

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO SANCHEZ, ACCUSED-APPELLANT.

G.R. No. 74740. August 28, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Appellant, with Juanito Zamora, was charged with the crime of arson in Criminal Case No. D-5402 before Branch XLIV (Dagupan City) of the Regional Trial Court, First Judicial Region, in an Information the accusatory portion of which reads:

X X X

"That on or about November 22, 1982, in the evening, in the barangay of Longos, municipality of Calasiao, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Danilo Sanchez and Juanito Zamora aiding one another and conspiring with two others whose identities are not yet known, did, then and there, wilfully, unlawfully and feloniously (sic) set fire to the residential house of Spouses Elpidio Nepuscua and Julieta Nepuscua worth P50,000.00 known to be occupied at the time.

Contrary to Article 321 of the Revised Penal Code."[1]

Only accused Danilo Sanchez could be served with the warrant of arrest. According to the return indorsement dated 23 June 1983, his co-accused, Juanito Zamora, "could not be located in his indicated address."[2]

Accused entered a plea of not guilty at his arraignment. Trial then proceeded against him with the prosecution presenting as its witnesses Demetrio Matabang, Pedro Parayno, Julieta Nepuscua and Cesar Nepuscua. The lone eyewitness, Mr. Elpidio Nepuscua, could no longer be presented because he died on 13 December 1982.[3] He, however, signed a statement on 24 November 1982 before an investigator of the Integrated National Police of Aguilar, Pangasinan wherein he implicated the accused as the person who burned the house.[4] Upon the other hand, after the trial court denied[5] a Demurrer to Evidence,[6] the defense presented as its witness the accused, Benedicto Mola and Herminigildo Mamaradeo.

On 20 March 1986, the trial court promulgated its decision[7] finding the accused guilty of the crime of Arson as defined under Presidential Decree No. 1613 and sentencing him to suffer the penalty of "reclusion perpetua (life imprisonment)" and to pay Julieta Nepuscua the sum of P50,000.00 representing the value of the house. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds accused Danilo Sanchez guilty beyond reasonable doubt of the crime of Arson as defined by Presidential Decree Number 1613 and considering the presence of the special aggravating circumstance that the offender is motivated by spite or hatred towards the owner or occupant of the property burned and the generic aggravating circumstance of nighttime, without any mitigating circumstance to offset the same, pursuant to Section 3(2) of Presidential Decree Number 1613, hereby sentences accused Danilo Sanchez to serve and suffer the penalty of Reclusion Perpetua (Life Imprisonment), to pay Julieta Nepuscua the sum of

P50,000.00 representing the value of the house that was burned, and to pay the costs.

SO ORDERED."[8]

Undaunted by his defeat and insisting on his innocence, accused immediately appealed the decision to the then Intermediate Appellate Court (now Court of Appeals).[9] The records of the case were thus referred, although erroneously, to the Intermediate Appellate Court on 12 May 1986.[10] The latter forwarded the same to this Court on 5 July 1986.[11]

In the Appellant's Brief,[12] accused imputes upon the trial court the commission of the following errors:

- "1. x x x in not considering the statement of Elpidio (sic) Nepuscua as hearsay evidence.
2. x x x in convicting the accused?appellant by considering the information made by Elpidio (sic) Nepuscua to his wife Julieta Nepusca and his son Cesar Nepuscua as part of the res gestae.
3. x x x in not giving credence to the defense of alibi interposed by the accused.
4. x x x in convicting the accused under the provisions of Presidential Decree No. 1613 considering that the accused was charged under the provisions of Art. 321 of the Revised Penal Code." [13]

The facts are not disputed.

Prior to 22 November 1982, the spouses Elpidio and Julieta Nepuscua were residents of Longos, Calasiao, Pangasinan. They lived in a house valued at P50,000.00. On 21 November 1982, Julieta, her children and three (3) grandchildren were evacuated by her husband to the house of his sister, Filomena Nepuscua, allegedly because the accused and Juanito Zamora were angry with her (Julieta's) husband who reported them to the police authorities for having cut, on 20 November 1982, the bamboo trees on a lot mortgaged to them (Nepuscuas) by Maria Billota, mother of Juanito Zamora. At midnight of 22 November 1982, while in the house of Filomena, Julieta was awakened first by a burst of gunfire and then by the barking of dogs from the direction of their house, which was about 150 meters from Filomena's house.[14] She rushed to the window and saw their house on fire. She woke up their children.[15]

Elpidio and Juanita's only son, Cesar, who had arrived from Manila in the evening that same day and who was also sleeping in the house of Filomena, witnessed the fire after being roused from sleep. He wanted to go to their burning house but his mother prevented him from leaving as he could be harmed by those responsible for the fire. The conflagration lasted for one and one-half (1½) hours. Earlier that evening, he was in their house but he left at about 11:30 o'clock for Filomena's house to spend the night there. At 3:00 o'clock in the early morning of 23 November 1982, Cesar left for Manila to report for work and to consult with his uncle, Atty. Cirilo Nepuscua, about the burning of the house.[16]

According to Julieta, at 4:00 o'clock in the morning of 23 November 1982, her husband arrived at the house of Filomena and related to her that "on that evening of November 22, 1982, there were four (4) persons who went near our house and they were carrying with them rice stalks or hay and then one of them called out, saying 'Tatay, tatay, bangon kayo ta ansakit so eges nen nanay, iyacar tayo ed hospital', which means, 'Father, father wake up because my mother is suffering from stomach (sic) ache and we will rush her to the hospital.'" He further told her that on that same evening, Danilo Sanchez went up to the balcony of their house carrying with him one (1) bundle of rice hay which he then set on fire thus causing the burning of their house.[17]

However, Cpl. Demetrio Matabang of the Integrated National Police of Aguilar, Pangasinan, testified that although Elpidio reported the burning of their house to the police authorities of Calasiao, Pangasinan on 23

November 1982, the latter did not mention the name of any suspect.[18]

Later, Elpidio reported the incident to the 152nd P.C. Company Headquarters at Lingayen, Pangasinan; on 24 November 1982, both his and Julieta's sworn statements[19] were taken by Cpl. Matabang in the presence of TSG Pedro Parayno of the said 152nd P.C. Company.

In his sworn statement, Elpidio narrated the burning incident. He categorically admitted therein that he reported the incident to the Calasiao Police Station, but he did not mention the names of the culprits for fear that he and his family would be placed in danger once the culprits discovered that they had been identified as suspects. Thus:

"23. Q: Did you ever made (sic) a report to the Police Station of Calasiao, Pangasinan, that your house was set fired (sic) by those subject persons named-above (sic)?

A: Yes sir, I reported the same on the following morning, November 23, 1982, but I did not made (sic) mentioned of (sic) any names, knowing that my life and the life of my family is (sic) in danger once those persons involved will come to know that I suspected them in (sic) doing the same and besides my plan is (sic) to report this to this PC Headquarters."[20]

At the time the four (4) persons (allegedly, the accused, Juanito Zamora and two other unidentified persons) arrived at the house, Elpidio was actually under the same and thus he was able to recognize the accused and Zamora because of the illumination caused by the burning rice hay.[21] He also declared that:

"22. Q: When your house was already on fire and that those suspects have (sic) already left, what did you do, if any?

A: I already run (sic) to the house of my sister where my family were (sic) and told them that it was Danilo Sanchez, Juanito Zamora and two (2) unidentified others who burned our house."

Matabang and Parayno then indorsed the case to the Office of the Provincial Fiscal.

On 18 December 1982, Elpidio Nepuscua died.[22]

It was only on 8 February 1983 that the Office of the Provincial Fiscal prepared the Information for Arson against the accused and Juanito Zamora. It was actually filed in court on 28 February 1983.[23]

There can, therefore, be no question that the only eyewitness to the burning of the house was Elpidio Nepuscua. Unfortunately, he died even before the Information was prepared and filed. Thus, he could no longer testify during trial.

The core issue then is whether or not the prosecution was able to prove the guilt of the accused beyond reasonable doubt to overcome the presumption of innocence which the Constitution guarantees every person accused of a crime.

A careful scrutiny of the records discloses that the prosecution relied solely on the sworn statement of Elpidio Nepuscua wherein he named the accused, Juanito Zamora, and two others whom he failed to identify, as the parties who set his house on fire, and the testimony of his wife Julieta Nepuscua to the effect that on 21 November 1982, she, her children and three (3) grandchildren were evacuated by Elpidio to the house of her sister-in-law, Filomena Nepuscua, because herein accused and Juanito Zamora were angry with Elpidio because the latter reported them for having cut on 20 November 1982 the bamboo trees that were mortgaged to them Nepuscuas) by Maria Billota, Juanito's mother. Julieta also declared that at 4:00 o'clock in the morning of 23 November 1982 -- four (4) hours after the burning of the house -- Elpidio told her that in the evening of 22 November 1982, four (4) persons carrying rice stalks went near their house; one of them uttered "father, father wake up because my mother is suffering from stomach (sic) ache and we will rush her to the hospital"; thereafter, Danilo Sanchez went up to

the balcony of their house carrying a bundle of rice stalks and set the same on fire. The court admitted in evidence Elpidio's sworn statement and considered Elpidio's declaration to Julieta as part of *res gestae*.

In the light of the above facts, the first assigned error must be resolved in favor of the accused.

Unless the affiants themselves are placed on the witness stand to testify thereon,[24] affidavits must be rejected, in judicial proceedings; the same would be inadmissible in evidence as hearsay. The reason for this is that an accused has the Constitutional right "to meet the witnesses face to face"[25] or to confront the witnesses against him.[26] To safeguard this right, Section 1, Rule 132 of the Rules of Court provides that the examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. The most that the trial court could have done was to admit the sworn statement of Elpidio Nepuscua merely as part of the testimony of the peace officer who conducted the investigation; assignment of any probative value to it could not be done without violating the hearsay rule and infringing upon the above-stated right of the accused.

The second assigned error must likewise be resolved in favor of the accused. The so-called statement uttered by Elpidio Nepuscua to his wife Julieta at about 4:00 o'clock in the morning of 23 November 1982, or four (4) hours after the burning, implicating accused, should not have been admitted as part of the *res gestae*.

Section 42 of Rule 130 provides:

"Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*."

Res gestae means the "things done".[27] It "refers to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or immediately after the commission of the crime when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement." [28] A spontaneous exclamation is defined as "a statement or exclamation made immediately after some exciting occasion by a participant or spectator and asserting the circumstances of that occasion as it is observed by him. The admissibility of such exclamation is based on our experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear, the utterance may be taken as expressing the real belief of the speaker as to the facts just observed by him." [29] In a manner of speaking, the spontaneity of the declaration is such that the declaration itself may be regarded as the event speaking through the declarant rather than the declarant speaking for himself. [30] Or, stated differently, "x x x the events speak for themselves, giving out their fullest meaning through the unprompted language of the participants. The spontaneous character of the language is assumed to preclude the probability of its premeditation or fabrication. Its utterance on the spur of the moment is regarded, with a good deal of reason, as a guarantee of its truth." [31]

There are, therefore, three (3) requisites for the admission of evidence as constituting part of the *res gestae*: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) that the statements must concern the occurrence in question and its immediately attending circumstances. [32]

In *People vs. Ner*,^[33] this Court, speaking through Chief Justice Concepcion, held:

"x x x All that is required for the admissibility of a given statement as part of the *res gestae*, is that it be made under the influence of a startling event witnessed by the person who made the declaration^[34] before he had time to think and make up a story,^[35] or to concoct or contrive a falsehood,^[36] or to fabricate an account,^[37] and without any undue influence in obtaining it,^[38] aside from referring to the event in question or its immediate attending circumstances."^[39]

The cases are not uniform as to the interval of time that should separate the occurrence of the startling event and the making of the declaration. What is important is that the declarations were voluntarily and spontaneously made "so nearly contemporaneous as to be in the presence of the transaction which they illustrate and explain, and were made under such circumstances as necessarily to exclude the idea of design or deliberation...."^[40]

In the light of the foregoing principle on *res gestae* and the settled jurisprudence thereon, We find the questioned statement of Elpidio Nepuscua to his wife to be lacking in spontaneity and to have been given after he had the luxury of time to concoct a story or fabricate an account. If indeed he was at his house at the time the accused and the latter's alleged companions came, and the burning took place at midnight, considering that the house of Filomena where his wife and children were sleeping was only 150 meters away, and there being no evidence at all that he was prevented through threats and intimidation by the accused and his companions or that he was struck by fear which immobilized him from immediately leaving the scene of the fire, no plausible reason may be summoned to justify or explain his nearly four-hour delay in reporting the incident to his wife and other members of his family. He could easily negotiate that distance in less than five (5) minutes. Doubtless, the burning of their house was no ordinary event; such a dastardly occurrence caused an irreparable loss of property and rendered them homeless. The shock and excitement it naturally produced was more than enough to propel his feet to bring him to his family as soon as possible. It behooved Elpidio to relay the tragic event to those dear to him without any delay; thus, his conduct cannot be reconciled with human experience, ordinary habits of men and common sense. It could, however, be easily reconciled if he were, in fact, with his family in the house of Filomena during the fire. If he evacuated his family to the house of Filomena on 21 November 1982 because he was afraid of the accused and Juanito Zamora, there was no reason at all for him to risk his life and limb by staying alone in their house. That he was not in the house at the time of the burning seems to be supported by the conduct of the members of his family. As testified to by Julieta and her son Cesar, they just looked out the window of Filomena's house while their own house was burning. They never mentioned that they expressed fears as to Elpidio's fate, if in fact the latter was left in the house. All that Julieta could do was to prevent Cesar from returning to their burning house for fear that the persons who set it on fire would harm him. Cesar then left for Manila at 3:00 o'clock early the next morning, 23 November 1982, barely three (3) hours after the fire. He did not proceed to their house to find out what had happened to his father. By that time, worry over Elpidio's fate did not seize or overcome both Julieta and Cesar. If indeed Elpidio was in their house before the fire and he left the scene only four (4) hours later, the conduct of his wife and son seemed too unnatural.

Another badge of untrustworthiness attributable to the alleged statement given by Elpidio to his wife is his deliberate suppression of the names of the "suspects" when he reported the incident to the police authorities of Calasiao, Pangasinan in the morning of 23 November 1982. The reasons given therefor are palpably untenable. In the first place, there is no evidence that the accused and his companions had a reputation for being violent; if they were known for their violence and Elpidio was so afraid of revealing their names, then he would have kept their identities in pectoris. This he failed to do during the investigation at the P.C. Headquarters the following day despite the absence of any assurance of protection.

After everything is said and done, it is clear to Us that serious doubts surround the questioned statement of Elpidio

to his wife, especially when viewed in the light of the probability of concoction - he had every reason to get even with the accused and Juanito Zamora.

Accused then deserves an acquittal on the ground of reasonable doubt. This conclusion renders unnecessary further disquisitions on the remaining assigned errors. It may however be pointed out that, as to the fourth assigned error, the Fiscal who conducted the preliminary investigation and filed the Information, 3rd Assistant Provincial Fiscal Pedro T. Fernandez, charged the accused and Juanito Zamora with the crime of Arson as defined and penalized under Article 321 (Other forms of Arson) of the Revised Penal Code. He must have been unaware of P.D. No. 1613, entitled Amending the Law on Arson, which was promulgated on 11 November 1980, or more than two (2) years earlier, repealing clause of which provides:

"SEC. 9. Repealing clause. -- The provisions of Articles 320 to 326-B of the Revised Penal Code and all laws, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Decree are hereby repealed or amended accordingly."

The proper charge should have been for a violation of P.D. No. 1613. However, the crimes defined and punished in Article 321 are also included in said decree although, inter alia, the latter imposes varying penalties depending on the nature, character or use of the property burned, and provides for the effects of special aggravating circumstances. The allegations in the information sufficiently charge an offense defined and penalized in P.D. No. 1613. Hence, having voluntarily pleaded thereto without any question, the accused could be convicted for the violation of P.D. No. 1613. The inaccuracy or error committed by the Fiscal was not a fatal defect. We take this opportunity, however, to advise Prosecutors to exercise utmost care in the preparation of Informations to the end that no injustice would be done to the accused and no prejudice would befall the State whose interest they are bound to protect.

WHEREFORE, the decision appealed from in Criminal Case No. D-5402 of Branch XLIV of the Regional Trial Court of Dagupan City is REVERSED and the accused-appellant is hereby ACQUITTED of the crime charged with costs de officio.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, and Romero, JJ., concur.
Feliciano, J., on official leave.

[1] Original Records, 1.

[2] Original Records, 6.

[3] Exhibit "E", Id., 79.

[4] Exhibit "A", Id., 5-6.

[5] Resolution of 23 January 1985, Id., 88-92.

[6] Id., 83-87.

[7] Id., 125-133. Per Judge Crispin C. Laron.

[8] Original Records, 133.

[9] Id., 141.

- [10] Rollo, 2.
- [11] Id., 1.
- [12] Id., 43-53.
- [13] Rollo, 45.
- [14] TSN, 5 March 1984, 4.
- [15] TSN, 27 December 1983, 2-10.
- [16] TSN, 5 March 1984, op. cit., 4-7.
- [17] TSN, 27 December 1983, 10-14.
- [18] TSN, 5 September 1983, 11.
- [19] Exhibits "A" and "B", respectively; Original Records, 5 and 4.
- [20] Id., 6.
- [21] Q and A No. 15.
- [22] Exhibit "E"; Original ?????
- [23] Id., 1.
- [24] People vs. Pagkaliwagan, 76 Phil. 457 [1946]; People vs. Mongado, 28 SCRA 642 [1969]; People vs. Briosos, 37 SCRA 336 [1971]; People vs. Villeza, 127 SCRA 349 [1984].
- [25] Section 14(2) of Article II, 1987 Constitution.
- [26] U.S. vs. Tanjuanco, 1 Phil. 374 [1902]; U.S. vs. Escondo, 25 Phil. 579 [1913].
- [27] Underhill's Criminal Evidence, 5[th] ed. vol. I, section 266, p. 664.
- [28] Wharton's Criminal Evidence, 12th ed., vol. I, section 279, p. 624.
- [29] Keefe vs. State. 50 Ariz. 293, 72 Pac 2d 425, cited in Wigmore on Evidence, Third ed., vol. VI, section 1745, pp. 132-133.
- [30] Wharton, op. cit., section 280, p. 632.
- [31] Underhill, op. cit., section 267, p. 671.
- [32] People vs. Ricaplaza, 23 SCRA 374 [1968]; Ilocos Norte Electric Co. vs. Court Appeals, 179 SCRA 5 [1989].
- [33] 28 SCRA 1151, 1161-1162 [1969].**
- [34] Citing People vs. Cuevas, L-5844-45, 30 May 1955; Air France vs. Carrascoso, L-21438, 28 September 1966, 18 SCRA 155.
- [35] Citing People vs. Avila, L-4640, 23 March 1953, 92 Phil. 805.
- [36] Citing People vs. Alban, L-15203, 29 March 1961, 1 SCRA 931.
- [37] Citing People vs. Ruzol, L-8699, 26 December 1956, 100 Phil. 537.

[38] Citing *People vs. Durante*, 53 Phil. 363, 371 [1929].

[39] Citing *People vs. Nartea*, 74 Phil. 8 [1942]; *People vs. Cuevas*, L-5844-45, 30 May 1955; *People vs. Quianzon*, 62 Phil. 162 [1935]; *People vs. Portento*, 48 Phil. 971 [1924]; *U.S. vs. Macuti*, 2 Phil. 1 [1913].

[40] *People vs. Ner*, supra, citing *Lousville N.A. & C.Ry. Co. vs. Buck*, 19 NE 453, 458.

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