Republic of the Philippines
Supreme Court
Manila

**SECOND DIVISION**

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| **PEOPLE OF THE PHILIPPINES,** Plaintiff-Appellee, | **G.R. No. 223098** |
| | Present: |
| ***- versus -*** | CARPIO, *Chairperson*<br>PERLAS-BERNABE,<br>CAGUIOA,*<br>J. REYES, JR., and,<br>LAZARO-JAVIER, *JJ.* |
| **NESTOR DOLENDO y FEDILES alias "ETOY",** Accused-Appellant. | **Promulgated:**<br>03 JUN 2019 |

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# 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**.

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* On official leave.

[1] Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Remedios A. Salazar-Fernando and Marlene Gonzales-Sison, *rollo*, pp. 2-15.

## 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.
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> 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]

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[2] Record, p. 1.
[3] *Id.* at 17.
[4] *Id.* at 29.
[5] TSN, August 13, 2003, pp. 8-9.
[6] *Id.* at 10.
[7] *Id.* at 11.
[8] *Id.*

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.
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> 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

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[9] *Id.* at 13.
[10] *Id.* at 14.
[11] *Id.*
[12] *Id.* at 16.
[13] TSN, July 5, 2006, p. 5.
[14] *Id.* at 6.
[15] Record, p. 137.
[16] TSN, September 16, 2009, p. 2.
[17] *Id.* at 5.

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

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[18] *Id.* at 6.
[19] *Id.*
[20] Penned by Judge Arturo Clemente B. Revil.
[21] CA *rollo*, pp. 19-20.
[22] Record, pp. 189-193.
[23] *Id.* at 194-195.
[24] *Id.* at 201-206.

**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.
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> SO ORDERED.[25]

[25] CA *rollo*, pp. 165-166.

## 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.

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[26] *Rollo*, pp. 21-22.
[27] *Id.* at 23-25 and 28-30.
[28] PD 1613 repealed Arts. 320 to 326-B of The Revised Penal Code.

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.

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Q: And did you personally see this Nestor Dolendo shouting?
A: Yes, sir.

xxxx

Q: You saw him with a gun?
A: Yes, sir.

xxxx

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.

xxxx

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.**

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[29] *See People vs. Murcia*, 628 Phil. 648 (2010).

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.

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Q: How many of you were able to jump out of the window?
A: We were four, three children and I.

Q: Who were the children who were able to jump?
A: Isalyn, Ivy and Janice.

Q: After you jumped out of the window, where did you go together with your four children?
A: We hid at the grassy place.

Q: How about Leonardo?
A: He was left because he was [asleep].

Q: That was 4:00 o'clock in the afternoon?
A: Yes maam.

Q: You were not able to awaken him?
A: Because I was rattled and I was also carrying my youngest child.[30]

Jessie Perocho corroborated his mother's testimony, viz:

Q: **How did you know that the accused was the one who blazed the house?**
A: **I saw him.**

Q: How did he blaze the house?
A: **He lighted a torch made of bundle of coconut leaves and burned the house.**

xxxx[31]

Both Deolina and Jessie Perocho recounted in detail their harrowing experience as a family in the cruel hands of appellant when he burned down their dwelling, killing six year old Leonardo Jr. as a result. Deolina and three of her children had to jump out of the window to escape the fire and hide in a grassy area. It was appellant whom they saw setting their dwelling on fire after he proudly announced his arrival to the head of the family Leonardo Sr. who was not around at that time.

The trial court gave full credence to the positive testimony of both Deolina and Jessie Perocho on that it was indeed appellant who set their dwelling on fire, killing six year old Leonardo Jr. as a result. The credible

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[30] TSN, August 13, 2003, pp. 10-16.
[31] TSN, July 5, 2006, pp. 4-5.

testimonies of these eyewitnesses are sufficient to prove the *corpus delicti* and support a conviction for arson against appellant.[32]

Appellant, nonetheless, imputes ill-motive to have tainted the credibility of the witnesses because he had a previous altercation with Leonardo Sr., Deolina's husband and Jessie's father.

The record speaks for itself. Both Deolina and Jessie were categorical, consistent and firm in their narrations of the incident and the appellant's identity as the one who set their dwelling on fire.

As the trial court keenly observed, despite the grilling cross-examination, both Deolina and Jessie firmly stood by their respective testimonies, particularly on their positive identification of appellant as the person who burned down their dwelling.

Another, because of the fire, Deolina lost her six year old son Leonardo Jr.; and Jessie, his younger brother. Hence, if at all they were impelled by a certain motive to testify against appellant and point him out as the offender, it was solely to exact justice from the person who truly caused the fire and definitely not from just any innocent fall guy.[33]

Appellant next harps on the alleged inconsistencies in the testimonies of witnesses pertaining to who among the children were inside the house when it was set on fire and what exactly appellant uttered about Leonardo Sr.. Surely, these alleged inconsistencies, if at all, refer to trivial matters which do not affect the credibility of the witnesses[34] positively identifying appellant as the one who burned their dwelling, killing the six year old Leonardo Jr. as a result.

We now reckon with appellant's denial and alibi. He claims he was working at *Pulong Buhangin*, Sta. Maria, Bulacan on the day and time the incident happened. To begin with, alibi is the weakest of all defenses. It is unreliable and can be easily fabricated.[35] More so, when as in this case, it is unsubstantiated by any corroborative evidence. It further crumbles in the absence of any showing that the presence of the accused in some other place precluded him from being physically present at the *locus criminis* on the day and time the crime was committed.[36]

Suffice it to state that appellant's alibi cannot prevail over the positive, clear, and categorical testimonies of Deolina and Jessie Perocho

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[32] *Supra,* Note 29.
[33] *See People vs. Ducabo*, 560 Phil. 709, 722 (2007).
[34] *See People vs. Gonzales*, 582 Phil. 412, 421 (2008).
[35] *See People vs. Gani,*,710 Phil. 466, 473 (2013).
[36] *See People vs. Amoc*, G.R. No. 216937, June 05, 2017, 825 SCRA 608, 617.

who all throughout identified him as the person who burned down their dwelling, killing Leonardo Jr. as a result.

On the affidavits of recantation executed by Deolina and Jessie Parecho, the Court looks upon retractions with disfavor because they can be easily obtained from witnesses through intimidation or for monetary consideration. Besides, retraction does not necessarily negate an earlier declaration,[37] especially when a witness executes it after conviction.[38] *Firaza vs. People*[39] is *apropos*:

> Indeed, **it is a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind.** Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses.
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> This Court has always looked with disfavor upon retraction of testimonies previously given in court. The asserted motives for the repudiation are commonly held suspect, and the veracity of the statements made in the affidavit of repudiation are frequently and deservedly subject to serious doubt.
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> x x x. **Especially when the affidavit of retraction is executed by a prosecution witness after the judgment of conviction has already been rendered, "it is too late in the day for his recantation without portraying himself as a liar." At most, the retraction is an afterthought which should not be given probative value.** (Emphasis supplied)

In addition, We share the trial court's observation that the affidavits of recantation were too terse, if not grossly inadequate. They visibly failed to address a number of material evidence adduced on record. In any case, it is certainly incredulous that after going through the tedious process of filing of the complaint, followed by rigorous trial particularly the grilling cross examination, not to mention the stress, anxiety, tears, pain, and sleepless nights they had to bear before, during and after the seemingly unending quest for justice, Deolina and Jessie Perocho would now, after fifteen long years, claim that everything they said and did before including the pain, the

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[37] *See People vs. Espenilla*, 718 Phil. 153, 166 (2013).
[38] *See People vs. Lamsen*, 721 Phil. 256, 260 (2013).
[39] 547 Phil. 572, 584-585 (2007).

tears, the stress, the sleepless nights they claimed to have suffered was just after all a figment of their imagination.[40]

In another vein, appellant attacks the competence of Judge Arturo Clemente B. Revil to accurately ascertain the facts and the credibility of witnesses considering that another judge heard and tried the case from beginning to end.

The challenge must fail. On several occasions, the Court has clarified that the competence of a judge to evaluate the evidence on record and the credibility of witnesses and based thereon, ascertain with marked accuracy the cold facts of the case is not at all diminished simply because another judge heard and tried the case. The judge assigned to decide the case can rely on the transcripts of stenographic notes of the testimonies of the witnesses and calibrate them in conformity with rules of evidence *vis-à-vis* men's common experience, knowledge and observations. *Sandoval Shipyards, Inc. vs. PMMA*[41] is in point, viz:

> x x x we have held in several cases that the fact that the judge who heard the evidence is not the one who rendered the judgment; and that for the same reason, the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case does not render the judgment erroneous. **Even though the judge who penned the decision was not the judge who heard the testimonies of the witnesses, such is not enough reason to overturn the findings of fact of the trial court on the credibility of witnesses.** It may be true that the trial judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, but **it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial. That a judge did not hear a case does not necessarily render him less competent in assessing the credibility of witnesses.** He can rely on the transcripts of stenographic notes of their testimony and calibrate them in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law. (*Emphasis supplied*)

So must it be.

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[40] *Supra,* Note 38.
[41] *See* 708 Phil. 535, 545-546 (2013).

The Court of Appeals correctly modified appellant's conviction from arson with homicide to simple arson conformably with prevailing jurisprudence. In *People vs. Malngan,*[42] the Court pronounced:

> Accordingly, in cases where both burning and death occur, in order to determine what crime/crimes was/were perpetrated - whether arson, murder or arson and homicide/murder, it is *de rigueur* to ascertain the main objective of the malefactor: (a) **if the main objective is the burning of the building or edifice, but death results by reason or on the occasion of arson, the crime is simply *arson*, and the resulting homicide is absorbed**; (b) if, on the other hand, the main objective is to kill a particular person who may be in a building or edifice, when fire is resorted to as the means to accomplish such goal the crime committed is *murder* only; lastly, (c) if the objective is, likewise, to kill a particular person, and in fact the offender has already done so, but fire is resorted to as a means to cover up the killing, then there are two separate and distinct crimes committed — *homicide/murder and arson*. (Emphasis supplied)

We now tackle the imposable penalty. Sec. 5 of PD 1613 provides, viz: "(i)f by reason of or on the occasion of the arson death results, the penalty of *Reclusion Perpetua* to death shall be imposed". On this score, since no aggravating circumstance was alleged or proved here, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua.*[43]

As for the monetary awards, the Court sustains the grant of P75,000.00 as civil indemnity and P75,000.00 as moral damages. But the grant of P30,000.00 as exemplary damages should be increased to P75,000.00. In addition, P50,000.00 as temperate damages should be granted.[44] Finally, these amounts shall earn six percent interest per annum from finality of this Decision until fully paid.[45]

Accordingly, the appeal is **DENIED**, and the Decision dated March 18, 2015, **AFFIRMED WITH MODIFICATION**.

Appellant **Nestor Dolendo y Fediles alias "Etoy"** is found guilty of **Arson** and sentenced to ***reclusion perpetua***.

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[42] 534 Phil. 404, 431 (2006).
[43] *See People vs. Abayon*, 795 Phil. 291, 301 (2016).
[44] *People vs. Jugueta*, 783 Phil. 806, 853 (2016).
[45] *People vs. Banez*, 770 Phil. 40, 49 (2015).

Appellant is ordered to pay P75,000.00 as civil indemnity, P75,000.00 as moral damages, P75,000.00 as exemplary damages, and P50,000.00 as temperate damages. These amounts shall earn six percent interest per annum from finality of this Decision until fully paid.

**SO ORDERED.**

**AMY C. LAZARO-JAVIER**
*Associate Justice*

**WE CONCUR:**

**ANTONIO T. CARPIO**
Senior Associate Justice
Chairperson

**ESTELA M. PERLAS-BERNABE**
Associate Justice

(On Official Leave)
**ALFREDO BENJAMIN S. CAGUIOA**
Associate Justice

**JOSE C. REYES, JR.**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division

**ANTONIO T. CARPIO**
Senior Associate Justice
Chairperson, Second Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the above Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**LUCAS P. BERSAMIN**
Chief Justice