

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELEUTERIO GARGAR, MEDIO SADAGNOT (AT LARGE), JAIME GAMBOA, AND TWO JOHN DOE CAFGUS, ACCUSED-APPELLANTS.

G.R. Nos. 110029-30, December 29, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

Accused-appellants Eleuterio Gargar and Jaime Gamboa seek the reversal of the decision[1] dated February 24, 1993, of the Regional Trial Court of Dumaguete City, Branch 37,[2] in Criminal Case 9463 and 9474, convicting them of arson and murder. For arson, they were sentenced to suffer the penalty of four years and two months of prision correccional as minimum to eight years and one day of prision mayor as maximum and to indemnify Arsenio Acabo the amount of P500.00. For the crime of murder, accused-appellants were meted out the penalty of reclusion perpetua and to indemnify the heirs of Joedex Acabo in the amount of P50,000.00.

The Informations filed before the trial court which charged accused-appellants with the crime of arson and murder read as follows:

Criminal Case No. 9463

"That on or about the 23rd day of December 1989, at sitio Apuya, Barangay Manalongon, Municipality of Sta. Catalina, Province of Negros Oriental, 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 and burn the residential house of Arsenio Acabo with the use of an improvised torch (known in the local Cebuano dialect as "sulo"), said accused fully knowing that said house was at that time being occupied by said owner and the members of his immediate family, thereby directly causing destruction by fire to the roof of said house, to the damage and prejudice of Arsenio Acabo in the sum of FIVE HUNDRED PESOS (P500.00).

Contrary to Section 3, Presidential Decree No. 1613.

Criminal Case No. 9474

"That on or about the 23rd day of December 1989 at sitio Apuya, Barangay Manalongon, Municipality of Sta. Catalina, province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with intent to kill, evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Joedex Acabo, with the use of a firearm which said accused were then armed and provided, thereby inflicting upon the body of Joedex Acabo the following injuries, to wit :

‘1. Lacerated wound 1 cm., left midchest area-anteriorly;

2. Rounded wound back, 1 inch diameter left lower chest;’ which injuries caused the instantaneous death of Joedex Acabo.

Contrary to Article 248 of the Revised Penal Code."[3]

The proper charges for arson and murder were filed against accused-appellants Eleuterio Gargar, Jaime Gamboa, Medio Sadagnot and two unknown CAFGU members. Sadagnot and the CAFGU members remained at large. The two criminal cases for murder and arson were jointly tried. The evidence for the prosecution shows that on December 23, 1989 at around eleven thirty in the evening, Arsenio Acabo was in his house sleeping together with his wife and children, Mario Wellan, Anna Bambie, Joedex, and Rembert. Awakened by the barking of dogs, Arsenio saw that part of the roof of his house was on fire. He then roused his children, who immediately proceeded to extinguish the fire. From the window, where Arsenio was standing, he saw five men, three of whom he was able to identify, namely, Terio Gargar, Jaime Gamboa and Medio Sadagnot. When heard a gunshot, he espied accused-appellant Gamboa aiming at their house. Beside him was accused-appellant Gargar who had a bolo tucked in his waist. Four gunshots followed and Arsenio was hit on the toe of his right foot. He then saw his son, Joedex, who was on the roof helping put out the fire, fall therefrom. The gunshot which hit Joedex which resulted in his death. Accused-appellants, together with their companions, then fled to a nearby cliff.[4] Arsenio testified that he was certain it was appellant Gargar whom he saw since they are brothers-in-law, their wives being sisters. Moreover, he knows Gargar who lives only about half a kilometer away from his house.[5]

Mario Wellan, one of the sons of Arsenio, testified that while handing a bucket of water to his brother Joedex, he saw five armed men standing on the road around three meters away from their house. He recognized three of them as Terio Gargar (his uncle), Medio Sadagnot, Jaime Gamboa and the two other armed CAFGU men. He heard a gunshot and saw accused-appellant Gamboa firing his gun, while accused Gargar was standing beside him with a bolo in his waist. Thereafter, successive gunshots were fired by Gamboa, one of which hit and caused the death of his brother, Joedex.[6]

The death certificate of Joedex Acabo showed, as cause of death, severe hemorrhage due to a bullet wound. The victim suffered a lacerated wound 1 cm left of the midchest area-anteriority and rounded wound back 1 inch diameter left of the lower chest.[7]

To support the claim of the prosecution that a bullet found on Joedex' body was from a .30 M1 garand rifle, (a firearm similar to the one owned by appellant Gamboa) Sgt. Virgilio Sarjento (a CAFGU member, unit supply sergeant) testified that the same firearm was issued to accused-appellant Gamboa on September 13, 1989.[8]

By way of defense, accused-appellant Gargar testified that on December 23, 1989, he was in his house attending to his wife and child who were stricken with chicken pox. He alleged that he only left his house at around five thirty in the afternoon where he fetched the "manghihilot," Rodolfo Solitario. He further claimed to have left his house at around 10 o'clock in the evening and 1 o'clock in the morning on the day of the incident to gather dry coconut leaves for boiling water. He denied having known his co-accused Jaime Gamboa, claiming that he came to know him only in jail. Gargar's testimony was corroborated by his wife Bienvenida and the "manghihilot" Rodolfo Solitario.

Accused-appellant Jaime Gamboa, on the other hand, testified that on December 23, 1989 he was in a CAFGU outpost in sitio Mangoncong in Barangay Nagbalaye in Sta. Catalina which is about ten (10) kilometers away from Apuya. He alleged that he was he was in the outpost from morning until night time. Florentino Taguimon, a CAFGU member, corroborated Gamboa's testimony.

The trial court, however, rejected accused-appellants' defense of alibi and on February 24, 1993, rendered a decision finding accused-appellants guilty of arson and murder for the death of Joedex Acabo. The dispositive portion of the decision reads as follows :

"Wherefore, all the foregoing considered, the Court finds accused Jaime Gamboa and Eleuterio Gargar guilty

beyond reasonable doubt of the crimes of Arson as charged in Criminal Case No. 9463 and Murder as charged in Criminal Case no. 9474 and are sentenced as follows:

In Criminal Case No. 9463 for arson and in accordance with Section 1 of P.D. No. 1613, accused Jaime Gamboa and Eleuterio Gargar are each sentenced to the indeterminate penalty of four years and two months of prision correccional as minimum to eight years and one day of prision mayor as maximum, to jointly and severally indemnify Arsenio Acabo the amount of P500.00 without subsidiary imprisonment in case of insolvency and to pay their proportionate share of the costs.

In Criminal Case No. 9474 for Murder, accused Jaime Gamboa and Eleuterio Gargar are each sentenced, in accordance with the new doctrine enunciated by the Supreme Court in *People vs Munoz, et. al.*, G.R. No. L-38968, February 9, 1989, there being no modifying circumstance, to the penalty of reclusion perpetua, to jointly and severally indemnify the heirs of Joedex Acabo the amount of P50,000.00 without subsidiary imprisonment in case of insolvency and to pay their proportionate share of the costs.

In the service of their sentence said accused are credited with the full time of their preventive imprisonment in accordance with Article 29 of the Revised Penal Code as amended by Republic Act 6127 if the conditions prescribed therein have been complied.

SO ORDERED."[9]

In this appeal, accused-appellants' main contention is that the trial court erred in giving full weight and credence to the testimony of prosecution witnesses, especially those of Arsenio Acabo and Mario Wellan Acabo, and finding that conspiracy was present when accused-appellants allegedly set fire the roof of Arsenio's house and for the death of Joedex Acabo.

Accused-appellant Jaime Gamboa argues that the circumstantial evidence presented by the prosecution to prove that he committed the crime of arson was not sufficient to convict him. Moreover he contends that the testimonies of the prosecution witnesses regarding the shooting of Joedex were full of inconsistencies and contradictions which cast a reasonable doubt on his guilt.

Accused-appellant Eleuterio Gargar likewise argues that the prosecution failed to prove his guilt beyond reasonable doubt. He cites the many inconsistencies in both the testimonies of Arsenio and Mario Wellan, such as the time when Arsenio woke up and saw the roof of his house burning; Arsenio testified that appellant Gamboa used his right hand in firing the gun while Mario Wellan claims that Gamboa used his left hand; Mario Wellan stated in his affidavit that he could not ascertain how many shots were fired but during his testimony in court, he was certain as to the exact number of shots.[10]

The Office of the Solicitor General, on the other hand, contends that the prosecution has clearly established the guilt of accused-appellants beyond reasonable doubt. Moreover the alleged inconsistencies raised by appellants regarding the testimonies of prosecution witnesses are trivial matters which do not destroy their probative value.

We find the appeal partly impressed with merit.

The trial court, in convicting accused-appellants of the crime of arson, used the following as circumstantial evidence:

"1. That at about 5:30 o'clock in the afternoon of December 23, 1989, appellants Gargar and Gamboa, with Medio Sadagnot and two CAFGUs were drinking Anejo rum and Pepsi in Manga, Manalongon, Sta. Catalina, Negros Oriental and that, after appellant Gargar had paid for the drinks, the group left and went towards the direction of Apuya some 1 ½ kilometers away. (As testified by prosecution witness, Timoteo Concepcion)

2. At about 11:30 in the evening of the said date, December 23, 1989, appellants Gargar and Gamboa, in the

company of said three other persons, were seen by Arsenio Acabo and his son Mario Wellan Acabo on the road just three fathoms from the house of the Acabos while its roof was on fire, and it was on that occasion that appellant Gamboa fired its firearm that killed Joedex and hit Arsenio's small toe.

3. Appellants and their companions fled to and jumped into fathom-deep cliff some nine or ten meters away from the Acabos' house.

4. A torch made of dried coconut leaves "which obviously was tossed to the roof to start the fire" was found near Acabo's house the next day; this fact resembles with appellant Gargar's story that he went out of his house to gather dried coconut leaves to boil water."^[11]

After a careful perusal of the records of the case, we find that the circumstances cited by the trial court do not sustain the conviction of accused-appellants for the crime of arson. Direct evidence of the commission of a crime is not the only matrix from where a trial court may draw its conclusion and finding of guilt. Indeed, there are crimes where there are no eyewitnesses at all. Under such situations, the courts are allowed to rule on the bases of circumstantial evidence. Which is sufficient for conviction if 1) if 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 a conviction beyond reasonable doubt. The corollary rule is that the circumstances established must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.^[12]

In the case at bar, two circumstances were cited by the prosecution to prove that accused-appellants committed the crime of arson. First, the testimony of Timoteo Concepcion that he saw accused-appellants together with Medio Sadagnot and two CAFGU members drinking in a store at Manga, Manalongon in the afternoon before the incident.^[13] Second, the presence of the accused-appellants together with their companions standing outside Arsenio's house while the roof was on fire. However, the said circumstances are insufficient to convict accused-appellants of arson in the absence of direct proof that they set fire to the roof of Arsenio's house. The circumstances do not constitute an unbroken chain that would lead to the conclusion that accused-appellants were responsible for the burning of the roof of the Acabos.

The evidence proffered by the prosecution merely create a suspicion that accused-appellants probably perpetrated the crime charged. But suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt.^[14] There being no credible circumstantial evidence to warrant a fair conclusion that appellants committed the crime of arson, acquittal, therefore, is in order.

On the other hand, as to the charge of murder, accused-appellants relied on the inconsistencies in the testimonies of Arsenio Acabo and his son, Mario Wellan, which, being relatively trivial, do not affect the veracity of their testimonies. Inconsistencies in the testimonies of witnesses which refer to minor and insignificant details do not destroy their credibility. Such minor inconsistencies even manifest truthfulness and candor and erase any suspicion of rehearsed testimony.^[15]

In this case, the fact remains that Mario Wellan, was present at the scene of the crime, actually witnessed the killing of his brother, Joedex by appellant Jaime Gamboa. Mario's testimony was corroborated by his father, Arsenio, who likewise witnessed the killing of his son from his house and was also shot on his small toe.

The defense of alibi set up by accused-appellants was correctly rejected by the trial court. For alibi to be credible, the accused must not only prove his presence at another place at the time of the commission of the offense but must also demonstrate that it would be physically impossible for him to be at the crime scene at that time.^[16] In the case at bar, appellant Gargar claims that he was in his house on December 23, 1989, but his house was merely half a kilometer away from that of the Acabo's, where the killing took place. As to appellant Gamboa, he alleged

that he was at the CAFGU outpost in Mangoncong on December 23, 1989 digging a foxhole. This allegation was, however, belied by the un rebutted prosecution evidence that there was no CAFGU outpost in the sitio of Mangoncong.[17] It is a well settled doctrine that alibi is a weak defense and that it should be rejected when the identity of accused was sufficiently and positively established by an eyewitness to the offense.[18] Mario's testimony, further corroborated by Arsenio, gives a complete account on the killing of Joedex, positively identifying accused Gamboa as the perpetrator of the crime.

Likewise, the trial court correctly ruled that conspiracy was present in this case. For collective responsibility to be established, it is not necessary that conspiracy be proved by direct evidence of prior agreement to commit the crime nor is it essential that there be proof of previous agreement to commit a crime. Conspiracy may logically be inferred from acts and circumstances showing the existence of a common design to commit the offense charged.[19]

The prosecution sufficiently proved that appellant Gamboa shot Joedex. As to appellant Gargar's liability, the evidence shows that he was standing side by side with Medio Sadagnot and two CAFGU members, when Gamboa fired the fatal shot that caused the death of the victim. While mere presence in the crime scene, absent any proof to support the allegation of conspiracy, cannot be considered as an indication of their being conspirators,[20] an exception to the rule is that when circumstances under which the accused was found, coupled with his conduct, may produce moral conviction that the accused must have participated in the commission of the offense.[21] In this case, appellant Gargar was not merely present in the crime scene, he had a bolo tucked in his waist.[22] Thus, his armed presence unquestionably lent encouragement and a sense of security to appellant Gamboa. While there is no evidence that appellant Gargar used his bolo, the fact that he fled with appellant Gamboa and three other companions bolstered the finding of a unity of purpose with appellant Gamboa. Conspiracy was also demonstrated by appellant Gargar's failure to prevent Gamboa from shooting the Acabo family.

To escape from criminal liability, the conspirator must have performed overt acts to stop or dissociate himself from the unlawful plan to commit the felony.[23] Where conspiracy is proven, the act of one is the act of all and therefore it does not matter that an accused did not fire the fatal shot.[24] Thus, the prosecution sufficiently proved that conspiracy was present in the killing of Joedex Acabo.

Based on the foregoing, the trial court correctly gave weight and credence to the testimonies of prosecution witnesses, Arsenio Acabo and Mario Wellan, which formed the bases for the conviction of accused-appellants of the crime of murder. The Court accords great respect to the factual findings of the trial court, which is in a better position than an appellate court to properly evaluate testimonial evidence, such as observing directly the witnesses' deportment and manner of testifying, absent any palpable error or arbitrariness in their findings.[25]

The conviction of accused-appellants of murder was qualified with treachery. The aggravating circumstance of treachery[26] is present when the offender commits any of the crimes against person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[27] In this case, Joedex was helping his brother extinguish the fire on the roof of their house when he was hit by one of the four bullets fired by appellant Gamboa. Under these conditions, appellant Gamboa's manner of shooting Joedex, as well as the circumstances present, did not allow the victim to put up any defense. The allegations of treachery charged in the Information were therefore duly proven by the prosecution.

WHEREFORE, the appeal is **PARTIALLY GRANTED** and the decision dated February 24, 1993 of the Regional Trial Court of Dumaguete City, Branch 37 in Criminal Case Nos. 9463 and 9474 is hereby **MODIFIED**. Accused-appellants Eleuterio Gargar and Jaime Gamboa are **ACQUITTED** in Criminal Case No. 9463 for arson

on the ground of reasonable doubt. Insofar as Criminal Case No. 9474 for murder, the decision of the trial court is AFFIRMED in toto.

SO ORDERED.

Kapunan, Purisima, and Pardo, JJ., concur.

- [1] Rollo, pp. 21-34.
- [2] Judge Temistocles B. Diez, presiding.
- [3] Rollo, pp. 21-22.
- [4] TSN, March 25, 1992, pp. 12-27.
- [5] Ibid, pp. 31-34.
- [6] Ibid, June 18, 1992, pp. 39-41.
- [7] Records, Exhibit A.
- [8] Records, Exhibit J.
- [9] Rollo, pp. 21-34.
- [10] Ibid, p. 124 (Appellant's Brief, pp. 5-10).
- [11] Id, p. 32.
- [12] People v. Danao, 323 Phil. 178 (1996)
- [13] TSN, March 27, 1992, pp. 12-15.
- [14] People v. Imelda Darvin, G.R. No. 125044, July,13, 1998.
- [15] People v. Edgardo Grefaldia, G.R. Nos. 121631-36, October 30, 1998.
- [16] People v. Alcantara, 324 Phil. 661 (1996).
- [17] TSN, July 31, 1992, pp. 7-9.
- [18] People v. Salvador, 279 SCRA 693 (1997).
- [19] People v. Sequiño, 332 Phil 90 (1996).
- [20] People v. Estanislao, 333 Phil. 680 (1996).
- [21] People v. Guialil Kamad, 100 Phil 419.
- [22] TSN, March 25, 1992, p. 48.
- [23] People vs. de los Reyes, 215 SCRA 63 (1992).
- [24] People vs Manlusoc, 327 Phil 599 (1996).
- [25] People vs Zamora, 278 SCRA 60 (August 21, 1997).
- [26] Article 14, Revised Penal Code.

[27] People vs Cogonon, 262 SCRA 693 (October 4, 1996).

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