P10

Republic of the Philippines
Supreme Court
Manila

**SECOND DIVISION**

**MARLON BACERRA y TABONES,**
Petitioner,

-versus-

**PEOPLE OF THE PHILIPPINES,**
Respondent.

**G.R. No. 204544**

Present:

CARPIO,* *J.*,
PERALTA,** *Acting Chairperson*,
MENDOZA,
LEONEN, and
MARTIRES, *JJ.*

**Promulgated:**
03 JUL 2017

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**DECISION**

**LEONEN, *J.*:**

The identity of the perpetrator of a crime and a finding of guilt may rest solely on the strength of circumstantial evidence.

This resolves the Petition for Review[1] assailing the Decision[2] dated August 30, 2012 and the Resolution[3] dated October 22, 2012 of the Court of Appeals in CA-G.R. CR No. 32923, which upheld the conviction of Marlon Bacerra y Tabones (Bacerra) for the crime of simple arson punished under Section 1 of Presidential Decree No. 1613.[4]

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* On official leave.

** Designated Acting Chairperson per S.O. No. 2445 dated June 16, 2017.

1 *Rollo*, pp. 8–35.

2 Id. at 36–51. The Decision was penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela of the Thirteenth Division, Court of Appeals, Manila.

3 Id. at 65.

4 Pres. Decree No. 1613, sec. 1 provides:

In the Information dated January 12, 2006, Bacerra was charged with violation of Section 1 of Presidential Decree No. 1613:

> That on or about 4:00 o'clock in the morning of November 15, 2005, at Brgy. San Pedro Ili, Alcala, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, with intent to cause damage to another, did then and theres [sic], willfully, unlawfully and feloniously set fire to the rest house of Alfredo Melegrito y Galamay, to his damage and prejudice in the amount of Php70,000.00, more or less.
>
> Contrary to Sec. 1, 1st par. of P.D. 1613.[5]

Bacerra pleaded not guilty to the charge.[6]

During trial, the prosecution presented private complainant Alfredo Melegrito (Alfredo), Edgar Melegrito (Edgar), Toni Rose dela Cruz, and PO3 Marcos Bautista, Jr. to testify on the alleged incident.[7] Their collective testimonies produced the following facts for the prosecution:

Alfredo and his family[8] were sound asleep in their home on November 15, 2005.[9] At about 1:00 a.m., he was roused from sleep by the sound of stones hitting his house. Alfredo went to the living room[10] and peered through the jalousie window. The terrace light allowed him to recognize his neighbor and co-worker,[11] Bacerra.[12]

Bacerra threw stones at Alfredo's house while saying, "Vulva of your mother."[13] Just as he was about to leave, Bacerra exclaimed, "[V]ulva of your mother, Old Fred, I'll burn you now."[14] Bacerra then left.[15] Alfredo's son, Edgar, also witnessed the incident through a window in his room.[16]

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Section 1. *Arson.* – Any person who burns or sets fire to the property of another shall be punished by *Prision Mayor*.
The same penalty shall be imposed when a person sets fire to his own property under circumstances which expose to danger the life or property of another.

5 Id. at 37.
6 Id.
7 Id.
8 Id. at 130–131, TSN dated January 15, 2007.
9 Id. at 37.
10 Id. at 132.
11 Id.
12 Id. at 37.
13 Id.
14 Id.
15 Id.
16 Id. at 160, TSN dated October 23, 2006.

Troubled by Bacerra's threat, Alfredo waited for him to return. Alfredo sat down beside the window.[17] At around 4:00 a.m.,[18] he heard dogs barking outside.[19] Alfredo looked out the window and saw Bacerra walking towards their nipa hut,[20] which was located around 10 meters from their house.[21]

Bacerra paced in front of the nipa hut and shook it.[22] Moments later, Alfredo saw the nipa hut burning.[23]

Alfredo sought help from his neighbors to smother the fire.[24] Edgar contacted the authorities for assistance[25] but it was too late. The nipa hut and its contents were completely destroyed.[26] The local authorities conducted an investigation on the incident.[27]

The defense presented Bacerra, Alex Dacanay (Dacanay), and Jocelyn Fernandez (Fernandez) as witnesses. Their collective testimonies yielded the defense's version of the incident:

At around 11:00 p.m. of November 14, 2005, Bacerra was at the house of his friend, Ronald Valencia. The two (2) engaged in a drinking session with Dacanay and a certain Reyson until 1:00 a.m. of November 15, 2005.[28]

Bacerra asked Dacanay to take him to his grandmother's house. Dacanay conceded but they found the gate closed.[29] Embarrassed to disturb his grandmother,[30] Bacerra asked Dacanay to bring him to Fernandez's house instead.[31] However, Dacanay was already sleepy at that time.[32] Hence, Bacerra requested his brother-in-law, Francisco Sadora (Sadora), to accompany him to Fernandez's house, which was located one (1) kilometer away.[33]

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17 Id. at 137–138.
18 Id. at 37.
19 Id. at 138.
20 Id. at 37.
21 Id. at 37–38.
22 Id. at 38.
23 Id.
24 Id.
25 Id. at 139, TSN dated January 15, 2007.
26 Id. at 38. The following items were inside the nipa hut at the time that it was burned: a television set, an electric fan, a mountain bike, catering items, and an antique sala set. The estimated value of these items was ₱70,000.00.
27 Id.
28 Id.
29 Id. at 38–39.
30 Id. at 202, TSN dated May 18, 2009.
31 Id. at 39.
32 Id.
33 Id.

Bacerra and Sadora arrived at Fernandez's house at around 1:30 a.m. Fernandez told Bacerra to sleep in the living room. She checked on Bacerra every hour.[34] At around 7:00 a.m., police officers who were looking for Bacerra arrived at Fernandez's house.[35] Knowing that he did not do anything wrong,[36] Bacerra voluntarily went to the police station with the authorities.[37]

In the Decision dated October 6, 2009, Branch 50 of the Regional Trial Court in Villasis, Pangasinan[38] found Bacerra guilty beyond reasonable doubt of arson:

> WHEREFORE, judgment is hereby rendered finding accused Marlon Bacerra y Tabones *GUILTY* beyond reasonable doubt of the crime of Simple Arson defined and penalized in Section 1 of Presidential Decree No. 1613 and, there being no modifying circumstance, is sentenced to suffer an indeterminate penalty of *six (6) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum*, together with all the accessory penalties provided by law.
>
> The accused is likewise ordered to pay the private complainant P50,000.00 as temperate damages.
>
> SO ORDERED.[39] (Emphasis in the original)

Bacerra appealed the Decision of the Regional Trial Court.[40] He argued that none of the prosecution's witnesses had positively identified him as the person who burned the nipa hut.[41]

In the Decision[42] dated August 30, 2012, the Court of Appeals affirmed the Decision dated October 6, 2009 of the Regional Trial Court *in toto*.[43]

Bacerra moved for reconsideration[44] but the Motion was denied in the Resolution[45] dated October 22, 2012.

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34 Id.
35 Id.
36 Id. at 206, TSN dated May 18, 2009..
37 Id. at 39.
38 Id. at 36.
39 Id. at 39–40.
40 Id. at 66–84, Appeal Brief for the Accused-Appellant.
41 Id. at 72.
42 Id. at 36–51.
43 Id. at 50.
44 Id. at 52–64, Motion for Reconsideration of the Court of Appeals Decision.
45 Id. at 65.

On January 15, 2013, Bacerra filed a Petition for Review on Certiorari[46] assailing the Decision dated August 30, 2012 and Resolution dated October 22, 2012 of the Court of Appeals.

In the Resolution dated January 30, 2013, this Court required the People of the Philippines to comment on the petition for review.[47]

On June 18, 2013, the People of the Philippines, through the Office of the Solicitor General, filed a Comment on the Petition[48] to which petitioner filed a Reply[49] on January 27, 2014.

Petitioner argues that the Court of Appeals erred in upholding his conviction based on circumstantial evidence, which, being merely based on conjecture, falls short of proving his guilt beyond reasonable doubt.[50] No direct evidence was presented to prove that petitioner actually set fire to private complainant's nipa hut.[51] Moreover, there were two (2) incidents that occurred, which should be taken and analyzed separately.[52]

Petitioner adds that there were material inconsistencies in the testimonies of the prosecution's witnesses.[53] Petitioner also points out that private complainant acted contrary to normal human behavior, placing great doubt on his credibility.[54] Persons whose properties are being destroyed should immediately confront the perpetrator.[55] Private complainant and his family, however, merely stayed inside their house throughout the entire incident.[56]

Petitioner argues in the alternative that the mitigating circumstances of intoxication and voluntary surrender should have been appreciated by the lower tribunals in computing the imposable penalty.[57] Petitioner was drunk at the time of the alleged incident.[58] In addition, he voluntarily surrendered to the authorities despite the absence of an arrest warrant.[59] Lastly, petitioner asserts that temperate damages should not have been awarded because private complainant could have proven actual damages during trial.[60]

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46 Id. at 8–35.
47 Id. at 283–284.
48 Id. at 297–336.
49 Id. at 343–354.
50 Id. at 11.
51 Id. at 21.
52 Id. at 22.
53 Id. at 11.
54 Id. at 25–27.
55 Id. at 26.
56 Id.
57 Id. at 11.
58 Id. at 27–28.
59 Id. at 29–30.
60 Id. at 12.

In its Comment, respondent asserts that direct evidence is not the only means to establish criminal liability.[61] An accused may be convicted based on circumstantial evidence as long as the combination of circumstances leads to the conclusion that the accused is guilty beyond reasonable doubt.[62]

Respondent argues that the Court of Appeals correctly affirmed the trial court's decision. For intoxication to be considered as a mitigating circumstance, it must be shown that it is not habitual.[63] The state of drunkenness of the accused must be of such nature as to affect his or her mental faculties.[64] Voluntary surrender cannot likewise be considered as a mitigating circumstance because there is no showing of spontaneity on the part of the accused.[65]

Lastly, respondent argues that temperate damages amounting to ₱50,000.00 was properly awarded because the burning of private complainant's nipa hut brought some pecuniary loss.[66]

This case presents the following issues for this Court's resolution:

First, whether petitioner's guilt was proven beyond reasonable doubt based on the circumstantial evidence adduced during trial;[67]

Second, whether the mitigating circumstances of intoxication and voluntary surrender may properly be appreciated in this case to reduce the imposable penalty;[68] and

Finally, whether the award of temperate damages amounting to ₱50,000.00 was proper.[69]

This Court affirms petitioner's conviction for the crime of simple arson.

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61 Id. at 306.
62 Id. at 306–307.
63 Id. at 331.
64 Id. at 331–332.
65 Id. at 332–333.
66 Id. at 333–334.
67 Id. at 11.
68 Id.
69 Id. at 12.

**I**

Direct evidence and circumstantial evidence are classifications of evidence with legal consequences.

The difference between direct evidence and circumstantial evidence involves the relationship of the fact inferred to the facts that constitute the offense. Their difference does not relate to the probative value of the evidence.

Direct evidence proves a challenged fact without drawing any inference.[70] Circumstantial evidence, on the other hand, "indirectly proves a fact in issue, such that the factfinder must draw an inference or reason from circumstantial evidence."[71]

The probative value of direct evidence is generally neither greater than nor superior to circumstantial evidence.[72] The Rules of Court do not distinguish between "direct evidence of fact and evidence of circumstances from which the existence of a fact may be inferred."[73] The same quantum of evidence is still required. Courts must be convinced that the accused is guilty beyond reasonable doubt.[74]

A number of circumstantial evidence may be so credible to establish a fact from which it may be inferred, beyond reasonable doubt, that the elements of a crime exist and that the accused is its perpetrator.[75] There is no requirement in our jurisdiction that only direct evidence may convict.[76] After all, evidence is always a matter of reasonable inference from any fact that may be proven by the prosecution provided the inference is logical and beyond reasonable doubt.

Rule 113, Section 4 of the Rules on Evidence provides three (3) requisites that should be established to sustain a conviction based on circumstantial evidence:

> Section 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:
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> (a) There is more than one circumstance;

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70 *People v. Ramos,* 310 Phil. 186, 195 (1995) [Per J. Puno, Second Division].

71 *People v. Villaflores*, 685 Phil. 595, 614 (2012) [Per J. Bersamin, First Division].

72 *People v. Fronda*, 384 Phil. 732, 744 (2000) [Per C.J. Davide, First Division].

73 Id.

74 Id.

75 *See People v. Villaflores*, 685 Phil. 595, 613–618 (2012) [Per J. Bersamin, First Division]; *People v. Whisenhunt*, 420 Phil. 677, 696–699 (2001) [Per J. Ynares-Santiago, First Division].

76 *See People v. Villaflores,* 685 Phil. 595, 614 (2012) [Per J. Bersamin, First Division]; *People v. Whisenhunt,* 420 Phil. 677, 696 (2001) [Per J. Ynares-Santiago, First Division].

(b) The facts from which the inferences are derived are proven; and
(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[77]

The commission of a crime, the identity of the perpetrator,[78] and the finding of guilt may all be established by circumstantial evidence.[79] The circumstances must be considered as a whole and should create an unbroken chain leading to the conclusion that the accused authored the crime.[80]

The determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test not a quantitative one.[81] The proven circumstances must be "consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."[82]

The crime of simple arson was proven solely through circumstantial evidence in *People v. Abayon*.[83] None of the prosecution's witnesses actually saw the accused start the fire.[84] Nevertheless, the circumstantial evidence adduced by the prosecution, taken in its entirety, all pointed to the accused's guilt.[85]

In *People v. Acosta,*[86] there was also no direct evidence linking the accused to the burning of the house.[87] However, the circumstantial evidence was substantial enough to convict the accused.[88] The accused had motive and previously attempted to set a portion of the victim's house on fire.[89] Moreover, he was present at the scene of the crime before and after the incident.[90]

Similarly, in this case, no one saw petitioner actually set fire to the nipa hut. Nevertheless, the prosecution has established multiple circumstances, which, after being considered in their entirety, support the conclusion that petitioner is guilty beyond reasonable doubt of simple arson.

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77 RULES OF COURT, Rule 133, sec. 4.
78 *Cirera v. People*, 739 Phil. 25, 41 (2014) [Per J. Leonen, Third Division].
79 *People v. Villaflores*, 685 Phil. 595, 615–617 (2012) [Per J. Bersamin, First Division].
80 *People v. Whisenhunt,* 420 Phil. 677, 696 (2001) [Per J. Ynares-Santiago, First Division].
81 *See People v. Ludday,* 61 Phil. 216, 221 (1935) [Per J. Vickers, En Banc].
82 Id. at 221–222.
83 G.R. No. 204891, September 14, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/204891.pdf> [Per J. Brion, Second Division].
84 Id. at 4.
85 Id. at 5–6.
86 382 Phil. 810, 820 (2000) [Per J. Quisumbing, Second Division].
87 Id. at 820.
88 Id. at 823.
89 Id. at 821.
90 Id. at 822.

First, the evidence was credible and sufficient to prove that petitioner stoned private complainant's house and threatened to burn him.[91] Private complainant testified that he saw petitioner throwing stones at his house and heard petitioner say, *"okinam nga Lakay Fred, puuran kayo tad ta!"*[92] (Vulva of your mother, Old Fred, I'll burn you now.)[93] Petitioner's threats were also heard by private complainant's son[94] and grandchildren.[95]

Second, the evidence was credible and sufficient to prove that petitioner returned a few hours later and made his way to private complainant's nipa hut.[96] Private complainant testified that at 4:00 a.m.,[97] he saw petitioner pass by their house and walk towards their nipa hut.[98] This was corroborated by private complainant's son who testified that he saw petitioner standing in front of the nipa hut moments before it was burned.[99]

Third, the evidence was also credible and sufficient to prove that petitioner was in close proximity to the nipa hut before it caught fire.[100] Private complainant testified that he saw petitioner walk to and fro in front of the nipa hut and shake its posts just before it caught fire.[101] Private complainant's son likewise saw petitioner standing at the side of the nipa hut before it was burned.[102]

The stoning incident and the burning incident cannot be taken and analyzed separately. Instead, they must be viewed and considered as a whole. Circumstantial evidence is like a "tapestry made up of strands which create a pattern when interwoven."[103] Each strand cannot be plucked out and scrutinized individually because it only forms part of the entire picture.[104] The events that transpired prior to the burning incident cannot be disregarded. Petitioner's threat to burn occurred when he stoned private complainant's house.

Also, there is no other reasonable version of the events which can be held with reasonable certainty.

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91 *Rollo*, p. 44.
92 Id. at 182, TSN dated September 3, 2007.
93 Id. at 136–137, TSN dated January 15, 2007.
94 Id. at 160, TSN dated October 23, 2006.
95 Id. at 182, TSN dated September 3, 2007.
96 Id. at 44.
97 Id. at 37.
98 Id. at 138, TSN dated January 15, 2007.
99 Id. at 167, TSN, dated October 23, 2006.
100 Id. at 44.
101 Id. at 138, TSN dated January 15, 2007.
102 Id. at 167, TSN dated October 23, 2006.
103 *People v. Ragon*, 346 Phil. 772, 785 (1997) [Per J. Panganiban, Third Division].
104 Id.

Private complainant could have actually seen petitioner burn the nipa hut by stepping outside of his house. However, behavioral responses of individuals confronted with strange, startling, or frightful experiences vary.[105] Where there is a perceived threat or danger to survival, some may fight, others might escape.[106] Private complainant's act of remaining inside his house during the incident is not contrary to human behavior. It cannot affect his credibility as a witness.

Furthermore, "the assessment of the credibility of witnesses is a function . . . of the trial courts."[107] It is a factual matter that generally cannot be reviewed in a Rule 45 petition.[108] Petitioner failed to prove, much less allege, any of the exceptions to the general rule that only questions of law may be raised in a petition for review brought under Rule 45 of the Rules of Court.[109] Hence, this Court will not disturb the trial court's findings on the matter.

**II**

For intoxication to be appreciated as a mitigating circumstance, the intoxication of the accused must neither be "habitual [n]or subsequent to the plan to commit [a] felony."[110]

Moreover, it must be shown that the mental faculties and willpower of the accused were impaired in such a way that would diminish the accused's capacity to understand the wrongful nature of his or her acts.[111] The bare assertion that one is inebriated at the time of the commission of the crime is insufficient.[112] There must be proof of the fact of intoxication and the effect of intoxication on the accused.[113]

There is no sufficient evidence in this case that would show that petitioner was intoxicated at the time of the commission of the crime. A considerable amount of time had lapsed from petitioner's drinking spree up to the burning of the nipa hut within which he could have regained control of

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105 *People v. Mactal*, 449 Phil. 653, 661 (2003) [Per J. Corona, En Banc].

106 Thierry Steimer, *The biology of fear-and anxiety-related behaviors,* NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3181681/> (last visited on May 16, 2017).

107 *Torres v. People*, G.R. No. 206627, January 18, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/206627.pdf> 6 [Per J. Leonen, Second Division].

108 Id.

109 RULES OF COURT, Rule 45, sec. 1.

110 REV. PEN. CODE, art. 15, par. 3.

111 *People v. Bautista,* 468 Phil. 173, 180 (2004) [Per J. Carpio-Morales, Third Division]; *Licyayo v. People*, 571 Phil. 310, 327 (2008) [Per J. Chico-Nazario, Third Division]; *People v. Nimuan*, 665 Phil. 728, 736 (2011) [Per J. Brion, Third Division].

112 *People v. Nimuan*, 665 Phil. 728, 736–737 (2011) [Per J. Brion, Third Division].

113 Id. at 736.

his actions. Hence, intoxication cannot be appreciated as a mitigating circumstance in this case.

Neither can voluntary surrender be appreciated as a mitigating circumstance.

Voluntary surrender, as a mitigating circumstance, requires an element of spontaneity. The accused's act of surrendering to the authorities must have been impelled by the acknowledgment of guilt or a desire to "save the authorities the trouble and expense that may be incurred for his [or her] search and capture."[114]

Based on the evidence on record, there is no showing that petitioner's act of submitting his person to the authorities was motivated by an acknowledgement of his guilt.

Considering that no mitigating circumstances attended the commission of the crime, the indeterminate sentence of six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum, imposed by the trial court, stands.

**III**

Under Article 2224 of the Civil Code, temperate damages may be awarded when there is a finding that "some pecuniary loss has been suffered but its amount [cannot], from the nature of the case, be proved with certainty." The amount of temperate damages to be awarded in each case is discretionary upon the courts[115] as long as it is "reasonable under the circumstances."[116]

Private complainant clearly suffered some pecuniary loss as a result of the burning of his nipa hut. However, private complainant failed to substantiate the actual damages that he suffered. Nevertheless, he is entitled to be indemnified for his loss. The award of temperate damages amounting to ₱50,000.00 is proper and reasonable under the circumstances.

**WHEREFORE**, the Petition for Review is **DENIED**. The Decision dated August 30, 2012 and the Resolution dated October 22, 2012 of the Court of Appeals in CA-G.R. CR No. 32923, finding petitioner Marlon

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114 *People v. Garcia,* 577 Phil. 483, 505 (2008) [Per J. Brion, En Banc], citing *People v. Acuram,* 387 Phil. 142 (2000) [Per J. Quisumbing, Second Division].

115 CIVIL CODE, art. 2216.

116 CIVIL CODE, art. 2225.

Bacerra y Tabones guilty beyond reasonable doubt for the crime of arson is **AFFIRMED**.

**SO ORDERED.**

**MARVIC M.V.F. LEONEN**
Associate Justice

WE CONCUR:

On official leave
**ANTONIO T. CARPIO**
Associate Justice

**DIOSDADO M. PERALTA**
Associate Justice
Acting Chairperson

**JOSE CATRAL MENDOZA**
Associate Justice

**SAMUEL R. MARTIRES**
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.

**DIOSDADO M. PERALTA**
Associate Justice
Acting Chairperson, Second Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

**MARIA LOURDES P. A. SERENO**
Chief Justice