

THIRD DIVISION

[G.R. No. 110029-30, December 29, 1998]

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

D E C I S I O N

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 enuniciated 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 Welan 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;