

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ORLANDO ARBOLANTE Y LAGUNDI, TEODULFO LORENZO AND
MAXIMO CATABAY, DEFENDANTS, TEODULFO LORENZO
DEFENDANT- APPELLANT.**

G.R. No. 96713. October 17, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal interposed by accused-appellant Teodulfo Lorenzo who, together with two other co-accused Orlando Arbolante y Lagundi and Maximo Catabay, were charged with the crime of arson before the Regional Trial Court of Tuao, Cagayan, Branch XI, in an information that reads:

"The undersigned, Provincial Fiscal, accuses Orlando Arbolante y Lagundi, Teddy Lorenzo and Maximo Catabay, of the crime of Arson, under section 3, No. 2, in relation to section 4, Nos. 3 and 4, of Presidential Decree No. 1613 (Amending the Law on Arson), committed as follows:

"That on about April 7, 1987, in the Municipality of Tuao, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Orlando Arbolante y Lagundi, Teddy Lorenzo and Maximo Catabay, together with several John Does who are alleged members of the New People's Army (NPA) and who were not identified, conspiring together and helping one another, with malice aforethought, with intent to destroy and to cause damage, and motivated by hatred and resentment which they entertained against Albino C. Miranda, did then and there wilfully, unlawfully and feloniously set fire on the rice granary (camarin) and house of the said Albino C. Miranda, knowing that the said house was occupied by the owners, Albino Miranda and his family at the time, thereby setting the said house and rice granary into flames and razing and reducing it completely to ashes including other properties; and that the properties that were burned and reduced to ashes with their corresponding value were as follows:

1. The house, valued at -----
P100,000.00
2. 149 cavans of palay, valued at -----
18,000.00
3. Furniture , valued at -----
5,000.00
4. Jewelries, valued at -----
5,000.00
5. Cash money amounting to -----

7,000.00

6. Appliances, valued at -----

6,000.00

7. Corn, valued at -----

1,000.00

8. Plows, valued at -----

1,000.00

9. Kitchen wares, valued at -----

1,000.00

10. Steel Harrow, valued at -----

700.00

11. Female carabao, valued at -----

2,500.00

12. Clothings, valued at -----

3,000.00

13. Electrical wirings, valued at -----

600.00

14. Two (2) batteries, valued at -----

2,000.00

15. One pig, valued at -----

500.00

=====

P153,980.00`

with the total value/amount of P153,980.00 (should be P153,300.00) and all belonging to Albino C. Miranda, to the damage and prejudice of the said owner, Albino C. Miranda in the aforesaid amount of ONE HUNDRED FIFTY THREE THOUSAND NINE HUNDRED EIGHTY (P153,980.00) (should be ONE HUNDRED FIFTY THREE THOUSAND, THREE HUNDRED (P153,300.00) PESOS, Philippine Currency." (Rollo, p. 6)

At the arraignment, both the accused-appellant and co-accused Arbolante pleaded not guilty while the other co-accused Catabay eluded arrest and has remained at large up to the present.

After trial, the accused-appellant and co-accused Arbolante were adjudged guilty of arson in a decision promulgated by the trial court on March 6, 1990 with the following dispositive portion:

WHEREFORE, premises considered, the Court hereby sentences the accused Orlando, Arbolante and Teodulfo Lorenzo to suffer the maximum penalty of Reclusion Perpetua as provided for under the pertinent provisions of

P.D. 1613 above-cited and to pay the complainant Albino Miranda jointly and solidarily by way of civil liability the total amount of P153,980.00 representing the value of the house burned down by the accused and their cohorts together with the other articles which were destroyed as a result of the burning as enumerated and itemized in the Information and proven to have been either lost or burned as a result thereof during the trial of this case. With costs." (RTC Decision, pp. 7-8; Rollo, pp. 24-25)

The antecedent facts as presented by the prosecution are summarized in the People's brief, as follows:

"At around 9:30 in the evening of April 7, 1987; complainant Albino Miranda was at his house situated at Bulagao, Tuao, Cagayan, together with his wife, Virginia, his nephews and nieces, Engr. Anguluan, Yolanda Espinosa and Emilio Arbolante, brother of accused Orlando Arbolante. While they were resting, a sudden burst of gunfire hit the windows at the southern portion of Miranda's house (TSN, December 15, 1987, pp. 4-6). The other portions of the house were likewise fired upon (Id., p. 7). Thereafter, a group of about seventy (70) persons shouted for Miranda to come down from his house and bring out his gun, otherwise, they would burn his house. Since Miranda refused to go down, his granary, located about ten (10) meters away from his house, was set on fire by the group, which he suspected to be composed of members of the New People's Army (NPA) (Id., p. 9).

"When his nephews and nieces tried to jump from the window to escape, Miranda approached the window and prevented them from going out. It was at this point that he saw appellant and his co-accused Arbolante inside his (Miranda's) premises climbing the extension roof of his house, holding bundles of cogon which they placed against the window of the house and near the walls (Id., April 14, 1988, p. 33). Arbolante then set the cogon on fire and burned Miranda's house. Accused Maximo Catabay was likewise present, but he was merely standing, doing nothing, (Id., p. 42). Miranda and his companions then hid in a portion of the house near the door which was not burning. (Id., December 15, 1987, p. 18)

The firing by appellant's companions continued while the house burned. For fear for their lives, Miranda and his companions inside the house did not go out. However, when the roof of Miranda's house collapsed, he was constrained to go out 'for the sake of the children,' who were with him then (Id., April 14, 1988, p. 37). Later, policemen and soldiers stationed at Tuao, Cagayan, arrived at the scene of the crime and conducted an investigation which led to the apprehension of appellant and his co-accused. A photographer called by the policemen, named Federico Sion, took pictures of what remained of the house of Albino Miranda (Id., December 14, 1988, pp. 45-47)

"The value of the Miranda's house that was burned down amounted to One Hundred Thousand Pesos (P100,000.00) while that of the granary was Five Thousand Pesos (P5,000.00) [Id., December 15, 1987, pp. 20-21]. Among those destroyed during the conflagration were two (2) carts of unhusked corn, one hundred forty-nine (149) cavans of palay valued at Eighteen Thousand Pesos (P18,000.00), one (1) carabao worth Four Thousand Five Hundred (P4,500.00), plow and harrow worth One Thousand Pesos (P1,000.00), kitchen utensils, electric wirings and batteries, and a cassette recorder worth Three Thousand Pesos (P3,000.00), cash amounting to Seven Thousand Pesos (P7,000.00), a watch worth Three Hundred Pesos (P300.00), and jewelries worth Two Thousand Pesos (P2,000.00). Likewise, twenty (20) cavans of palay and seventeen (17) sacks of cement owned by NIA employees, who were boarding in Miranda's house, were gutted by the fire (Id., pp. 22-25)

"Another witness for the prosecution, Violeta Miranda, sister-in-law of Albino Miranda, was at the time of the incident, with her husband in her house, about thirty (30) meters away from Albino's residence, when they heard shouting and gun reports. Fearing for their lives, they ran towards the banana plantation and hid themselves there (Id., December 6, 1988, p. 9). They saw appellant, accused Arbolante and their companions breaking into the house of Danny Talattad, about fifteen (15) meters away from the banana plantation (Id., p. 8). Subsequently, the group went eastward to the house of Albino Miranda, about thirty (30) meters away from where Violeta Miranda and her husband were hidden (Id., p. 10). According to Violeta, the group of men who

were with appellant fired their guns and shouted at Albino Miranda to come out of his house. When Albino refused to come out of his house, appellant and his companions burned Albino's granary and later, his residence (Id., pp. 11-12)" (Appellee's Brief, pp. 5-9; Rollo, p. 77)

Upon the other hand, the defense evidence as stated in the brief for the accused-appellant reads:

"Accused Orlando Arbulante (should be Arbolante) testified that he knew Albino Miranda because they were neighbors at Bulagao, Tuao, Cagayan. The allegations of Albino Miranda that he and Teodulfo Lorenzo were the ones who brought the two bundles of cogon and set it on fire on wall of the house of Albino Miranda was not true. He was at home at the time of the commission of arson. The reason why Albino filed a case against him was due to his refusal to stay at Albino's house and protect him (Albino) from the threat of certain Rafael Liggayu whom Albino hacked. He was not a member of the NPA. He knew that his brother Emilio Arbulante, a farm helper of Albino, was at the house when it was burned. (TSN., pp. 63-67, May 26, 1989). On the night of April 7, 1987, he was at home with his wife when people whom he believed to be NPA barged into the house of Albino Miranda. He heard several gun reports and shouts telling Albino to bring out his gun so that nothing would happen to him. After the gun reports and shouts, he went out of his house and saw the house of Albino already burning. Jose Casibang, his neighbor asked his help to bring to safety his (Jose) two children so he brought the two children to his father's (Alejandro Arbulante) house. When there were no more gun reports, he, his father and Jose Casibang went out and watched the burning of the house from a mango tree. After the fire was extinguished, he went home and slept. (TSN., pp. 4-8, June 23, 1989).

"On cross-examination, he testified that on the night of April 7, he did not see Teodulfo Lorenzo. (Ibid, p. 14)

"Accused-appellant testified that the allegation of Albino that he and Orlando Arbulante were the ones who brought and lighted the cogon at the roof of Albino's house was not true. He was not at the place when the burning of Albino's house occurred. The testimony of Violeta Miranda alluding him and Orlando Arbulante as the guide of armed men who burned the house of Albino was also not true. He was a member of the NPA. On April 7, 1987, he was at Conner, Kalinga Apayao along with other NPAs headed by one Ka Randy. At about 10:00 A.M. of said date, he and his companions left their headquarters in Bambang and proceeded to Sipang to patrol and look for government soldiers. They continued their patrol by proceeding to Mawigi and spent the night on said date in the mountains of Mawigi and Bambang.

"On April 5, 1987, he was at Bulagao, Tuao, Cagayan to visit his parents. He left Bulagao, Tuao, Cagayan in the morning of April 6, 1987 by hiking in the mountains with some of his companions on their way back to Conner Kalinga-Apayao. It took them two (2) days to arrive at their destination. (TSN., pp. 73-80, August 2, 1989).

"On cross-examination, he testified and corrected that it was not on April 7, 1987 that he was at Conner, Kalinga, Apayao but on April 8, 1987 because on April 7, 1987, they were still on their way to Conner Kalinga-Apayao from Bulagao, Tuao, Cagayan. (Ibid, p. 85)

"Guadalupe Arbulante testified that on the night of April 7, 1987, she together with her two children and husband were about to sleep when they heard gun report towards the direction of the house of Albino Miranda. Her daughter called for help so Orlando carried the children and brought them to the house. Jose Casibang, Florida, Marcelino and the children also came to her house. They also heard shouts saying, Berto bring out your gun, if not, we will burn your house. After a few minutes, the house was burned. They went out of the house and from a mango grove watched the burning house of Albino. While the house was burning, Orlando was at her house and after the burning he went to his own residence. (TSN, pp. 29-33, September 15, 1989)" (Appellant's Brief, pp. 6-7; Rollo; pp. 52-53)

The trial court gave more credence to the prosecution's version and dismissed the defenses of alibi and denial as ineffectual after weighing both documentary and testimonial evidence submitted before it.

Inasmuch as co-accused Arbolante jumped bail before the trial court rendered its decision, only the accused-appellant appealed in due course assigning as errors, to wit:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF ARSON ANCHORING ITS VERDICTS OF GUILT ON THE INCONSISTENT, CONTRADICTING AND INCREDIBLE TESTIMONIES OF PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN RELYING ON THE WEAKNESS OF THE DEFENSE EVIDENCE RATHER THAN ON THE STRENGTH OF THE EVIDENCE FOR THE PROSECUTION.

III

THE COURT A QUO ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON GROUND OF REASONABLE DOUBT. (Appellant's Brief, p. 1; Rollo, p. 47)

All the assigned errors call for a re-examination of the evidence on record to determine whether or not the quantum of proof necessary to overcome the presumption of innocence in favor of the accused was duly established by the prosecution.

Questioning the credibility of the prosecution witnesses, the accused-appellant points out the following inconsistencies and contradictions in their testimonies, namely: (1) that prosecution witness Albino Miranda testified that he saw both the accused-appellant and co-accused Arbolante with cogon bundles which they placed near the walls of his house after which Arbolante lighted the cogon thereby starting the fire that gutted Miranda's house while another prosecution witness Violeta Miranda, Albino's sister-in-law, stated in court that she saw the accused-appellant climbing the roof of Albino's kitchen and thereafter placing the lighted cogon which caused the burning of Albino's house (TSN, December 15, 1987, pp. 7-8; TSN, December 6, 1988, pp. 11-13); (2) that while Albino Miranda declared that the fire that gutted his house started on its walls, his sister-in-law, Violeta, related that the burning of Albino's house proceeded from the lighted cogon atop the roof of Albino's kitchen; [Ibid] (3) that in his direct testimony, Albino Miranda asserted that he and his companions stayed inside the house during the conflagration and it was only upon the arrival of the policemen and soldiers that they went out of the burning house while on cross-examination, he said that they went out of the house even before the policemen and soldiers arrived (TSN, December 15, 1987, pp. 13-14; TSN, April 14, 1988, pp. 37-38); and (4) that while Albino Miranda testified that there was an exchange of gunfire between the policemen/soldiers and the group of about seventy (70) persons, another prosecution witness Corporal Fernandez who was among the policemen at the scene of the crime for investigation purposes denied in open court that there was any fight or encounter between his group and the accused-appellant's group. [TSN, December 15, 1987, pp. 12-13; TSN, January 25, 1989, pp. 58-59] (Appellant's Brief, pp.8-9)

Decisional law, in a plenitude of cases, lays down the doctrine that inconsistencies on minor details do not affect the credibility of a witness as long as his narration is coherent in its essential parts and intrinsically believable as a whole. (People v. Paciano dela Torre, G.R. Nos. 90804-05, July 1, 1991; People v. Felipe Santiago, G.R. No. L-46132, May 28, 1991; People v. Eric Ansing y Cabanban, G.R. No. 86641, April 26, 1991)

In the case at bar, the inconsistencies and contradictions do not detract from the fact that Albino Miranda's house was intentionally set on fire by perpetrators who were positively identified by the prosecution witnesses. The discrepancies in the declarations made in open court by Albino and his sister-in-law, Violeta, can be readily

explained on the basis of human experience which shows that when two persons both claim witness to a certain incident, each of them will have a different account as to the details of that same incident since it is not possible for their senses of perception to be synchronized in such a way that one sees or hears exactly as the other does. Thus, while Albino Miranda focused his senses on the lighted cogon being placed by the accused Arbolante near the wall of the former's house, Violeta Miranda centered her attention on the accused-appellant who was climbing the kitchen roof where he placed the lighted cogon he was then holding. While Albino Miranda perceived the shots he heard at the time of the burning incident as an exchange of gunfire between the two groups present then, Corporal Fernandez' account of the gunshots fired at the time of the incident was based on the assessment he made as to where the gunshots actually came from. Hence, it bears reiterating our ruling in the case of *People v. Noguerras* (181 SCRA 19, 24-25 [1990]) that:

"x x x discrepancies in minor details are to be expected from an uncoached witness (*People v. Arbois*, 138 SCRA 24, 31). Such minor variations would rather show the sincerity of the witness and the absence of connivance between them to make their testimonies tally in every respect. (*People v. Pielago*, 140 SCRA 418, 423) Truth to tell, such trivial differences constituted fail-safe reliability (*People v. Dollantes*, 151 SCRA 592, 603)"

The accused-appellant further insinuates that the testimonies of the prosecution witnesses constituted deliberate falsehoods inasmuch as their narrations did not jibe in the important details so that the doctrine of "falsus in uno, falsus in omnibus" is applicable.

The contention is not worthy of merit. Even granting *arguendo* that the court declarations of the prosecution witnesses allegedly containing inconsistencies referred to by the accused-appellant are disregarded, the rest of their testimonies with respect to the fact that the crime of arson was committed by authors who were positively identified stands trustworthy in the absence of any ill-motive on the part of the prosecution witnesses to falsely implicate the accused-appellant and his co-accused with the crime as charged. If it were not true that the fire started from the wall where Albino Miranda saw the accused Arbolante placed the lighted cogon or that the said fire emanated from the kitchen rooftop where as Violeta Miranda asserted, the accused-appellant put the lighted cogon, the fact that Albino's house and rice granary were gutted by fire for which the accused-appellant and co-accused Arbolante were responsible as categorically attested to by Albino and Violeta remains. Whether or not Albino truly withstood the resultant heat from his house where he opted to stay while it was ablaze or whether there was an actual encounter between the group of the accused-appellant and that of Corporal Fernandez' or there was none are matters which are not relevant to the determination of the presence of the elements of the crime of arson as charged in the information. As we have held in the case of *People v. Virgilio Osias y Mallari, et al.*, (G.R. No. 88872, July 25, 1991):

xxx xxx xxx

"It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. And it has been aptly said that even when witnesses are found to have deliberately falsified in some material particulars, it is not required that the whole of their uncorroborated testimony be rejected but such portions thereof deemed worthy of belief may be credited. (*People v. Mozar*, 130 SCRA 568, 579 [1984] citing *People v. Malillos*, 24 SCRA 133 [1968])."

The primordial consideration is that the witness was present at the scene of the crime and that he positively identified (the accused) as one of the perpetrators of the crime charged (*People v. Gacho*, 124 SCRA 671 [1983] x x x."

The information charges the crime of arson under Section 3, subparagraph 2 in relation to section 4, subparagraphs 3 and 4 of Presidential Decree No. 1613 (Amending the Law on Arson) which we quote as

follows:

"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 xxx xxx

2. Any inhabited house or dwelling.

xxx xxx xxx

"SEC. 4. Special Aggravating Circumstances in Arson. - The penalty in any case shall be imposed in its maximum period:

xxx xxx xxx

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

4. If committed by a syndicate.

The offense is committed by a syndicate if it is planned or carried out by a group of three (3) or more persons."

The elements of the crime of arson under section 3 of P.D. No. 1613 as aforecited simply include: (1) that there is intentional burning; and (2) that what is intentionally burned is an inhabited house or dwelling. From the documentary and testimonial evidence adduced by the prosecution, there is clear and convincing quantum of proof sufficient to convict the accused-appellant beyond reasonable doubt of the crime of arson as the two elements aforementioned are proven present. The pictures of the burnt house where Albino Miranda and his wife used to reside before the fire incident were submitted and duly marked as Exhs. "B", "B-1", "B-2", and "B-3" (Records, pp. 6-9). Prosecution witness, Federico Sion who took the said pictures testified that in the early morning of April 8, 1987, he used his Nikon 135 camera to shoot from different angles whatever was left of Albino's burnt house located at Bulagao, Tuao, Cagayan in the presence of the Station Commander of Tuao Integrated National Police (INP), some policemen, some soldiers and Albino Miranda (TSN, December 14, 1988, pp. 3-5) Both prosecution witnesses Albino Miranda and Violeta Miranda positively named the accused-appellant as one of the persons who brought bundles of lighted cogon which started the fire that consumed Albino's house and rice granary (TSN, December 15, 1987, pp. 7-8; TSN, December 6, 1988, pp. 11-13). Corporal Ernesto Fernandez, Station Commander of Tuao, INP who was summoned to investigate the burning incident on April 7, 1987 at Albino's place described in open court what he saw and made an estimate of the amount of actual damages that resulted therefrom after conducting an investigation which became the basis of a criminal complaint for arson marked as Exhibit "D", (TSN, January 25, 1989, pp. 3-6; Records, p. 1)

Against the overwhelming prosecution evidence, the accused-appellant merely interjects the defenses of bare denial and alibi positing that the former is the only evidence available to an innocent person and maintaining that the claim of physical impossibility to be at the scene of the crime was amply corroborated by his co-accused Orlando Arbolante (Appellant's Brief, pp. 12-13; Records, pp. 58-59)

We find this an occasion to rule once more that the positive identification of the authors of a crime by the prosecution witnesses should prevail over the former's denials of the commission of the crime imputed to them for denial, like alibi, is inherently a weak defense and can easily be defeated by the affirmative and credible testimonies of prosecution witnesses pointing to the accused as the perpetrators of the crime for which they are charged. (People v. Edwin Belibet, et. al., G.R. No. 91260, July 25, 1991 citing People v. Marcos, 185 SCRA 154 [1990]; People v. Payumo, 187 SCRA 64 [1990]; see also People v. Cipriano Caballes, G.R. Nos. 93437-45, July 12, 1991 citing People v. Biago, 182 SCRA 411 [1990])

Moreover, we are further persuaded by the trial court's finding that the accused-appellant's alibi cannot stand the test of credibility. Extant from the evidence on record is the accused-appellant's vacillating testimony as regards his whereabouts at the time of the fire incident. Thus, on direct examination, the accused-appellant declared that:

"ATTY. DALANAO:

Q. On April 7, 1987 in the morning, where were you?

A. I was at Bangbang, sir.

Q. What were you doing there?

A. We stayed in our hut or our headquarters.

Q. Where at Bangbang?

A. Bangbang, Coner, sir.

xxx xxx xxx

Q. Now, in the evening of April 7, 1987, specifically 9:30 P.M. where were you, Mr. Witness?

A. I was in Coner, sir.

Q. Where in Coner?

A. Ripang, sir.

Q. What were you doing there?

A. We just went there to visit, sir.

Q. You said we, whom are you referring to as your companions?

A. My armed NPA companions, sir.

Q. You said you went to Ripang, were you able to reach Ripang?

A. Yes, sir.

Q. At what time did you arrive at Ripang, and what time did you leave your quarters?

A. We left there at 10:00 in the morning and then we arrived at Ripang at 11:00.

Q. After you arrived at Ripang, what did you do next, if any?

A. We went to patrol and find (sic) if there are enemies.

xxx xxx xxx

Q. You said you returned to Bangbang, were you able to reach Bangbang?

A. Yes, sir.

Q. What time did you reach Bangbang?

A. 12:00 noon.

Q. After you arrived at Bangbang, what else did you do, if any?

A. We rested.

Q. After resting, what else did you do?

A. We walked and continued our patrol.

Q. Towards, where?

A. We went towards Manag.

Q. How far is Manag from Bangbang?

A. Far, sir.

Q. Can you estimate the distance?

A. More than one kilometer.

Q. Did you reach Manag?

A. Yes, sir.

Q. What time did you reach Manag?

A. Around 3:00.

xxx xxx xxx

Q. At that day April 7, where did you sleep during night time?

A. In the mountains, sir.

Q. Which barangay?

A. Between Manag and Bangbang.

xxx xxx xxx

COURT:

Q. During the time you have been staying in Coner, Kalinga-Apayao and in the barrios you have just mentioned Manag, Bangbang, Ripang, did you ever have an occasion here in Tuao?

A. I had my vacation April 5, 1987.

Q. So, you were in Tuao on April 5, 1987?

A. In Bulagao, sir.

Q. And you stayed in Bulagao, Tuao, Cagayan?

A. On the 6th, I left immediately, I just went to visit my parents.

ATTY. DALANAO:

Q. You said you left Bulagao on April 6, 1987, where did you go from Bulagao?

A. I went back to Coner.

Q. How did you go back to Coner?

A. We hiked the mountains.

Q. Which mountain, if you know?

A. Mawigi.

COURT:

Q. How did you come on vacation, did you ride or you hiked?

A. We walked because some of my companions stayed in Mawigi.

Q. And when you went back to Coner and following day as you say, you also hiked?

A. Yes, sir.

Q. Now, in going to Bulagao, Tuao, Cagayan from your station in Coner by hiking as you say, how long will it take you?

A. It might be more than one day.

Q. How many hours or what time did you leave Coner when you took your vacation here in Tuao?

A. 6:00 P.M.

Q. What time did you reach Bulagao?

A. 2:00 P.M.

Q. Afternoon or early morning?

A. 2:00 in the afternoon.

Q. How many hours?

A. I don't know how many hours, I only heard from the radio that it's 2:00 P.M.

Q. You said that you left Coner 6:00 P.M.

A. Yes, sir.

Q. You walked the whole night?

A. Yes, sir.

Q. Until the whole morning up to 2:00 P.M.?

A. Yes, sir.

COURT:

Proceed.

ATTY. DALANAO:

Q. Coming from Bulagao, you said you left for Coner April 6, 1987 in the morning, what time did you leave Coner?

A. 6:30 in the morning.

Q. And what time did you reach Coner?

A. It took us two days because we stand by.

COURT:

Q. What do you mean by stand by?

A. We took time.

Q. So, it took you two days?

A. Yes, sir." (TSN, August 2, 1989, pp. 5-9; Underlining Supplied)

When asked clarificatory questions by the trial court, the accused-appellant gave a different account of where he actually was on the day the crime of arson transpired, thus:

"COURT:

xxx xxx xxx

Q. You stated in the direct examination that on April 7, 1987, you stayed in Bangbang which you later on corrected because you said you arrived only at Bangbang on April 8, in the morning coming from Bulagao, Tuao, Cagayan?

A. Yes, sir.

Q. After arriving at Bangbang coming from Bulagao, Tuao, Cagayan, you never left Bangbang anymore?

A. We rested.

Q. Because you walked for two days?

A. Yes, sir.

Q. Now, you stated again that on April 7, 1987 that (sic) with companions you went to Ripang to patrol at 10:00 A.M. to look for enemies?

A. No.

Q. You said you left Bangbang early in the morning of April 7, 1987 and went to Ripang, how can you reach that with the fact that it took you two days to walk from Bulagao to Bangbang?

A. My statement that we arrived at Bangbang on April 7 is not true.

Q. So, it is not again correct that on April 7, 1987 between 10:00 to 10:30, you went to Ripang to patrol to look for enemies?

A. No, sir, it's not true." (Ibid, pp. 15-16)

The foregoing testimonies of the accused-appellant render his defense of alibi suspect. For alibi to prosper in support of an accused's reliance on the constitutional presumption of innocence in his favor as regards a crime for which he is being made responsible, there must be substantial proof considering that the defense of alibi is generally weak, very easy to concoct and crumbles most frequently in case of positive identification of the accused. (People v. Danilo Mesias, G.R. No. 67823, July 9, 1991 citing People v. Pecato, 151 SCRA 14 [1987] and People v. Hermosa 177 SCRA 574 [1989]; People v. Rolando Godines, G.R. No. 93410, May 7, 1991; People v. Demecillo, 186 SCRA 161 [1990] citing People v. Tamayo, 183 SCRA 375 [1990])

We do not find any compelling reason to disregard the trial court's findings of fact on the credibility of the witnesses in this case as it had ably made use of the advantage of observing their actuations while they were testifying before it and consequently, it had effected a firsthand discernment concerning the veracity of their statements. (People v. Rosalino Dungo, G.R. No. 89420, July 31, 1991 citing People v. Claudio, 160 SCRA 646

[1988]; *People v. Rafael Velaga, Jr.*, G.R. No. 87202, July 23, 1991 citing *People v. Olalia*, G.R. No. 50669, 128 SCRA 139 [1984]; *People v. Guillermo Sanchez alias "Genaro"*, G.R. No. 88750, July 18, 1991 citing *People v. Orita*, 184 SCRA 105 [1990]; *People v. Edgardo Maceda*, G.R. No. 91106, May 27, 1991 citing *People v. Alvarez*, 163 SCRA 745 [1988]).

The crime of arson under section 3 of P.D. No. 1613 is punishable by reclusion perpetua to death and the maximum penalty is imposable when the crime is attended by any of the special aggravating circumstances under section 4 of the same Decree.

In the present case, the trial court found that the crime of arson was committed by a syndicate of more or less seventy (70) persons armed with guns but with respect to the aggravating circumstance under subparagraph 3 of section 4 aforecited, no pronouncement in relation thereto was made. The prosecution failed to substantiate the claim that the accused in the instant case were motivated by spite or hatred towards Albino Miranda and his family. Considering that the crime was committed by a syndicate of more or less seventy (70) persons, there is ample basis to infer the presence of conspiracy from the acts of the accused-appellant and his other co-accused that tend to show community of criminal purpose. (see *People v. Joven Bausing, et al.* G.R. No. 64965, July 18, 1991 and *People v. Vivencio Sabellano, et al.*, G.R. Nos. 93932-33, June 5, 1991) As we have stated in *People v. Elanito Oujano. et al.*, (G.R. No. 84361, May 31, 1991):

"Thus, too, in *People v. Taaca*, L-35652, September 29, 1989, this Court held that a conspiracy in the statutory language exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such a misdeed. That must be their intent. There is need for concurrence of wills or unity of action or purpose, or common and joint purpose and design. x x x x x If there is a chain of circumstances to that effect, conspiracy has been established. If such be the case then, the act of one is the act of all the others involved and each is to be held to the same degree of liability as the others." (At pp. 12-13)

Finally, the amount of actual damages suffered by Albino Miranda as a result of the crime of arson was erroneously totalled as P153,980.00 when the proper sum adds up to P153,300.00 only. After a careful review of the records of this case, we hold that only the amount of P153,000.00 was proven as damages inasmuch as with respect to the 149 cavans of palay, although Cpl. Fernandez indicated that the same was worth P18,680.00, the information only valued the said cavans at P18,000.00. We cannot grant more than what the information claims. With respect to the kitchen wares valued at P1,000.00 in the information only the amount of P700.00 was duly proved by the prosecution. (TSN, January 25, 1989, p. 5)

WHEREFORE, in view of the foregoing, the appealed decision is hereby AFFIRMED with the modification that the total amount of civil liability to be paid jointly and severally by the accused-appellant and his co-accused who failed to exercise his right to appeal be reduced to ONE HUNDRED FIFTY-THREE THOUSAND PESOS ONLY (P153,000.00)

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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