

SECOND DIVISION

[G.R. No. 223098, June 03, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NESTOR DOLENDY Y FEDILES ALIAS "ETOY", ACCUSED-
APPELLANT.**

DECISION

LAZARO-JAVIER, J.:

This appeal assails the Decision^[1] dated March 18, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05400, entitled *People of the Philippines vs. Nestor Dolendo y Fediles alias "Etoy"*, modifying the trial court's verdict of conviction against appellant from **arson with homicide** to **simple arson**.

The Proceedings before the Trial Court

By Information dated January 15, 1997,^[2] appellant Nestor Dolendo y Fediles was charged with arson resulting in the death of Leonardo Perocho, Jr. (Leonardo Jr.), viz:

That on or about September 18, 1996 in the afternoon thereof, at sitio (sic) Kapatagan, Barangay Capsay, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously set on fire a house owned by Leonardo Perocho, Sr., knowing it to be occupied at that time by one or more persons and as a result thereof LEONARDO PEROCHO, JR., 6 yrs. (sic) old boy suffered massive burns and injuries which directly caused his death thereafter.

CONTRARY TO LAW.

The case was docketed Criminal Case No. 8307 and raffled to the Regional Trial Court (RTC), Branch 48, Masbate City. Appellant had remained at large for five years until he got arrested on February 23, 2001.^[3]

On arraignment, appellant pleaded "not guilty".^[4] During the trial, Deolina Perocho and Jessie Perocho testified for the prosecution. On the other hand, only appellant testified for the defense.

The Prosecution's Evidence

Complainant Deolina Perocho testified that on September 18, 1996, around 4 o'clock in the afternoon while she and her children, Ivy (one year old), Isalyn (three years old), and Janice (five years old) were eating in their house at Sitio Kapatagan, Barangay Capsay, Municipality of Aroroy, Province of Masbate,^[5] she heard

appellant shouting "Leonardo, I am already here!"^[6] Leonardo Perocho, Sr. (Leonardo Sr.) was Deolina's husband. She also saw appellant Nestor Dolendo y Fediles alias "Etoy" holding a gun. She and her children immediately ran upstairs and called for help.^[7] But since their house was far from their neighbors, no one came to help.^[8]

She saw appellant gather dried coconut leaves and set their porch on fire.^[9] She and her three children jumped from the rear window and hid in a grassy area.^[10] After a while, they heard her six year old son Leonardo Jr. crying. She then realized she had totally forgotten about Leonardo Jr. who was asleep when the house fire began. By the time they came out from their hiding place, the house had been completely burned and Leonardo Jr. had died.^[11]

Appellant and her husband were not in good terms as they had a previous altercation. Leonardo Sr. had since avoided appellant.^[12]

Jessie Perocho, Deolina's 18-year old son testified that he was working at a nearby farm when the incident took place. He saw appellant light a torch made of coconut leaves and use it to set their house on fire.^[13] He got so scared he could not do anything to stop appellant.^[14]

Dr. Conchita Ulanday's post-mortem Medical Report on Leonardo, Jr. bore the following findings:

The cadaver was reduced in size, both extremities, upper and lower were missing as a result of burning. Skull was massively burned exposing burn (sic) brain tissue. Muscles of the face was also gone as a result of burning. Mandible bone and teeth were exposed. Skin and muscles of the upper and lower part of the body were massively burned. All internal organs were exposed and burned.

Due to the above mentioned examination was made that death was due to massive burned (sic).^[15]

The Defense's Evidence

Appellant invoked denial and alibi. He claimed to have been in *Pulong Buhangin*, Sta. Maria, Bulacan at the time of the incident.^[16] He knew the Perochos because Leonardo Sr. was one his mother's workers.^[17] He asserted that the prosecution witnesses could not have positively identified him from afar.^[18] He admitted though that he had a misunderstanding with the Perochos pertaining to gold panning activities.^[19]

The Trial Court's Ruling

By Decision^[20] dated September 23, 2011, the trial court found appellant guilty of arson with homicide. It gave credence to the testimonies of the prosecution witnesses and disregarded appellant's defense of alibi, thus:

WHEREFORE, in view of the foregoing, accused NESTOR DOLENDO y FEDILES is found guilty beyond reasonable doubt of the crime of ARSON with Homicide defined and penalized under Article 320 of the Revised Penal Code of the Philippines as amended by Republic Act No. 7659. He is hereby sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the heirs of the victim P75,000 as civil indemnity, P75,000 as moral damages and P30,000 as exemplary damages without subsidiary imprisonment in case of insolvency;

The period of detention of accused NESTOR DOLENDO y FEDILES shall be credited in his favor.

The Provincial Jail Warden of the Provincial Jail, Masbate is directed to immediately transfer NESTOR DOLENDO y FEDILES to the National Bilibid Prison, Muntinlupa City.

SO ORDERED.^[21]

On November 18, 2011, appellant filed a motion for new trial^[22] based on the respective affidavits of recantation^[23] of Deolina and Jessie Perocho. Deolina claimed that the fire came from a lighted kerosene lamp which fell and hit the wall of the house. Jessie, on the other hand, said he was nowhere near their house at the time of the incident.

Under Order dated November 25, 2011, the trial court denied the motion.^[24] It noted that the affidavits of recantation were executed fifteen years long after the incident and the affidavits of recantation did not address all the matters established during trial.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for convicting him of arson with homicide. He argued: **first**, the prosecution witnesses gave inconsistent testimonies pertaining to who exactly among the children were inside the house when it was set on fire and what appellant exactly uttered about Leonardo Sr. before he burned the house; **second**, the affidavits of recantation should have resulted in his acquittal; and **third**, the judge who penned the verdict of conviction was not the same judge who heard and tried the case.

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Ma. Antonia Edita C. Dizon and Associate Solicitor Mercedita L. Flores countered that the alleged inconsistencies referred to trivial matters which did not affect the credibility of the prosecution witnesses. As for the affidavits of recantation, the OSG agreed with the trial court that the same should be disregarded in view of the lapse of fifteen years from the time the incident took place, not to mention that the affidavits did fail to address all the matters presented during the trial. The OSG also argued that based on several decisions of the Court, the fact alone that a different judge rendered the decision other than the one who heard it, does not invalidate said decision. Finally, the OSG recommended that appellant's conviction be modified from arson with homicide to simple arson.

Under Decision dated March 18, 2015, the Court of Appeals affirmed with modification. Instead of arson with homicide, it found appellant guilty of simple arson, thus:

WHEREFORE, premises considered, the appeal is hereby DISMISSED and the September 23, 2011 Decision and the November 25, 2011 Order of the Regional Trial Court of Masbate City, Branch 48, in Criminal Case No. 8307, are AFFIRMED WITH MODIFICATION, in that Nestor Dolendo y Fediles is found guilty beyond reasonable doubt of the crime of simple arson.

SO ORDERED.^[25]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution^[26] dated June 15, 2016, both the OSG and appellant manifested that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.^[27]

Issues

- 1.) Did the Court of Appeals err in affirming the trial court's factual findings on the credibility of witnesses?
- 2.) Was the prosecution able to prove appellant's guilt beyond reasonable doubt?
- 3.) Was the trial court's verdict of conviction rendered invalid considering that the judge who rendered it was not the same judge who heard and tried the case?
- 4.) Did the Court of Appeals err in modifying appellant's conviction from arson with homicide to simple arson?

Ruling

The appeal must fail.

Section 3 of Presidential Decree 1613 (PD 1613), otherwise known as the New Arson Law^[28] reads:

Section 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:

1. Any building used as offices of the government or any of its agencies;
2. Any inhabited house or dwelling;
3. Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel;
5. Any plantation, farm, pastureland, growing crop, grain field, orchard, bamboo grove or forest;

6. Any rice mill, sugar mill, cane mill or mill central; and

7. Any railway or bus station, airport, wharf or warehouse.

Further, Sec. 5 reads:

Section 5. *Where Death Results from Arson.* If by reason of or on the occasion of the arson death results, the penalty of Reclusion Perpetua to death shall be imposed.

Arson requires the following elements: (1) a fire was set intentionally; and (2) the accused was identified as the person who caused it. The *corpus delicti* rule is satisfied by proof of the bare fact of the fire and that it was intentionally caused.^[29]

Here, Deolina Perocho positively testified:

Q: Kindly tell the court what the incident was about.

A: At 4:00 o'clock in the afternoon of September 18, 1996, this Nestor Dolendo was shouting at my husband.

x x x x

Q: And did you personally see this Nestor Dolendo shouting?

A: Yes, sir.

x x x x

Q: You saw him with a gun?

A: Yes, sir.

x x x x

Q: And after you kept shouting for help but none came, what happened next?

A: We jumped passing over the window at the back of the house together with my three children and Leonardo, Jr. was left.

Q: Why did you jump at the back window of your house?

A: Because he already set fire [on] our terrace.

x x x x

Q: By the way, how did you come to know that Nestor Dolendo had set fire on your porch?

A: **I saw him getting dried coconut leaves.**

Q: And what did he do with that porch?

A: **He set fire [on] our porch as well as the roofing made of coco leaves.**

Q: What did you do upon Nestor Dolendo having blazed the posts of your house with the torch?

A: We jumped out of the window.