bureau of Fire Protection which stated that damaged houses were residential, and that the fire had been intentional. Moreover, the certification from the City Social Welfare and Development Department likewise indicated that the burned houses were used as dwellings. The appellant likewise testified that his burnt two-story house was used as a residence. That the appellant's act affected many families will not convert the crime to destructive arson, since the appellant's act does not appear to be heinous or represents a greater degree of perversity and viciousness when compared to those acts punished under Article 320 of the RPC. The established evidence only showed that the appellant intended to burn his own house, but the conflagration spread to the neighboring houses.

In this regard, our ruling in *Buebos v. People*[24] is particularly instructive, thus:

The nature of Destructive Arson is distinguished from Simple Arson by the degree of perversity or viciousness of the criminal offender. The acts committed under Art. 320 of The Revised Penal Code constituting Destructive Arson are characterized as heinous crimes "for being grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society." On the other hand, acts committed under PD 1613 constituting Simple Arson are crimes with a lesser degree of perversity and viciousness that the law punishes with a lesser penalty. In other words, Simple Arson contemplates crimes with less significant social, economic, political and national security implications than Destructive Arson.

The Proper Penalty

Under Section 3, paragraph 2, of P.D. No. 1613, the imposable penalty for simple arson is reclusion temporal, which has a range of twelve (12) years and one (1) day, to reclusion perpetua. Applying the Indeterminate Sentence Law, the penalty imposable should be an indeterminate penalty whose minimum term should be within the range of the penalty next lower in degree, which is prision mayor, or six (6) years and one (1) day to twelve (12) years, and whose maximum should be the medium period of reclusion temporal to reclusion perpetua, or sixteen (16) years and one (1) day to twenty (20) years, taking into account the absence of any aggravating or mitigating circumstances that attended the commission of the crime. Taking these rules into account, we therefore impose on the appellant the indeterminate penalty of ten (10) years and one (1) day of prision mayor, as

minimum, to sixteen (16) years and one (1) day of reclusion temporal, as maximum.

As regards the award of damages, we sustain the lower courts' findings that the records do not adequately reflect any concrete basis for the award of actual damages to the offended parties. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable.[25]

WHEREFORE, the assailed February 24, 2009 decision of the Court of Appeals in CA-G.R. CR HC No. 00208-MIN is AFFIRMED with the following MODIFICATIONS:

(1)

appellant Alamada Macabando is found guilty beyond reasonable doubt of simple arson under Section 3(2) of Presidential Decree No. 1613; and

(2)

he is sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to sixteen (16) years and one (1) day of reclusion temporal, as maximum.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 5-16; penned by Associate Justice Edgardo T. Lloren, and concurred in by Associate Justice Edgardo A. Camello and Associate Justice Jane Aurora C. Lantion.

[2] Records, pp. 453-460; penned by Judge Noli T. Catli.

[3] TSN, January 28, 2002, p. 6.

[4] TSN, March 4, 2002, p. 8.

[5] TSN, January 28, 2002, pp. 8-9.

[6] TSN, February 4, 2002, pp. 8-10.

[7] TSN, March 4, 2002, pp. 7-8.

[8] TSN, January 28, 2002, p. 9.

[9] TSN, February 4, 2002, pp.19-20.

[10] Records, pp. 99-101.

[11] TSN, April 12, 2002, pp. 5-11.

[12] TSN, June 3, 2002, pp. 3-4.

[13] Id. at 7-8.

[14] Id. at 9-11.

[15] TSN, May 2, 2002, p. 8.

[16] Id. at 27-28.

[17] Records, p. 4.

[18] Id. at 12.

[19] See *Buebos v. People*, G.R. No. 163938, March 28, 2008, 550 SCRA 210, 223, citing *People v. Casitas*, G.R. No. 137404, February 14, 2003, 397 SCRA 382.

[20] *People v. Murcia*, G.R. No. 182460, March 9, 2010, 614 SCRA 741, 752.

[21] A Decree Amending the Law on Arson.

[22] *People v. Malngan*, 534 Phil. 404, 443 (2006).

[23] *People v. Soriano*, 455 Phil. 77, 93 (2003).

[24] *Supra* note 19, at 228.

[25] We also point out that there is a discrepancy between the affidavit-complaint of Barangay Chairman Ligtas and the certification issued by the City Social Welfare and Development Department with regard to the names and number of fire victims, and the estimated cost of the damage to their respective properties.

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