THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JUAN CASUMPANG, DEFENDANT AND APPELLANT.

G. R. Nos. 14973-74. March 26, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

On September 28, 1954, Juan Casumpang was charged the crime of simple arson under an information worded as follows:

> That on or about July 3, 1954, in the municipality of Anilao, province of Iloilo, Philippines, and within the jurisdiction of this Court, the accused, conspiring, confederating, and working together with John Doe and Richard Doe who are still at large, and take advantage of nighttime to better realize their purpose, armed with a revolver, with the use of force upon things, that is, by break' the door open, entered the house owned and inhabited by on Venancio Apresto and his family, and once inside, with deliberat intent and without justifiable motive, did then and there wilfully unlawfully and feloniously set fire to the house belonging to Venancio Apresto knowing said house to be inhabited and as a result of which the said house and things and effects therein were totally burned, thus causing damage and prejudice to said owner in the sum of P1,200.00."

The case was docketed as Criminal Case No. 4626 of the Court of First Instance of Iloilo.

After trial, the accused was found guilty, sentenced to an indeterminate sentence of from eight (8) years and one (1) day of prision mayor to sixteen (16) years and one (1) day of reclusion temporal, and to pay indemnity in the sum of P1,250.00 to Antonino Apresto, with costs. Not agreeable to the judgment, Casumpang appealed to the Court of Appeals, where the case was docketed as CA-G.R. No. 15586-R. The appeal is now before us pursuant to a resolution, dated December 29, 1958, of the Court of Appeals, sustaining the judgment of conviction except for the penalty therein imposed, which the appellate court believes should have been that of reclusion perpetua. Because the latter court is devoid of power t impose said penalty, the case was certified to us for final disposition.[1]

The following facts are fully supported by the evidence on record:

At about midnight of July 3, 1954, while Venancio Apresto and Rosario Osano, son and mother, respectively were asleep in their house in barrio Balabag, Anilao, Iloilo, t someone called from downstairs asking for a torch. Awakened, and upon instructions of his mother, Venancio ¦filled a bottle with kerosene and provided it with a wick. jr After lighting it, he handed the torch through the window to a person whose face he was able to sf&cexn.. Just as the lighted torch was handed down, Venancio saw the backs of two other men. The man who reached for the torch then asked for a glass of water, and Venancio once more obliged. Then, the trio demanded that the door be opened; and as none of the inmates would do so, they went up the porch and, attempting to gain entry, tried to force the door open, but they found it to-be securely locked. Unsuccessful, they shouted: "Just drop the weapons and money," to which Rosario replied that she didn't have any. This time, the trio forced open the window by removing one panel. Then, the same man who had received the torch attempted to enter through the window

opening, but was compelled to jump down when Venancio struck at him with a bolo. Immediately upon reaching the ground, the intruder fired gunshot that luckily hit no one. Upon signal from his companions, the same man set the house afire with the torch, and fled with his companions while the house was burning. To avoid being caught in the flames, Rosario Osano, Venancio Apresto, and two other children escaped through the kitchen (Antonino Apresto, the head of the family, being then away). The house and personal properties it contained, all valued at P1,200.00, were completely destroyed by the fire.

The morning after the incident, Venancio went to the municipal building of the town to report the matter, but as it was Sunday, he was not able to do so officially. The following Monday, however, the Chief of Police sent one of his men to conduct an investigation at the scene of the arson and to summon Venancio and his mother to the municipal hall for investigation.

The only issue is whether appellant's identity as one of the midnight raiders is sufficiently borne out by the evi-dence on record. Rosario Osano and Venancio Apresto both testified that they were able to recognize appellant Juan Casumpang as the arsonist who was handed the torch and a glass of water by Venancio. This they were able to do by the light of the torch that was handed to him (appellant). Venancio, furthermore, already knew Juan Casumpang before the incident, although he was not aware of his name then. It was also elicited during the trial that when Venancio Apresto and Rosario Osano were summoned by the Chief of Police around September or about two months after the occurrence in question, they readily identified the accused, a detained prisoner there, as one of the three men who burned their house; in fact, as the same fellow who was holding the torch and asked for a glass of water. The Chief of Police did not then divulge the name of the said prisoner, which fact explains the reason why in the affidavits of Venancio and Rosario, they did not refer to the accused as Juan Casumpang.

Our attention has been called to some alleged incon-sistencies committed by the chief prosecution witnesses; but such inconsistencies, insignificant as they were, do not necessarily mean that the witnesses could not have recognized the face of Casumpang, which, they insisted, was exposed to them during the eventful incident. More-over, as pointed out by the Court of Appeals, in most cases, affidavits are hurriedly taken and cannot be ex-pected to preclude inaccuracies, and usually, it is during the rigid examination at the trial when witnesses are compelled to state the specific facts in a given case.

Neither can we accept appellant's theory that he must have been mistaken only for an ex-convict Jose Casumpang, who, it is alleged, was the real author of the felonious deed complained of. As we have noted from the records before us, the prosecution witnesses were able to, and actually did, identify the accused not by name but by his face and physical appearance.

We conclude that in view of a positive identification, the lower court correctly disregarded the defense of alibi put up by the accused-appellant. Furthermore, it appears that appellant's house, where he claims to have stayed the whole night of July 3, 1954, is only about seven (7) kilometers away from the scene of the arson, and that the two places are easily accessible to each other by modern means of transportation. It was, therefore, neither im-possible nor improbable for appellant to have been at the scene of the crime on the night aforementioned.

The contention that the case was instituted only upon the instigation of the police chief of Anilao, because the latter failed to extort money from Casumpang, cannot be seriously considered. Whether or not the police head tried to extort any sum from the accused does not materially alter the situation the latter was already in. The refusal of the accused to give the amount of P500.00 could not have been enough reason for the alleged extortionist to fabricate the present charge, much less for the prosecution witnesses, Venancio Apresto and Rosario Osano, to testify falsely against the appellant. It does not appear, nor was it attempted to be shown, that anyone of them harbored any personal grudge against the accused.

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It is also averred that appellant was deprived by the trial court of his right to compulsory process to secure the attendance of one Domingo Patano, a probable de-fense witness. The records, however, disclose that said witness was properly subpoenaed by the court, and that when he failed to appear, defense counsel merely asked for the postponement of the case, which the court granted. When the trial was resumed on July 11, 1955, accused took the witness stand and after his, testimony was taken down, the defense closed its evidence and submitted the case for decision, without further reference to the presentation of any other witness who might testify for the defense. Under the circumstances, we certainly cannot hold the trial court guilty of the abuse charged by defense counsel.

The crime committed by the appellant was that of arson of an inhabited house, for which the law (Art. 321 (1) of the Revised Penal Code) imposes the penalty of reclusion temporal to reclusion perpetua. The commission of the offense was attended by the aggravating circumstance of nighttime, without any mitigating circumstance to offset it, so that the proper and only imposable penalty is reclusion perpetua, as correctly recommended by both the Court of Appeals and the Solicitor General. The indemnity in the amount of P1,250.00 imposed by the trial court upon the appellant should, however, be reduced to P1,200.00, the total value of the properties burned.

Wherefore, finding the accused Juan Casumpang guilty beyond a reasonable doubt of the crime of arson under Article 321, paragraph (1), of the Revised Penal Code, we hereby sentence him to undergo the penalty of reclusion perpetua, with all its accessories, and to indemnify Antonino Apresto in the sum of P1,200.00. Costs against appellant in both instances.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Barrera, Gutierrez David, and Paredes, JJ., concur.

Judgment affirmed with modification.

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[1]By mistake the records in CA-G. R. No. 15587-R (People vs. Casumpang), which case was appealed to the Court of Appeals jointly with CA-G. R. No. 15586-R, were also sent to this Court, without its having been appealed to us or certified by the Court of Appeals. The mistake explains why this appeal bears docket numbers.

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