

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CELSO AMADOR, RESTY AMADOR AND FELIPE ROBLES, ACCUSED, CELSO AMADOR, APPELLANT.

G.R. Nos. 100456-59. September 10, 1993

Ponente: MELO, J.

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MELO, J.:

This has reference to an appeal from the decision of Branch 49 of the Regional Trial Court of Palawan and Puerto Princesa City, Fourth Judicial Region, dated August 22, 1990.

Accused were charged in Criminal Cases No. 6764, No. 6765, No. 6766, and No. 6776 with the crimes of destructive arson, frustrated murder, and murder in separate informations, reading as follows:

Criminal Case No. 6764

That on or about the 8th day of January, 1987, in the evening at Sitio Limbasan, Barangay Ipilan, Municipality of Brooke's Point, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court the above-named accused conspiring and confederating together and mutually helping one another with evident premeditation and treachery and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and stab with a bladed weapon, to wit: a knife, one Flora Erader, hitting her in various vital parts of her body and inflicting upon her injuries which would ordinarily cause her death thus performing all the acts of execution which would have produced the crime of murder as a consequence but nevertheless did not produce it by reason of causes independent of the will of all the accused, that is by the timely and able medical assistance rendered to Flora Erader which prevented her death.

CONTRARY TO LAW and in violation of Article 248 in relation to Article 50 of the Revised Penal Code as amended.

Criminal Case No. 6765;

That on or about the 8th day of January, 1987 at Sitio Limbasan, Barangay Ipilan, Municipality of Brooke's Point, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously set fire to the house of one JORGE IRADER, thereby causing complete destruction to the said house and personal belongings therein in the total amount of THIRTY THOUSAND (P30,000.00) PESOS Philippine Currency, to the damage and prejudice of said JORGE IRADER in the aforesaid amount.

CONTRARY TO LAW and in violation of Article 320 of the Revised Penal Code.

Criminal Case No. 6766; and

That on or about the 8th day of January, 1987 at Sitio Limbasan, Barangay Ipilan, Municipality of Brooke's Point, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there wilfully,

unlawfully and feloniously set fire to the house of one TEOFILO BANCAIREN, thereby causing complete destruction to the said house and personal belongings therein in the total amount of FIFTY THOUSAND (P50,000.00) PESOS, Philippine Currency, to the damage and prejudice of said Teofilo Bancairen in the aforesaid amount.

CONTRARY TO LAW and in violation of Article 320 of the Revised Penal Code.

Criminal Case No. 6776.

That on or about the 8th day of January, 1987 at Sitio Limbasan, Barangay Ipilan, Municipality of Brooke's Point, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually assisting one another, with evident premeditation and treachery, armed with bladed weapon, did then and there wilfully, unlawfully and feloniously attack, assault and stab one DANIEL ANDRADE, hitting him in the various vital parts of his body and inflicting upon him multiple injuries which were the direct and immediate cause of his death shortly thereafter.

CONTRARY TO LAW and in violation of Article 248 of the Revised Penal Code. (pp. 66-67, Rollo)

Upon arraignment, the accused entered a plea of not guilty. The four cases were tried jointly. On August 22, 1990, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court renders judgment in Criminal Case No. 6764 finding Resty Amador guilty of the crime of FRUSTRATED MURDER as defined and penalized under Art. 248 of the Revised Penal Code as principal by direct participation without mitigating circumstances, and sentences him to suffer imprisonment of from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of PRISION CORRECCIONAL to TEN (10) YEARS OF PRISION MAYOR with all its accessory penalties, and to indemnify Flora Irader the sum of Eight Thousand (P8,000.00) Pesos in actual damages. Celso Amador and Felipe Robles are acquitted of the charge of Frustrated Murder.

In Criminal Case No. 6776, the Court finds Resty Amador guilty of the crime of MURDER, as defined and penalized under Article 248 of the Revised Penal Code, as principal by direct participation without mitigating circumstances and sentences him to suffer the penalty of RECLUSION PERPETUA, with all its accessory penalties, and to indemnify the heirs of Daniel Andrade the amount of Thirty Thousand (P30,000.00) Pesos for the death of the deceased; Six Thousand Seventy-Nine (P6,079.00) Pesos for funeral and other incidental expenses; Ten Thousand (P10,000.00) Pesos as moral damages and Ten Thousand (P10,000.00) Pesos as exemplary damages. Celso Amador and Felipe Robles are acquitted of the charge of Murder for insufficiency of evidence.

In Criminal Cases Nos. 6765 and 6766, the Court finds all three accused guilty of the crime of DESTRUCTIVE ARSON as defined and penalized under Article 320 of the Revised Penal Code as amended, and sentences them to suffer the penalty of RECLUSION PERPETUA on two (2) counts, with all its accessory penalties, and to indemnify Teofilo Bancairen the amount of Five Thousand (P5,000.00) Pesos and Jorge Irader, the amount of Thirty Thousand (P30,000.00) Pesos as actual damages and to pay the costs. (p. 81, Rollo)

Atty. Zoilo C. Cruzat filed a notice of appeal for accused Celso Amador and Felipe Robles, while no appeal was interposed by the other accused, Resty Amador. A brief was thereafter filed by Atty. Cruzat only for Celso Amador, for which reason a resolution was issued by this Court on July 14, 1993 requiring him to show cause why he failed to file a brief for Felipe Robles and to forthwith file said brief (p. 127, Rollo). In compliance therewith, Atty. Cruzat filed a Manifestation stating, among other things, that Felipe Robles had escaped during the trial below. Consequently, we issued a resolution on August 25, 1993, to the effect that the appeal of Felipe Robles is dismissed. Withal, this decision shall deal only with appeal of Celso Amador who assigns the following

alleged errors:

I. THE LOWER COURT ERRED IN GIVING CREDIT TO THE TESTIMONY OF PROSECUTION WITNESSES NAMELY: RODRIGO REVILLO AND ORESTES FERNANDO AND IN NOT GIVING CREDIT TO THE TESTIMONIES OF THE DEFENSE.

II. THE LOWER COURT ERRED IN DECLARING THAT APPELLANT AMONG WITH FELIPE ROBLES WERE POSITIVELY IDENTIFIED BY THE SAID PROSECUTION WITNESSES.

III. THE LOWER COURT ERRED IN HOLDING THAT CONSPIRACY AMONG THE ACCUSED WAS DULY ESTABLISHED.

IV. THE LOWER COURT ERRED IN CONVICTING THE APPELLANT MERELY BECAUSE, AS APPELLANT BELIEVES, HE OFFERED THE DEFENSE OF ALIBI. (p. 1, Appellant's Brief, p. 99, Rollo)

The facts of the case with respect to Criminal Cases No. 6765 and No. 6766, destructive arson, as established by the evidence of record, are as follows:

On the night of January 8, 1989, at around 7 o'clock, Rodrigo Revillo was walking home from his farm. When he was about twenty meters away from the house of Teofilo Bancairen, which was along his route, Revillo saw three men, Resty Amador, Felipe Robles, and accused-appellant Celso Amador, setting fire to the house of Bancairen. The three were all known to Revillo. Revillo saw Resty Amador enter the house and bring out a lighted gas lamp. Resty set fire to the cogon grass roof. Then Resty Amador gave the lamp to Robles who poured gas on the wall of the house and lit it. Robles passed on the lamp to Celso Amador who likewise poured gas on another side of the house and set it on fire. Revillo then shouted, "Why did you burn that house?" Without waiting for an answer and before the house completely burn down, Revillo ran away.

Also, at around 7 o'clock that same night, Orestes Fernando while around fifty meters away from Bancairen's house saw Celso Amador and Felipe Robles setting fire to Bancairen's house with a torch. Resty Amador was with Celso Amador and Felipe Robles. Although Fernando did not see Resty Amador participate in setting fire to the house, Resty Amador admitted during the trial that he took part in burning Bancairen's house.

Thereafter, Resty Amador, Celso Amador, and Felipe Robles went to the house of Jorge Irader, some 300 meters away from the house of Bancairen, and set Irader's house on fire. The burning of Irader's house was witnessed by Fernando who was around 30 meters away.

Accused-appellant assails the testimony of prosecution witnesses Rodrigo Revillo and Orestes Fernando, contending that the testimony of said witnesses is not worthy of belief. Revillo testified that his house is around one kilometer away from the house of Bancairen and that his farm is approximately 1/2 kilometer from his house, and that in going to his farm from his house or vice-versa, he passes by the house of Bancairen. Accused-appellant claims that from said testimony "it could be concluded that his farm is situated between the house of Teofilo Bancairen and his house", and "hence when he claimed to be walking his way to his house, it means that he was walking away from the house of Teofilo Bancairen and it is impossible for him, while on that process, to come near at a distance of 20 meters from the house of Teofilo Bancairen." (pp. 12-13, Appellant's Brief.) We are not impressed by such argument. Revillo testified that he had to pass by Bancairen's house in going to his farm. Thus on his way to his house from his farm, he chanced upon the three accused setting fire to the house of Bancairen.

Accused-appellant further derides the testimony of Revillo that after accused Felipe Robles received from Resty Amador the gas lamp and removed its cover and poured gas on the wall of the house of Bancairen he handed it over to Celso Amador who again removed the cover and poured gas on the other side of the house.

Accused-appellant asks rhetorically, "How could Celso Amador remove the cover of the gas lamp when it was already removed by Felipe Robles? How could Celso Amador pour the gas on the other side of the wall when the same was already poured by Felipe Robles?" (pp. 13--14, Appellant's Brief.) We fail to apprehend anything wrong or illogical in the narration of witness Revillo. Felipe Robles must have recapped the lamp so that the gas would not needlessly spill and he must have left some gas for Celso Amador and Felipe Robles to pour on the other side of the house. Further, accused-appellant would cast doubt on the testimony of Revillo that he recognized the three accused from a distance of 20 meters at night when the only light came from the gas lamp. It bears emphasis that Revillo was familiar with the malefactors, including accused-appellant, having known them for quite sometime and having worked with them at one time or another doing farm work. Then too, there was sufficient light to enable witness Revillo to recognize the accused, for other than the light from the gas lamp, there was a moon that night, shining with sufficient brightness, and the flames of a burning house were even brighter. Verily, the flames alone of a gas lamp are bright enough for identification (*People vs. Almenario*, 172 SCRA 268 [1989]). Where conditions of visibility are favorable and the witness does not appear to be biased against the man on the dock, his or her assertion as to the identity of the malefactor should normally be accepted (*People vs. Espejo*, 186 SCRA 627 [1990]). We, therefore, hold that under the circumstances of the case, the identification of the accused by witness Revillo is credible and reliable.

Accused-appellant points out what he calls a glaring inconsistency between the testimony of witness Revillo and that of witness Orestes Fernando in that while Revillo testified that accused-appellant set fire to the house of Bancairen by means of a gas lamp, Fernando testified that he saw accused-appellant set fire to the house of Bancairen using a torch. It must be noted that Revillo was only 20 meters away from the three accused persons when they set on fire the house of Bancairen, while Fernando was about 50 meters away. At that distance, Fernando could have mistaken the gas lamp for a torch. The essential fact elicited from the testimony of said witnesses is that they positively identified the three accused as the perpetrators of the arson.

Another circumstance which accused-appellant raises to discredit the testimony of Revillo and Fernando is Fernando's testimony that he did not hear Revillo shout at the accused while they were burning Bancairen's house. Such argument, however, fails to consider the circumstance that Revillo was 20 meters from the house of Bancairen while Fernando was 50 meters away, giving us a situation wherein 70 meters separated Revillo and Fernando. At that distance it would not be surprising for Fernando not to hear Revillo shouting. The noise of the crackling flames would have also added to stifling the shout of Revillo.

It bears emphasis that Revillo and Fernando are disinterested witnesses and not a shred of evidence appears on record that they are suborned witnesses. Accused-appellant Celso Amador himself admitted on the witness stand that he holds no grudge against Revillo. Their testimony, therefore, must be accorded full faith and credence.

Finally, accused-appellant Celso Amador interposes the defense of alibi in his bid for acquittal. He testified that at the time of the commission of the crime he was fast asleep in his room with his wife and that he did not leave his room after going to bed, until the next morning. Alibi is one of the weakest defenses that can be resorted to by an accused, especially where there is direct testimony of an eyewitness duly corroborated by that of another, not only because it is inherently weak and unreliable but also because of the ease of its fabrication and the difficulty of checking or rebutting it (*People vs. Bagasala*, 39 SCRA 236 [1971]; *People vs. Cornelio*, 39 SCRA 435 [1971]). Alibi to be believed must be supported by the physical impossibility of the accused to have been at the scene of the crime (*People vs. Brioso*, 37 SCRA 336 [1971]). Accused-appellant Celso Amador's house was only 2 kilometers, more or less, from the vicinity of the crimes, and it was, thus, not physically impossible for him to have been present at the scene of the crimes at the time they were committed and thereafter return home, appearing as innocent as a child. Moreover, the defense of alibi cannot prevail over positive testimony of

witnesses (People vs. Mercado, 38 SCRA 168 [1971]). Celso Amador's defense of alibi cannot prevail over the positive testimony of Revillo and Fernando that he was one of the perpetrators in the burning of the houses of Bancairen and Jorge Irader.

Accused-appellant, of course, maintains that because his alibi was sustained by the trial court when he was acquitted in Criminal Case No. 6764 (Frustrated Murder) and Criminal Case No. 6776 (Murder), it should likewise be given credit in the arson cases.

A scrutiny of the appealed decision does not support this contention. The acquittal in the murder and frustrated murder cases was due to the prosecution's failure to present proof beyond reasonable doubt on accused-appellant's participation in said crimes. The trial court merely stated that "as to the allegations of Flora Irader and Daniel Manlapig that Celso Amador and Felipe Robles were present during the stabbing, the Court entertained doubt as to the truthfulness of their declarations." The court did not accept accused-appellant's alibi as true. Moreover, the conviction of accused-appellant for arson, is based on the testimony of Revillo and Fernando, and not on the testimony of Irader and Manlapig.

Finally, it is contended that the prosecution failed to establish that there was conspiracy among the accused. This contention is a superfluity. Nowhere in the appealed decision did the trial court make any finding that there was conspiracy among the accused. There is no necessity to make a finding of conspiracy to convict all the accused of the crime of arson. There is copious evidence on record to show that each accused committed arson by direct participation. The evidence clearly shows that each accused committed the overt acts of arson. As above narrated, each accused set fire to the houses of Bancairen and Jorge Irader. Independent of the acts of his co-accused, accused-appellant's own overt acts constituted arson.

WHEREFORE, the decision appealed from is hereby affirmed in toto.

SO ORDERED.

Bidin, (Acting Chairman), Romero, and Vitug, JJ., concur.

Feliciano, J., (Chairman), on leave.

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