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The traditional misconception on the role of the government as a haven of refuge for the unemployed, the unqualified and the unskilled must cease. If the value reorientation of our people could be effected only through drastic and harsh measures, as the recent government reorganization and streamlining appear to be, so be it. The present government cannot and should not be burdened with excess personnel without special talents whose indiscriminate recruitment into the government service was done under the whim and caprice of a one-man ruler.

THIRD DIVISION

[G.R. No. 83186. June 4, 1990]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELPIDIO DEMECILLO and ROGELIO CRISMAL,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; INTRINSICALLY CREDIBLE IN CASE AT BAR. — We find, however, that the testimony of Tuastomban is untarnished by any tint of doubt. Tuastomban was able to identify only the appellants because they are his neighbors while the six (6) others are not. He could identify the two despite the darkness of the night because he saw them carrying burning dried coconut leaves which they used to set the house on fire. The glowing flame naturally shed light on their faces and made them easily recognizable from a distance of 15 meters away where Tuastomban was. Moreover, Tuastomban could not reasonably alarm and stop the perpetrators because the latter were superior in strength and number. He also heard them say that they were going to kill anyone who would jump from the house while it was on fire. The testimony of prosecution witness, Tuastomban,

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has intrinsic credibility. As can be gleaned from the facts presented and as admitted by appellant Rogelio Crismal, no motive on the part of Tuastomban for falsely identifying the appellants can be deduced. This being so, the statements of Tuastomban are entitled to full faith and credit.

2. **ID.; ID.; CREDIBILITY OF WITNESS; FACTUAL FINDINGS OF TRIAL COURT; RULE AND EXCEPTION.** — The appellants have not successfully presented compelling grounds to overturn the findings of the trial court on the credibility of the testimony of the prosecution witnesses and the clear and positive identification of the appellants as the perpetrators of the crime of arson. Well-settled is the rule that the factual findings of the trial court, which had all the opportunity to observe the behavior and demeanor of the witnesses and weigh all the evidence presented, are accorded great respect and weight in the absence of a clear showing of arbitrariness and misapprehension of the facts.

3. **ID.; ID.; ALIBI; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED.** — Not even the defense of alibi can surmount the strong evidence for the prosecution. The allegation that appellants were at crossing Tipanoy, which is a mere 10 minutes walk away from the house of the Fuenteses in Olas, Mahayahay can not totally eliminate the possibility that the appellants were physically present at the exact time and place when and where the crime was committed. Alibi cannot prevail against the positive identification of the accused by the prosecution. The Court notes that the appellants admit the weakness of the defense of alibi but they insist that their conviction must be based on clear and positive evidence of the prosecution. We find that the appellants keep on begging the question regarding the sufficiency of the prosecution evidence before both the appellate court and this Court. Premises considered, the Court rules that the prosecution evidence has met the requirement of moral certainty enough to satisfy the conscience and reason that the appellants committed the crime of arson; hence, the appellants are guilty of committing said crime beyond reasonable doubt.

4. **CRIMINAL LAW; ARSON (P.D. NO. 1613); IMPOSABLE PENALTY.** — The crime charged is arson as defined under the Revised Penal Code. There was no change as to the

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designation and nature of the crime. The amendment refers to an increase in penalty depending on the *facts* of the offense as committed. The Court of Appeals correctly amended the trial court judgment such that the appellants should be convicted of arson as provided under Section 3 of Pres. Decree No. 1613 which amended the law on arson in the Revised Penal Code on March 7, 1979 long before the commission of the offense in this case. The power of the Court of Appeals to review a judgment of the trial court in a criminal case includes the power to scrutinize the penalty imposed. The penalty imposable under Section 3 of Pres. Decree No. 1613 is *reclusion temporal* to *reclusion perpetua*. However, Section 4 prescribes that if the crime was motivated by spite or hatred, the penalty shall be imposed in its maximum period. The motive is clear in this case.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Macalalag Law Office & Associates for accused-appellants.

D E C I S I O N

GUTIERREZ, JR., *J.*:

Before us is an appeal certified by the Court of Appeals from a judgment of conviction of the crime of arson rendered by the Regional Trial Court of Lanao del Norte, Branch IV, Iligan City in Criminal Case No. 1083.

Appellants, Elpidio Demecillo and Rogelio Crismal were sentenced by the Regional Trial Court, applying the indeterminate sentence law, to serve the penalty of imprisonment of from two (2) years and four (4) months as minimum to eight (8) years as maximum and to indemnify the offended party, Anacita Fuentes in the sum of ₱1,000.00 without subsidiary penalty in case of insolvency.

The appellate court, after a thorough review of the facts and the evidence presented, upheld the credibility of the testimonies of the prosecution witnesses and found that the appellants were guilty beyond reasonable doubt of committing

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the crime of arson. Furthermore, it scrutinized the penalty imposed by the trial court and instead, imposed the penalty of *Reclusion Temporal* to *Reclusion Perpetua*. The appellate court ruled:

"The penalty imposed by the trial court needs correction. Paragraph 5 of Article 321 of the Revised Penal Code has already been repealed and superseded by P.D. 1613, dated March 7, 1979.

Appellants, had they studied the law on the matter, should not have appealed. As it is, they gambled on an acquittal which, on the basis of the facts, they had no chance of winning at all, at the risk that the penalty imposed by the trial court may be raised by the appellate court, as in the case at bar.

Under Section 3 of P.D. 1613, the penalty of *Reclusion Temporal* to *Reclusion Perpetua* shall be imposed if the property burned is any inhabited house or dwelling. Under Section 4 of the same law, the penalty shall be imposed in its maximum period if the offender is motivated by spite or hatred towards the owner or occupant of the property burned. The facts in the case at bar show that appellants were motivated by spite or hatred towards the owner or occupant of the house burned. At any rate, the court *a quo* also found that the aggravating circumstance of night time attended the commission of the crime. The penalty of *Reclusion Temporal* to *Reclusion Perpetua* should, therefore, be imposed in its maximum period, which is *Reclusion Perpetua*.

WHEREFORE, pursuant to Article VIII, Section 5, of the New Constitution of the Philippines which took effect on February 2, 1987 upon its ratification in a plebiscite held for that purpose, which provides:

"'The Supreme Court shall have the following powers:

xxx xxx xxx

(d) All criminal cases in which the penalty imposed is reclusion perpetua or higher.'"

and Section 13, Rule 124, Rules of Court, which states:

"'Whenever a Criminal Cases Division should be of the opinion that the penalty of death or life imprisonment should be imposed in a case, the said Division after discussion of the evidence and the law involved, shall render judgment imposing the penalty of either death or *reclusion perpetua* (should be *reclusion*

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perpetua or higher) as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.'"

and *finding accused-appellant guilty beyond reasonable doubt of the crime of arson as penalized by Section 3 of P.D. 1613 in its maximum period of Reclusion Perpetua*, we certify this case to the Supreme Court for final determination and appropriate action." (Italics supplied; *Rollo*, pp. 46-48).

We find from the foregoing that the Court of Appeals satisfied the requirement laid down by this Court in *People v. Daniel,* 86 SCRA 511 (1978) through Chief Justice Fred Ruiz Castro:

"ACCORDINGLY, this Court directs that, henceforth, should the Court of Appeals be of the opinion that the penalty of death or *reclusion perpetua* (life imprisonment) should be imposed in any criminal cases appealed to it where the penalty imposed by the trial court is less than *reclusion perpetua*, the said Court, with a comprehensive written analysis of the evidence and discussion of the law involved, render judgment expressly and explicitly imposing the penalty of either death or *reclusion perpetua* as the circumstances warrant, refrain from entering judgment, and forthwith certify the case and elevate the entire record thereof to this Court for review."

and which interprets the second paragraph of Section 12 of Rule 124 of the Rules of Court, now Section 13 of the 1985 Rules on Criminal Procedure as amended:

Section 13.

xxx xxx xxx

"Whenever the Court of Appeals should be of the opinion that the penalty of *reclusion perpetua* or higher should be imposed in a case, the Court after discussion of the evidence and the law involved, shall render judgment imposing the penalty of *reclusion perpetua* or higher as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court."

There being a judgment rendered imposing *reclusion perpetua* but not entered and only certified to this Court, we are constrained

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to proceed with the review of the entire records of the criminal case.

The information filed against the appellants alleged:

"That on or about April 7, 1986, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously burn the house and properties therein belonging to one Anacita Fuentes, and as a result thereof caused a total of ₱15,000.00 worth of properties belonging to the said Anacita Fuentes were burned, to the damage and prejudice of the said Anacita Fuentes in the aforesaid sum of ₱15,000.00, Philippine Currency." (Original Record, p. 9)

The evidence for the prosecution and the defense as well as the conclusions derived as summarized by the trial court are as follows:

"The prosecution presented Aurelio Tuastomban who testified that at around 7:00 o'clock in the morning of April 7, 1986 he went to the farm of Vicente Fuentes to gather firewood and at around 6:00 o'clock in the evening of the same day he ate his supper and planned to sleep in the house of Vicente Fuentes; that at around 6:30 in the evening he felt the call of nature and went to the fishpond which is about 50 meters away from the house and when he was about to return to the house he saw some eight (8) persons in the house of Vicente Fuentes and identified two (2) of them as Rogelio Crismal and Elpidio Demecillo, the two accused; that these two held lighted dried coconut leaves and burned the house of Vicente Fuentes. The house was completely burned down together with all the properties and belongings of the owner therein at around 7:00 o'clock that April 7, 1986.

Anacita Fuentes testified that on April 7, 1986 her house located at Tipanoy, Iligan City was burned and she identified the picture of the house (Exh. "A"); that she declared the said house for taxation purposes (Exhibit "B"); that the total value of the house burned was ₱15,000.00 but it did not include farm equipment as she had left these with a neighbor; that prior to April 7, 1986 when the house was burned, there was an incident between her family and the accused on March 19, 1986 when her house was stoned and the persons responsible even tried to burn the house but they were frustrated when a PC

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soldier called by her son arrived; that they filed a complaint with the PC regarding the stoning of the house and the attempt to burn the house and the persons responsible namely: Elpidio Demecillo and Rogelio Crismal together with their companion Alfredo Ylaya begged for forgiveness and offered to repair the house so the complaint was dropped and their house was repaired.

The defense presented as their first witness Avelino Crismal, the son of the accused Rogelio Crismal, who testified that his family is living in the land of former Fiscal Salvador Laya; that sometime on April 7, 1986 at around 7:00 o'clock in the evening he fetched water and while near the house of Vicente Fuentes he saw the son of Vicente Fuentes, by the name of Romeo Fuentes and Aurelio Tuastomban setting fire to the house of Vicente Fuentes and he asked them why they were burning the house and the two ran away; that he immediately ran because he was afraid that he might be implicated in the burning of the house; that the first time he saw the fire it was already big and had reached the roof of the house; that he immediately reported the matter to a certain Felix Sacay, their neighbor, who in turn, reported the matter to the barangay councilman; that he himself stayed in their house because there was nobody left there. According to him when he first saw the fire he was only about two arms length from the house and before that he did not see the fire because he was walking with his eyes to the ground.

Elpidio Demecillo, the accused testified that on April 7, 1986 at about 5:00 o'clock he and his brother Emilio Demecillo went to the Iligan City Hospital to secure a medical certificate for the injuries received by his brother when the latter was manhandled by a PC soldier named Jose Laruan who was brought to their place by Romeo Fuentes when the latter complained that he was threatened with a bolo by Emilio Demecillo. He identified the medical certificate issued to him (Exhibit "1"); that when they went home from crossing Tipanoy where they got off from the jeep at past 7:00 o'clock in the evening and while walking on their way home they were met by Dominador Formentora and Felix Sacay who informed them that the house of Vicente Fuentes was burned down. After having been informed of the burning of the house they reported the matter to the PC headquarters. In reporting to the PC headquarters he was accompanied by Isidro Cabahug and Florencio Nahuman and it was already around 8:00 o'clock in the evening. He denied setting fire to the house of Vicente Fuentes. However, he admitted to repairing the house of Vicente Fuentes after it was destroyed by stoning on March 19, 1986

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and he also admitted that there is a dispute regarding the boundary of his landholding and the land of Vicente Fuentes.

The next witness presented by the accused was Felix Sacay who testified that on April 7, 1986 at around 7:00 o'clock in the evening Alvino Crismal reported to him that the house of Vicente Fuentes was burned by Romeo Fuentes and Aurelio Tuastomban. He immediately proceeded to the house of the barangay councilman Loren Nahuman but he did not see him there and so he proceeded to the house of another barrio councilman Edwin Andrade and they were instructed to report the matter to the PC headquarters. They reported to the PC headquarters together with Edwin Andrade, Emilio and Elpidio Demecillo, a certain Julito, Rogelio Crismal and Isidro Cabahug. However, although he and Vicente Fuentes and the latter's wife were in good terms he never informed them of the burning of their house nor informed them that their son Romeo was the one who burned the house.

Judelyn Bulocan testified that she is a neighbor of Vicente Fuentes; that sometime on March 20, 1986 Romeo Fuentes and his mother entrusted to her their personal belongings at their house at Olas, Mahayahay, Iligan City; that aside from the personal properties a saw and a goat were also left in her custody; that there (sic) properties were left with her because on March 19, 1986 the house of the Fuentes family was stoned by certain persons whom she could not identify; that she knew of the stoning of the house because she could hear the impact of the stones landing on the house and which was frightening and she and her children even hid because they were afraid; that the stoning lasted for about 30 minutes to 1 hour; that when the house was burned on April 7, 1986 the personal properties of the Fuentes family were in her house and not in the house which was burned.

Rogelio Crismal testified that on April 7, 1986 at around 5:00 o'clock in the afternoon he was at Tipanoy because he was brought there by Elpidio Demecillo who took his brother to the Iligan City Hospital to be examined; that he waited there at Tipanoy for them and Emilio Demecillo and his brother Elpidio arrived at 7:30 o'clock in the evening; that when these two arrived they proceeded towards Olas, Mahayahay, Iligan City but on the way they were met by Felix Sacay, Isidro Cabahug and a certain Doming who informed them that the house of Vicente Fuentes was burned down. They went to the PC headquarters and reported the matter. He testified that he is also a

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tenant of Fiscal Salvador Laya and there is some boundary dispute on the land of Vicente Fuentes and his landholding.

The prosecution through the eye-witness Aurelio Tuastomban has clearly identified the accused Rogelio Crismal and Elpidio Demecillo as among those who burned the house. There seems to be no reason for the court to doubt the testimony of Aurelio Tuastomban who, even according to the two accused, has no motive or reason to testify falsely against them. Furthermore as testified not only by the witness for the prosecution but even admitted by the accused and their witnesses there was an on-going dispute on the boundary of the landholdings of the accused and the land of Vicente Fuentes and some violent incidents already happened prior to April 7, 1986 wherein the house which was burned down was stoned by the accused Rogelio Crismal and Elpidio Demecillo together with their companion Alfredo Ylaya. As testified to by Anacita Fuentes whose testimony the court finds to be credible, she overheard the accused say while they were repairing the house that they are repairing it now but later they will burn it. Obviously they were resentful for having been made to repair the house. This resentment of the accused Elpidio Demecillo deepened when his brother Emilio Demecillo was manhandled by a PC soldier who went to the area when the son of Vicente Fuentes complained to the PC headquarters that he was chased with a bolo by Emilio Demecillo. Together with the dispute concerning their boundaries the accused have all the motive to burn the house. The denial by the two accused and their alibi that at around 7:00 o'clock when the house was burned they were at crossing Tipanoy cannot prevail over the positive identification by the witness Aurelio Tuastomban who identified them as among those who burned the house. The alibi cannot also stand because according to the accused Rogelio Crismal at around 7:00 o'clock in the evening they were at crossing Tipanoy which is just a mere 10 minute walk to the place where the house was burned. The accused's contention that it was Romeo Fuentes together with the witness Aurelio Tuastomban who burned the house cannot merit acceptance by the court considering that even as early as March 20, 1986 the family of Vicente Fuentes was already concerned over their property and they have to take out their personal belongings out of the house because they were afraid these might be lost or destroyed due to the stoning incident wherein the two accused were involved." (Original Records, pp. 83-90)

The appellants raised the following errors in their appeal:

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I

"THE COURT OF APPEALS ERRED IN AFFIRMING THE RULING OF THE TRIAL COURT IN GIVING CREDIT TO THE SOLE TESTIMONY OF PROSECUTION WITNESS AURELIO TUASTOMBAN AND IN RELYING ON SAID TESTIMONY AS BASIS FOR THE IDENTIFICATION OF ACCUSED-APPELLANTS AS PERPETRATORS OF THE CRIME.

II

"THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT IN NOT FINDING THAT THE EVIDENCE FOR THE PROSECUTION IS INSUFFICIENT TO CONVICT THE ACCUSED-APPELLANTS OF THE CRIME CHARGED IN THE INFORMATION. (*Rollo*, p. 63)

III

"THE COURT OF APPEALS ERRED IN IMPOSING THE PENALTY OF *RECLUSION PERPETUA* BY APPLYING SEC. 3. OF P.D. 1613." (*Rollo*, p. 70)

A thorough examination of the facts of the case shows that the grounds relied upon by the accused-appellants are without merit.

Appellants mainly contend that the following facts as testified by Aurelio Tuastomban were unbelievable and unreliable: (1) that he saw eight (8) persons but was only able to identify two (2) of them; (2) that he could, in the darkness of the night, vividly count eight (8) persons at the scene of the crime and name two (2) of them; and (3) that having seen the alleged perpetrators, he could have prevented the commission of the crime by calling their attention.

We find, however, that the testimony of Tuastomban is untarnished by any tint of doubt. Tuastomban was able to identify only the appellants because they are his neighbors while the six (6) others are not (TSN, June 23, 1986, p. 14). He could identify the two despite the darkness of the night because he saw them carrying burning dried coconut leaves which they used to set the house on fire (TSN, June 23, 1986, pp. 13, 16). The glowing flame naturally shed light on their faces and made

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them easily recognizable from a distance of 15 meters away where Tuastomban was (*Ibid.*, p. 13). Moreover, Tuastomban could not reasonably alarm and stop the perpetrators because the latter were superior in strength and number. He also heard them say that they were going to kill anyone who would jump from the house while it was on fire (*Ibid.*). The testimony of prosecution witness, Tuastomban, has intrinsic credibility.

As can be gleaned from the facts presented and as admitted by appellant Rogelio Crismal (TSN, June 24, 1986, p. 35), no motive on the part of Tuastomban for falsely identifying the appellants can be deduced. This being so, the statements of Tuastomban are entitled to full faith and credit (*People v. Berbal*, G.R. No. 71527, August 10, 1989; *People v. Espinosa and Jundoy*, G.R. No. 72883, December 20, 1989).

As correctly found by the trial court, it was in fact the accused-appellant who had their own reasons for committing the crime and denying such commission. The records show that there was an on-going dispute involving the appellants and their landlord (a certain Fiscal Laya) on the one hand, and the family of Vicente Fuentes on the other, regarding the boundaries of land, which fact is admitted by both appellants in their oral testimonies. The rift between the two parties became more manifest when on March 19, 1986 (before the burning incident), the appellants, together with one Alfredo Ylaya stoned the house of Vicente Fuentes in Olas, Mahayahay, Iligan City. One of the children of Fuentes reported the matter to the Philippine Constabulary (PC) and Vicente Fuentes filed a complaint against them. The appellants apologized and offered to repair the house. As a result, the complaint was dropped.

However, Anacita Fuentes, the wife of Vicente, testified that while the appellants were repairing the house, she heard them say that they will burn the house at the next opportunity (TSN, June 23, 1986, p. 20). This means that appellants harbored ill-will resulting from the humiliation of having to pay for the damage they had done. The antipathy was all the more intensified when the brother of appellant Demecillo, Emilio, was mauled

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by a PC soldier upon the complaint of the son of Vicente Fuentes of having been chased by Emilio with a bolo.

The appellants have not successfully presented compelling grounds to overturn the findings of the trial court on the credibility of the testimony of the prosecution witnesses and the clear and positive identification of the appellants as the perpetrators of the crime of arson. Well-settled is the rule that the factual findings of the trial court, which had all the opportunity to observe the behavior and demeanor of the witnesses and weigh all the evidence presented, are accorded great respect and weight in the absence of a clear showing of arbitrariness and misapprehension of the facts (*People v. Panuelos*, 136 SCRA 501, [1985]; *People v. Abonada*, 169 SCRA 530 [1989]; *People v. Maghanoy*, G.R. Nos. 67170-72, December 15, 1989; *People v. Corrales*, G.R No. 76922, February 21, 1990).

The appellants claim that the trial court erred in not finding that the prosecution evidence is insufficient to prove their guilt beyond reasonable doubt. They adduce that Tuastomban was actually a participant in committing the crime of arson because as alleged by the defense witness, Alvino Crismal, Tuastomban and Romeo Fuentes (son of Vicente) were the ones who burned the house. They say that Romeo Fuentes had plans to burn his father's house which was worth only ₱350.00 that is why he and his mother, Anacita, left their personal belongings in the house of Judelyn Bulocan.

The Court rules otherwise. The version given by the defense appears to be a fabrication of what transpired before and during the burning incident if only to exculpate them from guilt. The testimony of Alvino Crismal on which appellants rely heavily was correctly rejected by the trial court in this wise:

"The testimony of Alvino Crismal is also unbelievable. He is just a mere 14 year old child, who is smaller than his age and claimed to have asked Romeo Fuentes why he burned the house and yet at the same breath, he also claimed to have run away immediately because he was afraid to be implicated. If he was afraid, why did he call the attention of Romeo Fuentes. His testimony that he first saw the fire when he was only about two arms length from the house is beyond

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human experience. If he was going towards the house that evening, and considering that it was already 7:00 o'clock and dark, he could have even seen the fire from a far distance. His reason that he was looking towards the ground while walking and therefore did not see the fire from a far is very flimsy and incredible since one who walks at night especially in the farm would try to see where he was going. There is no doubt therefore in the mind of the court that the two accused Elpidio Demecillo and Rogelio Crismal were responsible for the burning of the house." (Original Records, p. 90)

The court does not find any ground averred by the appellants that is plausible enough to convince us that Romeo Fuentes and Aurelio Tuastomban planned and burned the house of Vicente. It is more in accord with reason and human experience to believe that Romeo and Anacita transferred their belongings on March 20, 1986, the day after the stoning incident, to the house of a neighbor in order to prevent another possible destruction by the appellants. The defense testimony that there were eight (8) of them including the appellants who were out there in the streets at about 7:00 p.m. on April 7, 1986 to report the occurrence of a fire to the authorities only confirms the prosecution's theory that the appellants and six (6) other men were involved in the burning incident on that same night.

Not even the defense of alibi can surmount the strong evidence for the prosecution. The allegation that appellants were at crossing Tipanoy, which is a mere 10 minutes walk away from the house of the Fuenteses in Olas, Mahayahay can not totally eliminate the possibility that the appellants were physically present at the exact time and place when and where the crime was committed (*People v. Javier*, G.R. No. 70997, February 28, 1990; *People v. Idnay*, 164 SCRA 358 [1988]; *People v. Asuncion and Aguinaldo*, G.R. No. 83870, November 14, 1989; *People v. Tamayo, et al.*, G.R. Nos. 79418-21, March 20, 1990). Alibi cannot prevail against the positive identification of the accused by the prosecution (*People v. Tamayo, et al., supra*).

The Court notes that the appellants admit the weakness of the defense of alibi but they insist that their conviction must be based on clear and positive evidence of the prosecution. We find that the appellants keep on begging the question regarding

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the sufficiency of the prosecution evidence before both the appellate court and this Court. Premises considered, the Court rules that the prosecution evidence has met the requirement of moral certainty enough to satisfy the conscience and reason that the appellants committed the crime of arson; hence, the appellants are guilty of committing said crime beyond reasonable doubt (*People v. Padilla*, G.R. No. 72709, August 31, 1989).

The appellants further question the imposition by the Court of Appeals of the penalty of *reclusion perpetua* under Section 3 of Pres. Decree No. 1613 by arguing that they were not properly informed of the offense of arson under the said law. There is no merit in this argument. It is well-settled that the accused may be convicted of a crime and sentenced to a penalty stated therefor so long as the facts alleged in the information and proved at the trial shall constitute *the crime for which he is convicted* even though different from the crime designated and charged in the information (*Santos v. People*, G.R. No. 77429, January 29, 1990).

In this case, the crime charged is arson as defined under the Revised Penal Code. There was no change as to the designation and nature of the crime. The amendment refers to an increase in penalty depending on the *facts* of the offense as committed. The Court of Appeals correctly amended the trial court judgment such that the appellants should be convicted of arson as provided under Section 3 of Pres. Decree No. 1613 which amended the law on arson in the Revised Penal Code on March 7, 1979 long before the commission of the offense in this case. The power of the Court of Appeals to review a judgment of the trial court in a criminal case includes the power to scrutinize the penalty imposed (Section 13, Revised 1985 Rules on Criminal Procedure). The penalty imposable under Section 3 of Pres. Decree No. 1613 is *reclusion temporal* to *reclusion perpetua*. However, Section 4 prescribes that if the crime was motivated by spite or hatred, the penalty shall be imposed in its maximum period. The motive is clear in this case.

WHEREFORE, the appealed judgment of the trial court as certified by the Court of Appeals is modified in that the accused-

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appellants ELPIDIO DEMECILLO and ROGELIO CRISMAL are hereby found guilty beyond reasonable doubt of the crime of arson as defined in Section 3 of Presidential Decree No. 1613 and sentenced to serve the penalty in the maximum period for *reclusion perpetua*. The order to indemnify the offended party the sum of ₱1,000.00 without subsidiary imprisonment in case of insolvency is *AFFIRMED*.

SO ORDERED.

Fernan, C.J. (Chairman), Feliciano, Bidin, and *Cortes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 84713. June 4, 1990]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellees, vs.* **CARLITO ESWAN, PEDRO ESWAN, ELIGIO ESWAN and CARLOS CASTRO, JR.,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI; UNAVAILING UNLESS ACCUSED PROVED THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE SCENE OF THE CRIME. — As can be gathered from the narration of facts of the appellants, their defense is mainly alibi. As held in *People v. Tamayo, et al.*, March 20, 1990, it is commonplace learning that alibi is a weak defense because it can be so easily manufactured. Because of the positive testimony pinpointing his direct participation in a killing, the accused must not only show that he was at some other place at the time that the crime occurred but also that it was physically impossible for him to have been at the scene of the crime in order to sustain his defense. In fact, Carlito Eswan testified that he passed by the plaza where