

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELEE, VS. PEDRO CEDENIO Y RASONABLE, FELIPE ANTIPOLLO Y MISA, AND JURITO AMARGA Y BAHIAN, ACCUSED-APPELLANTS.*G.R. No. 93485. June 27, 1994*

Ponente: BELLOSILLO, J.

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The silence of the slumbering night was suddenly shattered by wailing cries for help. A sheet of fire raged, its crimson brightness overwhelming the velvet darkness enshrouding the sleepy barangay as it enveloped the lair of a mandadaut,[1] the flames only fading away with the first blush of dawn. As the smoke thinned and the ashes settled, the debris yielded five (5) fatalities among them a 22-day old female infant. Unlike the other victims, she did not sustain any stab or hack wound. She could have died of suffocation if not of burning.

Bonifacio Palomas recounts that on 26 November 1986, at about ten-thirty in the evening, he was roused from his sleep by bangs and slams and what sounded like women's desperate cries for help coming from the direction of a neighbor's house some thirty (30) meters away. It was Hilario Dorio's house on fire. Peeping through his window, Palomas saw around seven (7) persons, among them appellants Pedro Cedenio, Jurito Amarga and Felipe Antipollo, emerge from the house of Dorio that was afire. The blaze was so bright he was able to recognize them. They were wielding unsheathed bolos. Afraid, Palomas remained home. The following morning, he narrated to Romeo, son of Hilario Dorio, what he witnessed the night before. Then he went with the younger Dorio to the rubble and saw the charred bodies of his father, Hilario Dorio, his mother Flora, his sister Maria, his niece Dioscora, and his maternal grandmother Nicanora Tabanao, said to be a family of sorcerers in the village.[2]

Policarpio Apostadero was resting at around ten-thirty that fateful evening when he heard dogs barking. Thinking that a carabao may have gone astray, he went out of his house and headed for the cornfield. On his way, he noticed some thirty (30) meters away that the house of Hilario Dorio was on fire. From where he stood, he also saw people running out of the burning house. As the fierce fire illumed the surroundings, he recognized three (3) of them as his neighbors Pedro Cedenio, Jurito Amarga and Felipe Antipollo. When they drew nearer, he saw them holding bolos stained with blood so he retreated home. The next morning, he went to the burned house, joined the people already milling around, and saw the seared bodies of the five (5) members of the Dorio household.[3]

Albino Calunod, Sr., Barangay Captain of Gandingan, Pangantucan, Bukidnon, also narrated that on 27 November 1986, at around seven o'clock in the morning, he was informed by Cristituto Gajo that the Dorio residence was gutted by fire the night before and that five (5) members of the Dorio family then occupying the house were burned to death. He thus proceeded to the scene and found the house razed to the ground. The five (5) bodies retrieved from the site were those of Hilario Dorio with wounds on the head and chest, Flora Dorio with a wound on the leg and head almost severed; Maria Dorio with wounds in the neck and left nipple; Nicanora Tabanao with a wound in the stomach; and, infant Dioscora Dorio with no wounds at all but charred to the bone.[4]

Perfecto Antifuesto implicated Pedro Cedenio to the heinous crime. Antifuesto said that on 26 November 1986, at around seven o'clock in the evening, he was awakened by Cedenio who borrowed his bolo. At around three o'clock the following morning, Pito Panla-an woke him up to return the bolo earlier borrowed by Cedenio. It was placed in its scabbard and left leaning against the wall below the window. When Panla-an left, Antifuesto got his bolo and found bloodstains on its handle. Upon unsheathing it, he discovered fresh blood on its blade. Thirty (30) minutes later, Cedenio arrived and appeased him, "x x x do not worry, if this incident reaches the court I will answer (for) everything." [5]

Although it appears that around nine (9) persons were involved in the commission of the felony, [6] only three (3) were convicted by the trial court. [7] Thus on 16 March 1990, it found Pedro Cedenio, Felipe Antipolo and Jurito Amarga guilty of "Arson with Multiple Murder as defined and penalized under Section 5 of Presidential Decree No. 1613 (amending the law on Arson)" [8] and sentenced them to reclusion perpetua. On 4 April 1990, they filed their notice of appeal.

Appellants now argue that there is no direct and positive evidence showing that they killed the victims and burned their house. The fact that prosecution witnesses saw them coming out of the burning house cannot by itself sustain the conviction as this lone circumstance is capable of several interpretations. If witnesses indeed saw them there, that must be the time when they (appellants) were trying to save the burning house and its occupants. They likewise contend that the testimonies of the prosecution witnesses are contrary to human experience and should not inspire credence. Thus the claim of witness Antifuesto that his bolo was borrowed and later returned with bloodstains is highly improbable for it is unnatural for criminals to openly bare the instruments used in perpetrating a crime.

Finally, appellants maintain that their denial and alibi should prevail over the insufficient evidence of the prosecution. In asserting their innocence, they allege that they were in the area because of their moral obligation to save life and property. Hence, appellant Cedenio claimed that he cut up banana trunks and hurled them into the fire while appellant Antipolo gathered soil and threw it into the blaze. While witnesses might have indeed seen them (appellants) coming out of the burning house, that was probably after they (appellants) checked on and tried to save the occupants of the house.

We are far from persuaded. While we cannot affirm the findings of the trial court that accused-appellants are guilty of "Arson with Multiple Murder as defined and penalized under Section 5 of Presidential Decree No. 1613" as there is no such offense, we nevertheless find them guilty of as many crimes as are alleged in the Information and proven by the evidence.

It is settled that there is no complex crime of arson with homicide. The late Mr. Chief Justice Ramon C. Aquino cites Groizard -

x x x when fire is used with the intent to kill a particular person who may be in a house and that objective is attained by burning the house, the crime is murder only. When the Penal Code declares that killing committed by means of fire is murder, it intends that fire should be purposely adopted as a means to that end. There can be no murder without a design to take life. In other words, if the main object of the offender is to kill by means of fire, the offense is murder. But if the main objective is the burning of the building, the resulting homicide may be absorbed by the crime of arson. [9]

x x x in the classification of crimes committed by fire, attention must be given to the intention of the author. When fire is used with intent to kill a x x x person who may be in shelter, and that objective is secured, the crime is x x x murder. Murder or homicide in a juridical sense would exist if the killing were the objective of the malefactor and the burning of the building was resorted to only as the means of accomplishing his purpose. The rule is otherwise when arson is itself the end and death is a mere consequence. The crime in such a case

would be arson only, absorbing the homicide.[10]

Except for the imposable penalty, the rule has not changed. Accordingly, if death results by reason or on the occasion of arson, the crime is simply arson although the imposable penalty as provided in Sec. 5 of P.D. No. 1613, which expressly repealed Arts. 320 to 326-B of The Revised Penal Code, is now reclusion perpetua to death. If the objective of the offender is to kill and arson is resorted to as the means to accomplish the crime, the offender can be charged with murder only. But if the objective is to kill - and in fact the offender has already done so - and arson is resorted to as a means to cover up the killing, the offender may be convicted of two separate crimes of either homicide or murder, and arson.

Consequently, in *People v. Paterno*[11] where the defendants killed a Japanese spy and his wife, and thereafter set the victims' house afire with their lifeless bodies inside and their three-day old infant who perished in the fire, we found the accused guilty of murder for the killing and of arson for burning the house with the resulting death to the infant. In *People v. Basay*[12] we said that where the house was burned to conceal the stabbing and hacking, separate crimes of murder and arson were committed.

The Information in this case however, although erroneously charging the crime of "Arson with Multiple Murder," clearly charges appellants with six (6) distinct criminal acts. It accuses them of "wilfully, unlawfully and criminally attack(ing), assault(ing) and stab(bing) Hilario G. Dorio, Nicanora G. Tabanao, Maria T. Dorio, Dioscora T. Dorio and Flora T. Dorio, inflicting on their persons multiple mortal wounds x x x x (and) set(ting) on fire and burn(ing) the house of the victims x x x x"[13] Since appellants failed to move to quash the information on the ground of multiplicity of charges or object thereto at any other time, the defect has been waived, and thus the trial court may validly render judgment against them for as many crimes as were alleged.[14] In order to sustain a conviction for as many offenses as are alleged, it is elementary that all the allegations must be proven with moral certainty. Hence, considering that the Information alleges that appellants burned the house of the victims and killed them with treachery and (evident) premeditation, both the arson and the multiple murder must be proven beyond reasonable doubt.

We accord credence to the testimonies of the prosecution witnesses. We see no reason to depart from the conclusion of the trial court that it was "morally convinced that the three accused are all guilty x x x x[15] The court a quo had the opportunity to observe the witnesses thus its findings are given great weight and respect.

Palomas, Apostadero and Antifuesto are disinterested witnesses and there is not a shiver of evidence to indicate that they are suborned witnesses. In fact, the records show that witness Antifuesto even lent his bolo to appellant Cedenio so that the former could not have had a grudge against the latter, otherwise, he would not have lent his bolo.[16] Absent the most compelling reason or motive, it is inconceivable why the prosecution witnesses would openly and publicly lie or concoct a story which would send three innocent men to jail.[17] Where the defense failed to show any evil or improper motive on the part of prosecution witnesses, the presumption is that their testimonies are true and thus entitled to full faith and credence.[18]

While the prosecution witnesses did not see the actual killing of the victims and the burning of the house, we have repeatedly ruled that guilt may be established through circumstantial evidence provided that (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and, (3) the combination of all the circumstances is such as to produce conviction beyond reasonable doubt.[19] Thus in *People v. Adriano*[20] and *People v. Galendez*[21] we ruled that there can be a conviction based on circumstantial evidence when the circumstances proven form an unbroken chain which leads to a fair and reasonable conclusion pinpointing the accused as the perpetrator of the crime.

This is another lucid illustration of a case where a conviction can be sustained on the basis of circumstantial

evidence. First, appellant Cedenio borrowed the bolo of witness Antifuesto at around seven o'clock in the evening. Second, Cedenio together with appellants Antipolo and Amarga were positively identified as brandishing their bloodstained bolos while rushing out of the victims' burning house around ten-thirty that same evening. Third, Antifuesto's bolo was returned to him at around three o'clock the following morning after appellants were seen outside the victims' burning house. Fourth, the bolo had bloodstains when it was returned. Fifth, Cedenio called on Antifuesto at three-thirty that same morning to appease the latter and assure him not to worry because "x x x if this incident reaches the court, I will answer (for) everything." [22] Sixth, when retrieved from the burned house, the bodies of the victims bore stab and hack wounds. For sure, these circumstances "form an unbroken chain which leads to a fair and reasonable conclusion pinpointing the accused as the perpetrators of the crime." [23]

We disagree with appellants' submission that the testimony of prosecution witness Antifuesto is not in accord with human nature. On the contrary, his testimony that the bolo was returned to him with bloodstains is worthy of belief. Appellants never thought that Antifuesto would testify against them. Thus, appellant Cedenio borrowed Antifuesto's bolo and after its return even mollified him.

In fine, we believe that when appellants were seen in the vicinity of the burning house, they were not there to save lives and property but rather to escape from the locus criminis and avoid being made to answer for the consequences of their wicked act. In other words, they were not there to save the lives and valuables of the victims but to save their own. We are convinced that appellants conspired to inflict fatal blows on the victims which cost their lives and thereafter set their house on fire to conceal the dastardly deed. [24] Conspiracy, as we said, may be inferred from the acts of the accused when such acts point to a joint purpose or design. [25]

From the evidence adduced, it is evident that after the victims were hacked and stabbed to death, appellants set the house afire to hide their gruesome act. This is the only logical conclusion for the burning of the house. For, appellants and some six (6) others, all bolo-wielding, have already inflicted fatal wounds on the victims, save for the 22-day old infant. If their objective was merely to kill the victims then there would be no reason for them to burn the victims' abode. On the other hand, if their objective was merely arson, they would not have attacked the victims with their bolos.

We however cannot consider the qualifying circumstance of treachery. For treachery to be appreciated, there must be proof that at the time of the attack, the victims were not in a position to defend themselves and that the offenders consciously and deliberately adopted particular means, method or form of attack which they employed to ensure the accomplishment of their purpose with impunity. [26] There is no proof of such fact in the instant case; neither is there any testimony on how the attack was actually carried out. Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the victims began and developed, it can in no way be established from mere suppositions that the killing was perpetrated by treachery. [27] For, the rule is settled that treachery cannot be presumed; it must be proved by clear and convincing evidence as conclusively as the killing itself. [28] Hence, when the manner of the attack is not proven, the accused should be given the benefit of the doubt and the crime should be considered homicide only, [29] absent any other circumstance which would qualify the killing.

Nevertheless, we qualify the killing to murder on account of evident premeditation. For evident premeditation to be considered, it must affirmatively appear from the overt acts of the accused that they definitely resolved to commit the offense; that they coolly and dispassionately reflected on the means of carrying their resolution into execution and on the consequences of their criminal design; and, that an appreciable length of time elapsed as to expect an aroused conscience to otherwise relent and desist from the accomplishment of the intended crime. [30] These, the prosecution established.

The fact alone that appellants burned the victims' house after inflicting fatal wounds on them already suggests that they clung to their determination to commit the crime. The circumstance that appellant Cedenio borrowed the bolo of witness Antifuesto and later placated the latter when his bolo was returned to him already bloodstained strongly indicates that appellants pondered on the means of executing the crime and on the consequences of their criminal design. Since appellant Cedenio borrowed the bolo at around seven o'clock in the evening and the crime was committed around ten o'clock that same evening, certainly, there was sufficient interval of time within which to reflect upon the consequences of the crime they planned to commit.

The death certificates of victims Hilario Dorio, Flora Dorio, Maria Dorio and Nicanora Tabanao state as cause of death "incised wounds" which could definitely be caused by a bolo, while the infant's death was due to "burns." Hence, appellants should be held responsible only for the murder of the four (4) victims who sustained fatal hack and stab wounds. They cannot be convicted of homicide for the death of the infant who died presumably of suffocation or incineration but of arson resulting in death, as defined in Sec. 5 of P.D. No. 1613.

Considering that the prosecution was able to show with moral certainty that the killing of the four (4) victims was attended with evident premeditation and the burning was done to disguise the murder, appellants are guilty of arson and four (4) counts of murder, each count aggravated by dwelling which, while not alleged in the Information, was sufficiently proven during the trial.

The penalty prescribed by law for murder if committed with evident premeditation is reclusion temporal in its maximum period to death,[31] while for arson where death results, it is reclusion perpetua to death.[32] Since the murder was attended by the aggravating circumstance of dwelling, with no mitigating circumstance, the imposable penalty against appellants is death for each of the four (4) counts of murder they committed. However, considering that the death penalty was proscribed at the time appellants committed the crime, their sentence should be reduced to four (4) terms of reclusion perpetua. For the arson where death resulted, appellants should be sentenced to a separate term of reclusion perpetua.

Furthermore, it appearing from the records that the heirs of the deceased did not waive nor reserve their right to institute a civil action, nor did they institute a civil action prior to the criminal action, the civil action for recovery of civil liability is impliedly instituted with the instant criminal action.[33] Consistently therefore with prevailing jurisprudence, appellants are jointly and severally liable to the heirs of the victims in the amount of P50,000.00 for every death even without proof of pecuniary loss.

WHEREFORE, the Decision of the trial court is MODIFIED. Appellants PEDRO CEDENIO, FELIPE ANTIPOLLO and JURITO AMARGA are found guilty beyond reasonable doubt of four (4) counts of murder and another crime of arson. Consequently, appellants are sentenced each to four (4) terms of reclusion perpetua for the murder of Hilario Dorio, Flora Dorio, Maria Dorio and Nicanora Tabanao, and another reclusion perpetua for arson for the burning of the house which resulted in the death of infant Dioscora Dorio, to be served successively in accordance with Art. 70 of The Revised Penal Code. In addition, appellants are jointly and severally held liable to the heirs in the amount of P50,000.00 for the death of each victim.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quason, and Kapunan, JJ., concur.

[1] "Sorcerer" in Cebuano.

[2] TSN, 19 January 1990, pp. 2-10.

[3] Id., pp. 11-17.

[4] Id., 11 September 1989, pp. 9-12.

[5] Id., pp. 3-8.

[6] Nine (9) persons were originally charged. Two (2) have remained at-large. Of the seven (7) brought before the jurisdiction of the trial court, four (4) were eventually dropped for insufficiency of evidence.

[7] Decision penned by Judge Vivencio P. Estrada, Regional Trial Court, Malaybalay, Bukidnon, Br. 8.

[8] Dispositive portion of the Decision of the trial court, Rollo, p. 34.

[9] Aquino, R., The Revised Penal Code, 1987 Ed., Vol. II, p. 548.

[10] Id., 1988 Ed., Vol. III, p. 345.

[11] 85 Phil. 722 (1950).

[12] G.R. No. 86941, 3 March 1993, 219 SCRA 404; also see *People v. Bersabal*, 48 Phil. 439 (1925).

[13] Amended Information, Rollo, pp. 5-6.

[14] *People v. Ducay*, G.R. No. 86939, 2 August 1993, citing Sec. 8, Rule 117, Rules of Court.

[15] See Note 7; Decision of the court a quo, p. 6; Rollo, p. 33.

[16] See *People v. Amador*, G.R. Nos. 100456-59, 10 September 1993.

[17] See *People v. Rivera*, G.R. No. 101798, 10 May 1993, 221 SCRA 647.

[18] *People v. Lizada*, G.R. No. 97226, 30 August 1993; *People v. Villa*, G.R. No. 94469, 11 May 1993, 221 SCRA 661.

[19] *People v. Briones*, G.R. No. 97610, 19 February 1993, 219 SCRA 134, citing Section 4, Rule 133 of the Rules of Court and *People v. Alcantara*, G.R. No. 74737, 29 July 1988, 163 SCRA 783, among others.

[20] G.R. No. 104578, 6 September 1993.

[21] G.R. Nos. 56465-66, 26 June 1992, 210 SCRA 360.

[22] See Note 5, p. 7.

[23] See Notes 22 and 23.

[24] Respective Certificates of Death of Hilario Dorio, Flora Dorio, Maria Dorio and Nicanora Tabanao, Records, pp. 10-14.

[25] *People v. Villagrancia*, G.R. Nos. 82727-28, 7 April 1993, 221 SCRA 136.

[26] *People v. Villanueva*, G.R. No. 98468, 17 August 1993.

[27] *People v. Devaras, L - 48009*, 3 February 1992, 205 SCRA 676, citing *U.S. v. Perdon*, 4 Phil. 141 and *U.S. v. Pangilion*, 34 Phil. 786.

[28] *People v. Simon*, G.R. No. 56925, 21 May 1992, 209 SCRA 148.

[29] See Separate Opinion of Mr. Justice Teodeoro Padilla in *People v. Agcaoili*, G.R. No. 92143, 26 February 1992, 206 SCRA 606.

[30] People v. Pastoral, G.R. No. 51686, 10 September 1993.

[31] Art. 248, par. 5, The Revised Penal Code.

[32] Sec. 5, P.D. No. 1613.

[33] See Sec. 1, Rule 111, New Rules on Criminal Procedure. Court.

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